IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL JURISDICTION
COMPANY APPLICATION LOD.NO.364 OF 2015
IN
COMPANY PETITION NO.52 OF 1997

M/s. Vijay through its Proprietor Vijay Balwant Patil .. Applicant

In the matter between:

M/s. Omega Shipping Pvt. Ltd. .. Petitioner
Versus
The Official Liquidator for M/s.Vikram Projects Pvt. Ltd. .. Respondents

Mr.Prathamesh Kamat i/b. Yashodhan Gavankar for applicant
Ms.Shyamali Gadre with Ankit Kulkarni i/b. Little & Co. for respondent No.2
Ms.Prathibha Ramaswamy, Assistant O.L. Present.

CORAM : S.C.GUPTE, J.

DATE : 30th th October 2015

P.C.

1] This company application seeks validation of a transfer and assignment of right, title and interest of the company, Vikram Projects Pvt. Ltd. (in liquidation), in an immovable property situated at Plot No.E-2 at Sinnar Industrial area, district Nashik.

2] This plot of land, which is owned by MIDC, was allotted to the company (in liquidation) under an agreement executed on 12th May 1993. One of the conditions of the agreement was that the construction work shall be completed on this plot by the company within a period of three years from the date of allotment. The company failed to complete the construction on the said plot. MIDC in the premises issued a show cause notice to the company (in liquidation) on 17th September 1996, calling upon the company to show cause why action of re- possession of the plot and termination of the agreement should not be taken. At the request of the company an extension was granted by MIDC for completing construction on the plot after charging an additional premium. Since, even after the extended period, the construction was not completed, a further show cause notice was issued by MIDC to the company. The matter was thereafter followed up by MIDC between the years 1998 and 2010. In the meantime, on 10th January 2008, the company was ordered to be wound up by this Court and the Official Liquidator, who was already appointed as provisional liquidator of company, was appointed as Liquidator thereof with usual powers under the Companies Act, 1956.

3] MIDC claims that it was not aware of the liquidation proceedings initiated in respect of the company. After issuing a final show cause notice and publishing the same in local newspapers, MIDC terminated the agreement with the company by notice dated 17th May 2013. By a panchanama, MIDC claims to have assumed possession of the plot on 29th June 2013.

4] By an application dated 13th April 2014, the applicant herein applied to MIDC for allottment of the subject plot. MIDC, by an offer letter dated 1st September 2014, offered the subject plot to the applicant subject to payment of Rs.81,63,400/- towards earnest money deposit. The applicant, on 9th September 2014, paid the EMD, whereafter, MIDC sanctioned a lease in favour of the applicant. On 12th September 2014, the applicant paid the entire consideration of Rs.3,75,58,500/- to MIDC. Thereafter, on 14th November 2014, a registered lease agreement was executed between MIDC and the applicant. Under this agreement, the plot is agreed to be leased in favour of the applicant for a period of 95 years on terms and conditions mentioned therein. After realising that the plot of land was in the custody of the Official Liquidator and placed under security deployed by the Official Liquidator, the applicant has presented this application.

5] The company (in liquidation) had already committed a breach of the agreement executed by the MIDC in its favour on 12th May 1993. If there was a breach of the agreement long before the appointment of the provisional liquidator and the subsequent winding up of the company, the MIDC was within its rights to terminate the agreement and re-possess the land. For this, it need not apply to the company court, as held by the Supreme Court in the case of Phatu Rochiram Mulchandani Vs. Karnataka Industrial Areas Development Board reported in **(2015) 5 S.C.C. 244**. The transaction in favour of the applicant, who has paid the entire consideration of over Rs.3.75 Crores to MIDC after the latter terminated the agreement with the company in liquidation, cannot be faulted and will have to be honoured. Since in the meantime winding up had commenced, possession of the land, however, could not have been taken without leave of the court.

6] The only question is as to the liability of MIDC and/ or the applicant to reimburse the Official Liquidator with the security expenses incurred by the Liquidator after repossession of the land claimed by MIDC. Learned Counsel for the applicant submits that his client is agreeable to bear the security expenses and reimburse the expenses to the Official Liquidator for the period from September 2014 onwards. The learned Counsel for the MIDC opposes the Liquidator's application for reimbursement of any security charges by it.

7] The Corporation, in its affidavit in reply to the company application, itself has claimed that under a panchanama prepared by it on 29th June 2013, MDIC has resumed the possession of the plot. MIDC, after resuming possession and issuing final termination notice, has taken steps to even allot the subject plot to the applicant and also received the consideration for the same. In fact, MIDC, before claiming re-possession of the subject plot, was bound to apply to this Court for seeking possession of the plot, since by the time of resumption of the plot, the company was already ordered to be wound up and the Liquidator's security guards were employed at the subject plot. In any event, having regard to the fact that since

29th June 2013, MIDC claims to be in possession of the plot, MIDC will have to reimburse the security expenses incurred by the Liquidator with effect from 29th June 2013. It cannot possibly expect the Liquidtor to bear the expenses of guarding the plot for the period during which it claims to be in possession of the plot.

8] Accordingly, the application is disposed of in terms of following order:-

(i) Company application is allowed in terms of prayer clauses (a) and (b);

(ii) The Official Liquidator shall withdraw his security guards forthwith from the subject plot;

(iii) The applicant shall reimburse the security expenses incurred by the Official Liquidator for the period between 1st September 2014 and till date. The Official Liquidator shall communicate the exact figure of the expenses incurred towards such security charges to the applicant and the applicant shall pay these charges within three weeks thereafter;

(iv) MIDC shall reimburse the security expenses incurred by the Official Liquidator in respect of the subject plot for the period between 29th June 2013 till 31st August 2014. The Official Liquidator shall communicate the exact amount of the security expenses for this period to MIDC and MIDC shall reimburse these expenses to the Official Liquidator within a period of four weeks after receipt of such communication.

(v) There shall be no orders as to costs.

(S.C.GUPTE, J.)