

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2015

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

O.S.A.No.161 of 2015

Gomathy Thirunavukkarasu

... Appellant

Vs.

1.M.Ravindran

Senior Advocate, Administrator,
Anubhav Group of Companies. (In Liquidation)

2.The Official Liquidator,

High Court, Madras,

As Liquidator of Anubhav Group of Companies

Corporate Bhavan II Floor,

29, Rajaji Salai, Chennai - 600 001.

... Respondents

Prayer:-Original Side Appeal filed under Order XXXIX Rule 11 of Original Side Rules r/w clause 15 of Letter Patent, against the order made in Company Application Nos.617 & 618 of 2014 in C.P.No.13 of 2000, dated 07.11.2014.

For Appellant ... Mr.Hari Shankarmani

For Respondent ... Mr.B.Dhanaraj for RR1&2

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM)

This appeal is directed against the decreetal order dated 07.11.2014 in Company Application No.617 of 2014 in Company Petition No.13 of 2000.

2. The Appellant filed two applications in Company Application Nos.617 & 618 of 2014, both the applications were dismissed by common order dated 07.11.2014 and this Appeal is directed against the order in Company Petition No.617 of 2014. By the said Application, the appellant prayed for a direction to the Administrator of M/s.Anubhav Group of Company, presently under the control of the Official Liquidator, to identify alternate plot at equivalent/similar locality measuring about 6000 sq.,ft. and consequently, to direct the

Official Liquidator to execute a sale deed in respect of alternate plot in favour of the appellant or her nominee.

3. The undisputed facts are that the appellant purchased the plot No.327, measuring an extent of about 6000 sq.,ft. in a scheme promoted by the Company under liquidation called Anubhav Green Rich Village in Survey No.109/3 at Santhvellore Village, Sriperumbudur Taluk, Kancheepuram District. A memorandum dated 06.01.1994, was executed by the Company in favour of the appellant acknowledging full payment of the sale consideration and thereafter, sale deed was executed on 14.07.1994 and duly registered as document No.2262 of 1994, on the file of the Sub-Registrar, Walajabad. The appellant was issued patta No.824, by the Tashildar, Sriperumbudur.

4. It is the say of the appellant that she was not aware that the company went into liquidation and only during February 2014, she found that the plot was fenced by some third party and on verification came to know that the Administrator has been appointed to take care of the assets of the Company and therefore, approached the Administrator and produced all documents in support of her ownership of plot No.327.

5. It is stated that the Administrator informed the appellant that notices were sent to all the purchasers including the appellant to the addresses available with the company and the notices sent to the appellant had been returned 'unserved' and in such circumstances, the Administrator secured order from this Court for sale of the said plot No.327.

6. The Appellant brought to the notice of the Company Court that under similar circumstances sales effected by the Administrator were set aside in C.A.No.878 of 2004 and liberty was granted to the Administrator to approach the Company Court for appropriate direction, if any one of the purchasers produced material before the Administrator to prove their purchase. Further, it was brought to the notice of the Company Court in Company Applications Nos.895 & 896 of 2009, dated 09.07.2009, Company Court permitted such of those purchasers, who did not pay the sale consideration, were permitted to remit the balance amount and get the sale deed executed by the Official Liquidator. With these facts, the Appellant approached Company Court to identify an alternate plot of equivalent size and execute sale deed in her favour.

7. The Official Liquidator, who had by then put in charge of the Company under liquidation, filed a report before the Company Court stating that the appellant failed to produce documents for verification as regards her ownership despite notice and publication. It was further submitted that after the order passed by the Company Court dated 08.10.2012, by which the sales were set aside, the Official Liquidator effected paper publication in English and Tamil dailies affording a final opportunity to all the allottees/purchasers

including the appellant to produce documents on or before 03.12.2012. However, the appellant failed to utilize the said opportunity. Further, it is submitted that the plot No.327 has been sold in favour of third party, sale deed has been executed and possession has been handed over to the purchaser. Thus, the Official Liquidator resisted the prayer made by the appellant for allotting an alternate plot.

8. The Company Court opined that sale effected in favour of the appellant having been set aside, the appellant had no subsisting right over plot No.327, based on such sale. Further, it was held that the appellant has approached the Court belatedly and there has been escalation of the value of the property and if alternate plot is to be provided to the appellant at a lesser cost, it would cause the financial loss and the Official Liquidator would be unable to pay the secured and unsecured creditors of the Company. Challenging the said decision of the Company Court, the Appellant has filed this Appeal.

9. The learned counsel appearing for the appellant contended that the appellant was not residing at the same address which was available with the company under liquidation and due to change of address, the appellant did not receive the notice and that cannot be a ground to deprive the appellant from being entitled to alternate land, which has been done in several cases by the Official Liquidator. It is further submitted that in the reports filed by the Administrator dated 24.06.2014 and 30.06.2014, it has been clearly stated that the Company Court had already directed the Official Liquidator to execute the sale deeds in favour of the allottees/purchasers, whose sale deeds were set aside and alternate plot was allotted and one such being, plot No.433. Therefore, the appellant would plead that there should not be any discrimination among similarly placed persons and the appellant alone should not be singled out.

10. When the appeal was heard on 17.08.2015, notice was accepted by the learned counsel appearing for the Official Liquidator. We pointed out that it was strange that the asset of the appellant could have been sold, if it already stood transferred prior to the proceeding initiated against the Company and no case has been made out that the appellant is a front for the owners. In view of the aforesaid position, we called upon the learned counsel for the Official Liquidator to locate an alternate plot as in other cases where the property has been wrongly sold and alternative plots have been given. The learned counsel appearing for the Official Liquidator was put on notice that failure of this obligation will give rise to complications qua title of purchaser, as the title of the appellant prima facie could not have been taken away.

11. When the appeal was heard today, it is seen from the report of the Official Liquidator that after discharge of the Administrator, the Official Liquidator came to understand that there were 33 vacant

plots remaining with the company in liquidation for which the Company Application was filed by the then Administrator for the sale of the said plots in C.A.No.689 of 2014 and the same is pending before the Company Court. That apart, there are five more plots available. However, the exact position has to be ascertained from the then Administrator.

12. In the light of the above, it is evident that there are several vacant plots from which the appellant could be allotted one such plot. As pointed out earlier, we are prima facie not satisfied with the manner in which the appellant's right to the property had been divested, especially when the property has been sold and stood transferred in favour of the appellant much prior to the proceedings initiated against the Company and there is no case of malafide pleaded against the appellant nor it has been stated that the appellant is a front for the owners or promoters of the company. That apart there can be no discrimination and the appellant is entitled to be sold an alternate plot as has been ordered in other cases.

13. Accordingly, the Appeal is allowed and the impugned order is set aside, with the direction that one of the plots available around the same size will be offered to the appellant. The details of plots of same or similar size be intimated by the Official Liquidator to the appellant within two (2) weeks and the appellant will intimate the choice within two (2) weeks thereafter. We clarify that in order to prevent any delay, the plots which are pending for sale, forming subject matter of Company Application No.689 of 2014 and five other plots stated to be vacant would be the pool from which the concerned plots have to be drawn.

14. On the aforesaid aspect having completed, sale deed will be executed at the earliest along with possession and the process be completed as early as possible, but not later than two (2) months from the appellant communicating the preference of the plot. No costs.

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Asst.Registrar (CS III)

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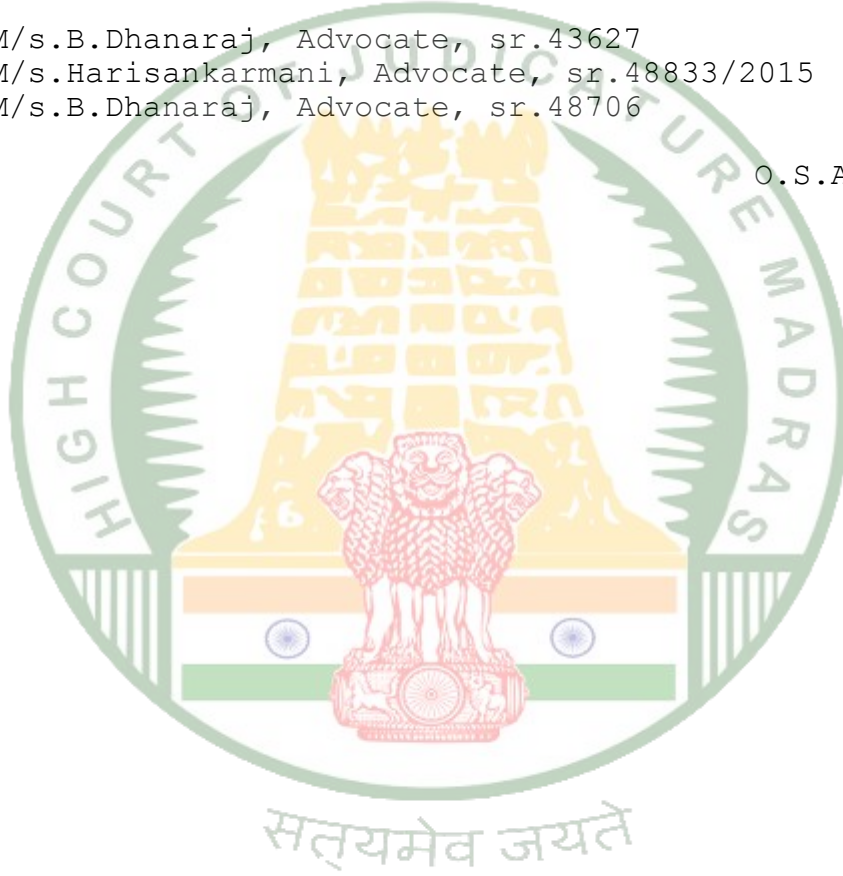
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+1 cc to M/s.B.Dhanaraj, Advocate, sr.43627
+1 cc to M/s.Harisankarmani, Advocate, sr.48833/2015
+1 cc to M/s.B.Dhanaraj, Advocate, sr.48706

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