



Comp.A.Nos.237 & 238 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	02.08.2023
Order pronounced on	20.09.2023

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Comp.A.Nos.237 & 238 of 2022

in

Comp.A.No.161 of 2022

in

C. P. No.57 of 1998

1. C.Sekar
2. S.ChinnaKaruppan
3. C.Lakshmi
4. S.Pichammal

... Applicants
(in both applications)

v.

1. The Official Liquidator, High Court, Madras
As Provisional Liquidator of
Maxworth Orchards (India) Limited (In Provisional Liquidation),
High Court, Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai, Chennai – 600 001.
2. Ms.D.Nagasaila Suresh
Administrator of Maxworth Orchards(India) Limited,
(In Provisional Liquidation)
Old no.3811/new no.1411,
Akbarabad Second Street,
Kodambakkam, Chennai – 600 024.



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3. Indian Bank, rep. by General Manager,
Corporate Office, No.254-260,
Avvai Shanmugam Salai, Royapettah,
Chennai – 600 014.

4. The Manager, Indian Bank,
Karaikudi Branch, Sivagangai District.
(Respondent Nos.3 & 4 impleaded by order
applications)
dated 21.06.2023 in C.A.No.261/2023)

... Respondents
(in both

PRAYER IN C.A.Nos.237 & 238 of 2022: These Applications are filed under Order XIV Rule 8 of O.S. Rules r/w Rules 9, 11(B) of the Companies (Court) Rules, 1959 praying to (a) set aside the order dated 14.06.2022 passed by this Hon'ble Court in C.A.No.161 of 2022 in C.P.No.57 of 1998, pertaining to the lands to an extent of 46.64 acres situated at Iluppakottai Velampallam Village, Panangudi group, Sivagangai district in survey nos.131/7, 132/1B, 132/2, 132/3, 132/4, 133/1, 133/2, 133/3, 133/4, 133/5, 134/1A, 134/1B, 134/1C, 134/3, 135/1, 135/3, 136/1, 136/2, 136/3, 136/4B, 136/5, 137/1, 137/2, 137/3, 137/4, 137/6, 138/2, 138/4, 139/4, 139/5A/53, 140/1, 140/3, 140/4, 141/2, 141/3, 142/1A, 142/1B, 143/5, 144/1, 144/2, 144/3, 144/5, 144/6, 147/1, 148/6, 149/1A, 149/2A, 149/2B, 149/2C, 149/2D1, 281/11; and (b) grant stay of all further proceedings pending final disposal of the case; and pass such suitable order and thus render justice.

Applicants : M/s.C.Umashankar &
B.P.Vinoth

Respondents : Official Liquidator for R1
Mr.H.Karthik Seshadri
for Mrs.Nagasaila Suresh,



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Administrator (R2)
Ms.Hemalatha Suresh

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COMMON ORDER

These applications are presented by persons claiming title to lands ad-measuring an extent of 46.64 acres in Survey Nos.131/7, 132/1B, 132/2, 132/3, 132/4, 133/1, 133/2, 133/3, 133/4, 133/5, 134/1A, 134/1B, 134/1C, 134/3, 135/1, 135/3, 136/1, 136/2, 136/3, 136/4B, 136/5, 137/1, 137/2, 137/3, 137/4, 137/6, 138/2, 138/4, 139/4, 139/5A/53, 140/1, 140/3, 140/4, 141/2, 141/3, 142/1A, 142/1B, 143/5, 144/1, 144/2, 144/3, 144/5, 144/6, 147/1, 148/6, 149/1A, 149/2A, 149/2B, 149/2C, 149/2D1, 281/11 situated at Elumpaikottai Velamballam village, Sivagangai taluk, Sivagangai District. In Company Application No.237 of 2022, the applicants seek an order of stay of all further proceedings pursuant to the order dated 14.06.2022 of this Court in C.A.No.161 of 2022 and in Company Application No.238 of 2022, the applicants seek to set aside the sale notice.

2. Learned counsel for the applicant, Mr.C.Umashankar, submitted that the applicants trace their title from four registered sale deeds each dated 08.01.2014, which were registered as Document



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Nos.31, 32, 33 and 34 of 2014 at the Joint Sub-Registrar Office-I, Sivaganga. He further submitted that the aforesaid purchase was from Columbia Bio Fuels Pvt. Ltd.(Columbia Bio Fuels), which has its registered office at Kolkata. Learned counsel also relied upon the *pattas*, *kist* receipts and village accounts in respect of the lands to assert title.

3. Learned counsel further submitted that the schedule mentioned property was mortgaged by the applicants in favour of the Indian Bank, Karaikudi Branch, by deposit of title deeds on 26.04.2016. He also submitted that a supplementary deed of mortgage was executed on 04.10.2019, which was registered as Document No.1718 of 2019 at the Joint Sub-Registrar Office-I, Sivaganga. These mortgages were not redeemed and, therefore, by order dated 28.06.2023 in C.A.No.261 of 2023, the Indian Bank was impleaded as Respondent Nos. 3 & 4 in both applications.

4. Learned counsel submitted that no prior notice of the auction was provided to the applicants. On the ground that the applicants have clear title over these lands, it was submitted that the company in liquidation (the Company) does not have any right over the lands.



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WEB COPY

5. In response to these submissions, a common counter was filed by the learned Administrator on behalf of the Official Liquidator (the OL). In the said counter, it was asserted that the Company acquired about 155.65 acres in Velamballam (Illupukottai) and Kattu Suravanthi villages under the Max-Nandavanam project through 57 registered general powers of attorney (GPAs) in favour of Mr.A.Venkatesan, an employee of the Company. Pursuant thereto, the Company took possession of the entire extent of land, conducted a survey and plotted the lands.

6. Mr.Karthik Seshadri, learned counsel for the Administrator, submitted that item no.14 of the sale notice dated 29.04.2022 pertained to sale of lands of the extent of 74.65 acres in the Max-Nandavanam project. Out of 74.65 acres, he pointed out that the applicants claim title to only 46.64 acres based on the alleged purchase by the applicants from Columbia Bio Fuels in the year 2014. Therefore, for purposes of these applications, he contended that it is sufficient to decide the rival claims as regards the said 46.64 acres (the Disputed Lands).



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7. In order to establish the Company's title over the Disputed Lands, learned counsel for the Administrator relied upon the memorandum of understanding (MoU) dated 10.07.1995 for acquiring about 150 acres of land and the subsequent agreement for sale dated 13.07.1995. He further stated that the original landowners, after receiving the full sale consideration, executed GPAs in favour of an employee of the Company.

8. With regard to the sale deeds executed by Columbia Bio Fuels in favour of the applicants, learned counsel contended that the sale was after the commencement of winding up and, therefore, void against the OL and the Company. Furthermore, he referred to the encumbrance certificates placed in the typed set of the Administrator (pages 419 to 573) and contended that the name of Mr. A.Venkatesan, the agent, is specified therein and that this constitutes evidence that both Columbia Bio Fuels and the applicants had knowledge of his interest in the Disputed Lands before purchasing the same. It was also submitted that the OL took possession of the lands on 27.04.2011 by affixing a notice on the compound pillars. Thereafter, the auction sale took place on 14.06.2022



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and S.Abinaya was declared as the highest and, therefore, successful bidder for 74.65 acres at Rs.1,50,00,000/.

9. Learned counsel for the Bank (respondent Nos.3 & 4) submitted that the applicants had mortgaged the Disputed Lands by deposit of title deeds on 26.04.2016, and that the memorandum of deposit was registered as Doc.No.689/2016. She further submitted that the mortgage was renewed by re-deposit of the said title deeds on 04.10.2019, and that the memorandum of deposit in relation thereto was registered as Doc.No.1789/2019, with the SRO, Sivagangai. Learned counsel concluded her submissions by contending that the proposed sale by respondent no.1 pursuant to order dated 14.06.2022 in C.A.No.161/2022 is liable to be set aside in view of the subsisting mortgage on the properties.

10. Upon considering the contentions of the contesting parties, the primary question that warrants examination is whether the disposition in favour of the applicants is a disposition of the property of the Company. If the answer is in the affirmative, the conveyance in favour of the applicants would be void unless validated by the Court because such



conveyance is after commencement of winding up. If the answer is that no clear conclusion can be drawn in summary proceedings, parties should be called upon to go through a trial process. If the answer is in the negative, the applicant succeeds. In order to determine which category this case falls under, it is necessary to scrutinize the documents on record.

11. On perusal of the MoU dated 10.07.1995 between the Company and Mr.A.Karupaiah, it is evident that Mr.A. Karuppaiah was entrusted with the responsibility of obtaining GPAs in favour of the Company for the extent of 150 acres. Further, in clause 4 thereof, it was specified that 20% of the total sale consideration would be paid to Mr.A.Karupaiah as advance after getting the preliminary clearance from the land acquisition executives of the Company. The said document also specifies that the agreed price is Rs.7500/- per acre without commission. The agreement for sale dated 13.07.1995 executed by Mr.A.Karupaiah in favour of the Company covers an extent of 150 acres for the sale consideration of Rs.11,25,000/-. However, the schedule to the said document does not disclose any survey numbers.



12. In addition to the MoU, 34 GPAs are on record along with sale consideration receipts and deeds of undertaking executed by the land owners in 1995 for handing over possession. Each GPA deals with specific extents of land in one or more survey numbers. Several receipts are also on record and the learned Administrator has correlated the GPA with the corresponding receipt. Since the GPA contains details of both survey number(s) and extents therein and, likewise, the receipt also contains the same information, such correlation is possible. Moreover, it is stated in each receipt that a GPA would be executed and that the entire sale consideration was received in cash. By way of illustration, one of the receipts is extracted below:

"கிரையரசீது

1995ஆம் வருஷம் அக்டோபர் மாதம் 16ந் தேதிக்கு யுவ வருஷம் புரட்டாசி மாதம் 29ந் தேதி, சென்னை மாநகரம், சென்னை-83, அசோக்நகர் டோர்நம்பர் 39, 47வது தெருவில் வசிக்கும் திரு. அருள்தரும்பெருமாள் அவர்கள் குமாரர் 27 வயதுள்ள திரு. ஏ. வெங்கடேசன் அவர்களுக்கு,

பசும்பொன்முத்துராமலிங்கத்தேவர் மாவட்டம், சிவகங்கை வட்டம், இலுப்பக்கோட்டை வேளாம்பள்ளம் கிராமத்தில் வசிக்கும் வேலு மகன் விவசாயம் நாகு எழுதிக் கொடுத்த கிரைய ரசீது.

எனக்குப் பாத்தியப்பட்டுள்ள அடியிற்கண்ட சொத்தை நான் தங்களுக்கு நாளது தேதியில் ரிஜிஸ்தர் ஜெனரல்பவர் பத்திரத்தின்மூலம் பவர்



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பத்திரத்தில் கண்டுள்ளசொத்துக்களை ரிஜிஸ்தர் செய்து கொடுத்துஇருக்கிறேன். ண பவர் பத்திரத்தில் கண்டுள்ளசொத்துக்கு கீழே குறிப்பிட்ட பணப்பற்றுப்படி கிரையத்துகை ரூபாய் முழுவதையும் ரொக்கம் பெற்றுக்கொண்டேன். ண சொத்தை தாங்கள் சர்வசுதந்திரப் பாத்தியமாக அனுபவித்துக் கொள்ளவேண்டியது. ண சொத்துக்களை எக்காரணத்தைக்கொண்டும் மாற்றம் செய்யவோ, ரத்துச்செய்யவோ எனக்கு யாதொரு உரிமையும் கிடையாது என்று இதன்மூலம் உறுதியாய்ச்சொல்லுகிறேன். பணப்பற்று ரூ.32,925/- (ரூபாய் முப்பத்தி இரண்டாயிரத்தி தொள்ளாயிரத்தி இருப்பத்தைந்து மட்டும்).

சொத்து விவரம் சிவகங்கை வட்டம், பனங்காடி குரூப், பனங்காடி உள்கடை, இலுப்பக்கோட்டை வேளாம்பள்ளம் கிராமத்தில்.

- 1.சர்வே எண்.134ல் 1ஏ புன்சை 0.60.0 ஏர்க்கு ஏக்கர் 1 செண்டு 48 ஒரு ஏக்கர் நாற்பத்திஎட்டு செண்டு மட்டும்.
2. சர்வே எண்.136ல் 50.71.0 ஏர்க்கு ஏக்கர் 1 செண்டு 76 ஒரு ஏக்கர் ஏப்பத்திஆறு செண்டு மட்டும்.
- 3.சர்வே எண்.142ல்1ஏ புன்சை 0.46.5 ஏர்க்கு ஏக்கர் 1செண்டு 15 ஒரு ஏக்கர் பதினைந்து சென்று மட்டும்.

சாட்சிகள்

- 1.
- 2.ராமகதிரேசன் னு.டி, ராமன் இலுப்பக்கோட்டை
GPA No: 312/95”



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13. If the GPAs are verified to identify whether any GPA deals with the lands described in the above-extracted receipt, it becomes clear that GPA No.312 of 1995 relates to 1.48 acres in Survey No.134/1A; 1.76 acres in Survey No.136/5; and 1.15 acres in Survey No.142/2A. The same survey numbers and extents are dealt with in the receipt, extracted above, which is at page 22 of the typed set filed by the learned Administrator. Therefore, it is possible to draw the conclusion that the said receipt is in respect of consideration paid and received for the extent of lands covered in GPA No.312 of 1995. By undertaking this exercise of identifying corresponding GPAs and receipts, an inference may be drawn that full sale consideration was paid in respect of specific parcels of land before the relevant GPA was executed. The relevant particulars are captured in the following table:



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S.No.	GPA No.	Extent (in acres)	Survey Nos. Covered	Consideration
1.	312/95	1.48 + 1.76 + 1.15	134/1A, 136/5, 142/1A	Rs.32,952/-
2.	219/95	1.40	137/2	Rs.10,500/-
3.	407/95	3.01	138/2	Rs.22,575/-
4.	175/95	2.65 + 1.42	141/1, 143/2	Rs.30,525/-
5.	179/95	1.10 + 0.91 + 1.68	143/1, 143/4, 144/1	Rs.27,675/-
6.	160/95	0.88 + 1.70	141/3, 145/6	
7.	162/95	1.64	140/3	Rs.12,300/-
8.	180/95	10.94	147/1	Rs.82,050/-
9.	171/95	0.84	143/5	Rs.6,300/-
10.	172/95	1.98 + 0.64	132/2, 136/2	Rs.19,650/-
11.	290/95	2.70 + 1.63 + 5.74	133/4, 133/5, 134/2	Rs.75,525/-
12.	409/95	2.74	140/4	Rs.20,550/-
13.	218/95	1.44	139/4	Rs.10,800/-
14.	408/95	2.11	133/1	Rs.15,825/-
15.	344/95	0.99	132/1B	Rs.7,425/-
16.	277/95	2.91	281/12	Rs.21,825/-
17.	313/95	0.74 + 0.69	134/1C + 139/5A	Rs.10,725/-
18.	319/95	1.52	132/4	Rs.11,400/-
19.	167/95	1.68	133/3	Rs.12,600/-
20.	278/95	0.74 + 0.67	134/1B, 139/5B	Rs.10,575/-
21.	176/95	1.00 + 0.48 + 0.70	131/7, 136/3, 144/2	Rs.16,350/-
22.	159/95	0.50 + 1.91	137/4, 139/1	Rs.18,075/-
23.	166/95	1.82	137/6	Rs.13,650/-
24.	161/95	1.16 + 1.07	134/3, 140/1	
25.	212/95	0.84	136/1	Rs.6,300/-
26.	220/95	3.32	137/1	Rs.24,900/-
27.	289/95	1.83 + 2.56 + 1.80	135/1, 135/3, 137/3	Rs.46,425/-
28.	213/95	0.84 + 0.57	136/4B, 142/1B	Rs.10,575/-
29.	203/95	1.80	148/6	Rs.13,500/-
30.	182/95	2.42	132/3	Rs.18,150/-
31.	217/95	4.50 + 2.99 + 1.51	141/2, 144/3, 132/4	Rs.67,500/-
32.	174/95	0.70 + 1.95	144/5, 144/6	
33.	168/95	1.54	133/2	
34.	324/95	4.54	132/4	
SALE DEEDS				
1.	45/96	0.72 + 0.29 + 3.05 + 0.29 + 2.20 + 0.12 + 0.25 + 0.98 + 0.16 + 0.95 + 0.35	149/1A, 149/2A, 149/2D1, 149/2B, 149/2C, 149/1B, 149/2D2, 149/2E1, 149/2Ey2, 150/4, 150/6,	Rs.58,032/-
2.	46/1996	0.40	150/8	-
TOTAL EXTENT		113.59 acres	TOTAL CONSIDERATION	Rs.7,35,234/-

<https://www.mhc.tn.gov.in/judis>



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14. These GPAs evidence that the land owners executed them in favour of Mr.A.Venkatesan. The employment application form and joining report of the agent, Mr.A.Venkatesan, is on record, and these documents clearly indicate that A.Venkatesan was an employee of Maxworth. Therefore, there is basis to draw the inference that the PoAs were executed in his favour in course of his employment with Maxworth. By orders of injunction dated 24.04.2003 and 18.11.2003, in C.A.No.740 of 2003, this Court restrained the agent from alienating lands purchased by the Company.

15. Another piece of evidence in this case is the deed of undertaking by land owners for handing over possession of lands forming the subject of each of the GPAs. All the deeds of undertaking are in identical language and a representative relevant extract is set out below:

1995 வருஷம் அக்டோபர் மாதம் 16ந்தேதிக்கு
யுவ வரும் புரட்டாசி மாதம் 29ந்தேதி, சென்னை
மாநகரம், சென்னை 83, அசோகநகர்
டோர்நம்பர் 39, 47வது தெருவில் வசிக்கும்
திரு.அருள்தரும்பெருமாள் அவர்கள் குமாரர் 27
வயதுள்ள திரு.ஏ.வெங்கடேசன் அவர்களுக்கு,
பசம்பொன் முத்தூராமலிங்கத் தேவர்
மாவட்டம், சிவகங்கை வட்டம், இலுப்பக்கோட்டை
வேளாம்பள்ளம் கிராமத்தில் வசிக்கும்வேலு மகன்



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விவசாயம் நாகு எழுதிக் கொடுத்த
உறுதிமொழிப் பத்திரம்.

எனக்குத் தனித்த சொந்த பாத்திய
அனுபவத்திலும் சுவாதீனத்திலும் இருந்து
வருகிற அடியிற்கண்ட சொத்தைப் பொறுத்து
தங்களுக்கு நான் நாளது தேதியில் ஒரு பவர்
பத்திரம் எழுதிக் கொடுத்திருக்கிறேன்.
அடியிற்கண்ட சொத்தைப் பொறுத்து ஏதாவது
வில்லங்கம், விவகாரம் இருந்து வெளியானால்
அதை என்னுடைய சொந்தப் பொறுப்பிலிருந்தும்,
என்னுடைய சொந்த செலவிலிருந்தும் இதர
மற்றச் சொத்துக்களிலிருந்தும் தங்களுக்குநான்
நிவர்த்தி செய்துக் கொடுப்பேனாகவும் என்று
தங்களுக்கு இந்த உறுதிமொழிப்பத்திரம் எழுதிக்
கொடுத்திருக்கிறேன். அடியிற்கண்ட சொத்தை
இன்று தேதியில் தங்கள் வசம் ஒப்படைத்து
விட்டேன்.

Additionally, the minutes of proceeding dated 27.04.2011 records that the representative of the OL and Administrator visited the lands in Max-Nandavanam and affixed notices on the compound pillar communicating the taking over of possession by the OL and a team of 4 security guards for day shift and 6 security guards for night shift from M/s.Global Security Services were appointed to safeguard the immovable assets of the Company.



16. In *Suraj Lamp & Industries (P) Ltd. v. State of Haryana*,

(Suraj Lamps)(2012) 1 SCC 656, which was decided on 11.10.2011, the Supreme Court concluded that a sale should ordinarily be by way of a registered conveyance, but carved out an exception for *bona fide* transactions involving the execution of a GPA in favour of a developer. In relevant part, it was held as under in paragraphs 26 and 27:

“26....The said “SA/GPA/will transactions” may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered into before this day, they may be relied upon to apply for regularisation of allotments/leases by development authorities. We make it clear that if the documents relating to “SA/GPA/will transactions” have been accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue Authorities to effect mutation, they not be disturbed merely on account of this decision.

27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son,



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daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding “SA/GPA/will transactions” are not intended to apply to such bona fide/genuine transactions.”

Upon examining the MoU, the Sale Agreement, the GPA, the receipts and the deeds of undertaking, I conclude that this transaction falls within the exceptions carved out in ***Suraj Lamps***. In this connection, it is also pertinent to refer to the judgment of the Division Bench of this Court in ***Maxworth Orchards India Ltd. v. B. Ravi Babu and others (Maxworth DB)***, 2023-4-L.W.205, where, in paragraph 27, the Division Bench



extracted paragraph 27 of **Suraj Lamps**, held in paragraph 28 that **Suraj**

Lamps is prospective and further held, in paragraph 29 as under:

“29. In the case before us, the powers of attorney were executed in the last decade of the previous millennium and therefore, the argument based on Suraj Lamps necessarily, has to fail.”

The wide powers of the Companies Court under Sections 446(2) and 456 of CA 1956 were also recognised and endorsed in **Maxworth DB** at paragraphs 30 and 31 of the judgment.

17. The documents relied on by the rival claimants remain to be considered. The applicants produced the following four sale deeds dated 08.01.2014 executed by Columbia Bio Fuels: (i) sale deed in favour of the 1st applicant under Document no.31 of 2014 for an extent of 36.30 acres of land comprised in Survey Nos.131/7, 136/3, 132/1B, 134/1A, 136/5, 142/1A, 132/2, 132/3, 133/1, 133/2, 134/1C, 139/5A, 134/3, 140/1, 136/2, 136/4B, 142/1B, 137/2, 137/4, 137/6, 138/1, 138/2, 139/1, 139/4, 140/3, 143/5, 133/3; (ii) sale deed in favour of the 2nd applicant under Document no.32 of 2014 for an extent of 36.30 acres of land comprised in Survey Nos. 134/1B, 135/1, 135/3, 136/1, 137/1, 137/3, 138/4, 139/5B, 139/6, 140/4, 141/1, 141/2, 141/3, 143/1, 143/2, 143/4, 143/6,



143/7, 151/9; (iii) sale deed in favour of the 3rd applicant under Document no.34 of 2014 for an extent of 36.28 acres of land comprised in Survey Nos. 144/1, 144/3, 147/1, 148/1, 148/2, 148/4, 148/5, 149/3A, 149/3B, 150/1, 150/2, 151/17, 163/6, 163/8, 167/2, 167/5, 145/6; and (iv) sale deed in favour of the 4th applicant under Document no.33 of 2014 for an extent of 36.35 acres of land comprised in Survey Nos.144/2, 144/5, 144/6, 148/6, 149/1A, 149/2A, 149/2B, 149/2C, 149/2D1, 150/8, 151/10, 151/13, 151/2, 151/3, 151/8, 163/3, 164/2B, 164/3B, 164/4, 166/4B, 167/1, 168/3, 145/1A, 145/5, 132/4, 133/4, 133/5.

18. The recitals of each of the sale deeds reveal that Columbia Bio Fuels is a private limited company registered under the Companies Act, 1956 (the Act), with its registered office at Kolkata. They further reveal that Columbia Bio Fuels had acquired the Disputed Lands from several original land owners in 2006. However, the parent documents of such transactions are not on record.

19. The *pattas* on record specify the names of the applicants as the owners of the property. *Patta* Nos.1689 & 1720 reflect the name of the 1st applicant, *patta* no.1690 reflects the name of the 2nd applicant,



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patta no.1691 reflects the name of the 4th applicant, and *patta* no.1692 reflects the name of the 3rd applicant. Additionally, there are some land D.8 receipts and *adangal* receipts of the year 2015 to show the alleged ownership of the applicants.

20. In order to determine the category in which this case may be placed (paragraph 10 *supra*), Section 536(2) of the Companies Act, 1956 (CA 1956) needs to be examined. Section 536(2) deals with the disposition of the property, including actionable claims, of a company after the commencement of winding up. The said provision is set out below:

“536(2) In the case of a winding up by or subject to the supervision of the Court, any disposition of the property (including actionable claims) of the Company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.”

C.P.No.57 of 1998 was presented by a creditor of the Company on or about 24.02.1998. An Administrator was appointed on 12.02.2001 and was vested with all powers of the Official Liquidator by order dated

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06.02.2006. By order dated 17.09.2010, the Official Liquidator was appointed as Provisional Liquidator. Consequently, by virtue of the legal fiction incorporated in Section 441(2) of CA 1956, the winding up was deemed to commence on or about 24.02.1998. As a corollary, Section 536(2) of CA 1956 became applicable and all dispositions of property, including actionable claims, of the Company and transfers of shares or alteration in the status of members in the Company, if effected after 24.02.1998, would be void unless validated by the Court.

21. In this case, as discussed above, there is basis to conclude that the Disputed Lands are assets of the Company. Considering the fact that the MoU, Sale Agreement and GPAs in favour of the Company were executed in 1995, whereas the sale deeds in favour of the applicants were executed in 2014, the pertinent question is: whether the sale deeds in favour of the applicants are void in terms of Section 536(2) of CA 1956? The relevant documents are revisited to answer this question.

22. As regards Sale Deed bearing Document No.31 of 2014, the survey numbers specified in the schedule thereto tally with the survey numbers in GPA Nos.312/95, 219/95, 407/95, 162/95, 171/95, 172/95,



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218/95, 408/95, 344/95, 313/95, 167/95, 176/95, 159/95, 166/95, 161/95, 213/95, 182/95 and 168/95, and the receipts corresponding thereto. The aggregate extent covered by these survey numbers is about 34.86 acres. Survey No.138/1 for an extent of 1.45 acres is the subject of the above sale deed but not of any GPA. As regards Sale Deed bearing Document No.32 of 2014, the survey numbers specified in the schedule thereto match those in GPA Nos.278/95, 289/95, 212/95, 220/95, 278/95, 409/95, 175/95, 217/95, 160/95 and 179/95 and the receipts corresponding thereto, except for Survey Nos.143/7, 138/4, 139/6, 143/6 and 151/9. It is pertinent to note here that Survey Nos. 143/7, 139/6, 143/6 and 151/9 do not form part of the Judge's Summons. Excluding those survey numbers and the extents therein, the extent covered in the GPAs in relation to this sale deed is 25.96 acres. As regards Sale Deed bearing Document No.33 of 2014, Survey Numbers 144/5, 144/6, 148/6, 132/4, 133/4, 133/5 correspond to GPA Nos.174/95, 203/95, 217/95, 290/95 to an extent of 20.97 acres and the receipts corresponding thereto and Survey Numbers 149/1A, 149/2A, 149/2D1, 149/2B, 149/2C correspond to the Sale Deed bearing Document No.45/96, which was executed in favour of the agent for an extent of 6.51 acres. As regards Sale Deed bearing Document No.34 of 2014, Survey Numbers 144/1,



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144/3, 147/1 match those in GPA Nos.179/95, 180/95 and 144/3, respectively, of an extent of 15.57 acres and the receipts corresponding thereto. A table correlating the sale deeds of the applicant and the GPAs is set out below:

Doc. No.31 of 2014

Survey Nos.	Extent (in acres)	Covered in GPA Doc. No.	Extent (in acres)
131/7	1.00	176/95	1.00
136/3	0.48	176/95	0.48
132/1B	0.98	344/95	0.99
134/1A	1.48	312/95	1.48
136/5	1.75	312/95	1.76
142/1A	1.13	312/95	1.15
132/2	1.97	172/95	1.98
132/3	2.42	182/95	2.42
133/1	2.11	408/95	2.11
133/2	1.54	168/95	1.54
134/1C	0.74	313/95	0.74
139/5A	0.69	313/95	0.69
134/3	1.16	161/95	1.16
140/1	1.07	161/95	1.07
136/2	0.64	172/95	0.64
136/4B	0.83	213/95	0.84
142/1B	0.56	213/95	0.57
137/2	1.39	219/95	1.40
137/4	0.49	159/95	0.50
137/6	1.81	166/95	1.82
138/1	1.45	-	-
138/2	3.01	407/95	3.01
139/1	1.91	159/95	1.91
139/4	1.44	218/95	1.44
140/3	1.64	162/95	1.64



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143/5	0.83	171/95	0.84
133/3	1.67	167/95	1.68
Total Extent	36.30	Total Extent	34.86

Document No.32 of 2014

Survey Nos.	Extent (in acres)	Covered in GPA Doc. No.	Extent (in acres)
134/1B	0.74	278/95	0.74
135/1	1.83	289/95	1.83
135/3	2.55	289/95	2.56
136/1	0.83	212/95	0.84
137/1	3.32	220/95	3.32
137/3	1.80	289/95	1.80
138/4	3.02	-	-
139/5B	0.66	278/95	0.67
139/6	3.43	-	-
140/4	2.74	409/95	2.74
141/1	2.65	175/95	2.65
141/2	4.49	217/95	4.50
141/3	0.88	160/95	0.88
143/1	1.09	179/95	1.10
143/2	1.42	175/95	1.42
143/4	0.91	179/95	0.91
143/6	2.08	-	-
143/7	0.90	-	-
151/9	0.93	-	-
Total Extent	36.30	Total Extent	25.96

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Survey Nos.	Extent (in acres)	Covered in GPA Doc. No.	Extent (in acres)
144/2	0.70	176/95	0.70
144/5	0.70	174/95	0.70
144/6	1.95	174/95	1.95
148/6	1.80	203/95	1.80
149/1A	0.71	45/96 Sale deed	0.72
149/2A	0.28		0.29
149/2B	0.28		3.05
149/2C	2.19		0.29

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Survey Nos.	Extent (in acres)	Covered in GPA Doc. No.	Extent (in acres)
149/2D1	3.05		3.05
150/8	0.39	46/1996 Sale deed	0.40
151/10	0.13	-	-
151/13	0.17	-	-
151/2	0.16	-	-
151/3	0.16	-	-
151/8	0.23	-	-
163/3	1.34	-	-
164/2B	1.50	-	-
164/3B	0.43	-	-
164/4	1.18	-	-
166/4B	0.64	-	-
167/1	4.60	-	-
168/3	2.40	-	-
145/1A	0.67	-	-
145/5	1.67	-	-
132/4	4.54	324/95	4.54
133/4	2.70	290/95	2.70
133/5	1.63	290/95	1.63
Total Extent	36.35	Total Extent	21.82

Document No.34 of 2014

Survey Nos.	Extent (in acres)	Covered in GPA Doc. No.	Extent (in acres)
144/1	1.67	179/95	1.68
144/3	2.98	217/95	2.99
147/1	10.92	180/95	10.94
148/1	2.43	-	-
148/2	2.12	-	-
148/4	0.70	-	-
148/5	0.80	-	-
149/3A	1.80	-	-
149/3B	0.52	-	-
150/1	2.21	-	-
150/2	3.01	-	-
151/17	2.08	-	-



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163/6	0.23	-	-
163/8	0.61	-	-
167/2	1.23	-	-
167/5	1.19	-	-
145/6	0.85	160/95	1.70
Total Extent	36.28	Total Extent	17.31

23. Therefore, the sales in favour of the applicants in 2014 were undoubtedly not *bona fide*. Such sales were detrimental to the interest of the Company and, therefore, cannot be validated. Consequently, the sale deeds dated 08.01.2014 are declared void and the *pattas* issued on that basis are also void. As is evident from the table in the preceding paragraph, lands conveyed in certain survey numbers, as specified therein, under the four sale deeds are not lands of the Company. As regards such lands, it is open to the applicants to call upon the respective vendors to execute an appropriate instrument. In view of the above, the purported mortgages, all of which are founded on the above sale deeds, are also declared void by applying the principle of *nemo dat quod non habet*. Even as regards lands covered under the GPAs/sale deeds, it is open to the applicants to make claims against their vendors as a consequence of this order. It is needless to say that it is open to the Bank to initiate appropriate proceedings against the applicants/borrowers to



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recover its dues, including by enforcing any other security (other than the mortgages that were declared void herein).

24. For reasons set out above, Company Application No.237 and 238 of 2022 are dismissed without any order as to costs. As a corollary, the Official Liquidator shall take necessary action to mutate the title and revenue records to reflect the Company's ownership of the relevant immovable property and to conclude the auction sale.

20.09.2023

Index : Yes

Internet : Yes

Neutral citation : Yes

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J.

SENTHILKUMAR RAMAMOORTHY,

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Pre-Delivery Common Order made in

in

Comp.A.Nos.237 & 238 of
2022 in

Comp.A.No.161 of 2022

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C. P. No.57 of 1998



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