

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

COMPANY APPLICATION No.364 of 2010

In

Company Petition No.23 of 1988

Date:28.01.2015

Between:

K.Nagamma and 8 others.

.... Applicants

And:

M/s Satya Steel Strips Private Limited,
reptd by the Official Liquidator and 7 others.

... Respondents

Counsel for the Applicants: Sri S.Ravi

Counsel for respondent No.1: Sri M.Anil Kumar

Counsel for respondent No.2: Sri Deepak Bhattacharjee

Counsel for respondent No.3: Sri N.Pramod

Counsel for the applicants in

COMPA No.410 of 2014: Sri Koka Raghava Rao

for Sri P.N.Murthy

The Court made the following:

ORDER:

This Company Application is filed by nine persons
for the following substantive relief:

“to declare the applicants as the owners of
the application schedule property i.e.,
Acres.18.38 guntas of land in Survey
Nos.296 and 297 of Kolakal Village,

Gajwel Mandal, Medak District.”

In support of this application, applicant No.1, viz., N.Nagamma, has filed her sworn affidavit, wherein she has stated that this Court by order, dated 20.06.1992, in Company Petition No.23 of 1988 ordered respondent No.1-company to be wound up at the instance of respondent No.2, which has advanced loans to respondent No.1. She has further stated that her husband has purchased an extent of Acres 29.28 guntas of land in Survey Nos.296 and 297 of Kolakal Village, Gajwel Mandal, Medak District from its vendor; that since the date of the said purchase, her husband was in physical possession and enjoyment of the said property; that after the death of her husband, she and her sons-K.Chandraiah, whose legal representatives are applicant Nos.2 to 5, K.Buchaiah, whose legal representatives are applicant Nos.6 to 8, and K.Krishnaiah-applicant No.9 have inherited the said property; that an extent of Acs.5.30 guntas of land in Survey No.296 and another extent of Acs.5.00 of land in Survey No.297 were sold by her and her three sons in favour of one Satish Lokanda and another in the year 1977; and that thus, the remaining extent of Acs.18.38 guntas of land is in possession and enjoyment of the applicants. It is further averred that one Smt Satyavathi purchased the land to an extent of Acs.10.30 guntas from Satish Lokanda and another on 02.12.1983; that respondent No.1-company owns an extent of Acs.23.00 of land in Survey Nos.298 and 299 and that when applicant No.1 has noticed that respondent No.1-company has tried to encroach upon her property, she has filed O.S.No.72 of 1984 in the Court of the learned District Munsif, Gajwel, Medak District for perpetual

injunction and possession. Applicant No.1 has further averred that as respondent No.1 objected to the valuation of the suit, the same was transferred to the Court of learned Sub-Ordinate Judge, Siddipet and the same was re-numbered as O.S.No.7 of 1987; that eventually, the said suit was decreed in favour of the applicants; that after the filing of the Execution Petition, i.e., E.P.No.27 of 1998 by the applicants, respondent No.2 filed Company Application.No.882 of 1999 in Company Petition No.23 of 1988; that this Court allowed the said Company Application and set aside the decree and also the order passed in E.P.No.27 of 1998. It is further averred that a Division Bench of this Court has remanded the case to the Company Court for deciding the preliminary question as to whether the application schedule property was the property belonging to the applicants and that after remand, the Company Court has disposed of Company Application No.882 of 1999 by order, dated 19.04.2005, holding that in the absence of leave of the Company Court under Section 446 of the Companies Act, 1956 (for short 'the Act'), the suit itself was not maintainable and therefore, the decree and the order to re-deliver the possession were set aside. The applicants have, therefore, filed the present Company Application for adjudication of their rights over the extent of Acs.18.38 guntas of land in Survey Nos.296 and 297.

Several reports have been filed by the Official Liquidator reference to which is not necessary. However, on 30.06.2014, this Court has referred to one of the reports filed by the Deputy Official Liquidator and observed that in the said report, the Deputy Official Liquidator has categorically stated that respondent No.1 was not the owner of Acs.9.19 guntas of land in Survey

No.296 and Acs.2.20 guntas of land in Survey No.297. In the wake of the said report, this Court directed the Official Liquidator to cause verification of the actual extent of land delivered to the auction purchaser and submit a report. Thereafter, the Official Liquidator has addressed letter, dated 16.07.2014, to the Tahsildar, Toopran Mandal, Medak District wherein he has informed the latter that he has taken possession of the assets of the company in liquidation including Acs.23.00 of land in Survey Nos.298 and 299 standing in the name of respondent No.1-company and Acs.5.30 guntas of land in Survey Nos.296 and 297 standing in the name of Smt Satyavathi; that in pursuance of order, dated 15.10.2009, in Company Application No.1135 of 2009, the Official Liquidator has sold the said property in favour of M/s Mahalakshmi Profiles Private Limited for Rs.11.10 crores along with machinery, structures and sheds; and that by order 23.12.2009, this Court accepted the sale and directed execution of sale deed and delivery of possession in favour of the auction purchaser and consequently, the sale deed was executed in favour of M/s Sree Mangalam Business Ventures, the nominee of the auction purchaser, and possession of land admeasuring Acs.28.30 guntas in Survey Nos.296 to 299 along with machinery, structures and sheds were handed over to the nominee of the auction purchaser. Referring to Company Application No.410 of 2014 filed by one K.V.K.Rama Rao and three others and order, dated 14.07.2014, passed by this Court in the said application, the Official Liquidator has requested the Tahsildar to conduct survey and submit his report. In reply to the said letter of the Official Liquidator, the Tahsildar has informed the latter vide his letter, dated 07.08.2014 that

the total extent of land situated in Survey Nos.296 to 299 is Acs.66.07 guntas; that the Mandal Surveyor, Toopran has issued notices to all the neighbouring pattadars as per the prescribed procedure; that they have refused to take the notices; that tippons are available in the office of the Assistant Director (S & LRs), Medak at Sangareddy; that no sub-division has taken place in respect to the above-mentioned Survey numbers and as such, if any objections are raised by the pattadars of the land situated in the said Survey numbers, the survey cannot be completed; and that the pattadars of the land situated in the said Survey numbers have raised objections to and obstructed the survey sought to be held and therefore, the survey could not be held. The applicants have filed various Miscellaneous Applications in Company Application No.364 of 2010 reference to which is not necessary at all.

I have heard Sri Koka Raghava Rao and Sri S.Ravi, learned senior counsel appearing for the various applicants, Sri M.Anil Kumar, the learned counsel for the Official Liquidator and Sri N.Pramod, the learned counsel for the auction purchaser.

The long and short of the dispute raised by the applicants before this Court is that while the subject matter of sale was only Acs.28.30 guntas of land in Survey Nos.296 to 299, as the said lands were not surveyed and boundaries were not demarcated, the Official Liquidator has handed over even the extent of Acs.18.38 guntas of land belonging to the applicants along with the extent of Acs.28.30 guntas of land.

A perusal of the recitals in the sale deed, dated 08.02.2010, filed by the applicants shows that the company in liquidation was the absolute owner and

possessor of land admeasuring Acs.23.00 of land in Survey Nos.298 and 299 and Acs.5.30 guntas in Survey Nos.296 and 297. At page No.5 of the sale deed it is recited as under:

“Whereas the auction purchaser had paid the entire sale consideration of Rs.11.10 crores (Rupees Eleven crores and ten lakhs only) to the Official Liquidator within the time stipulated by the Hon’ble High Court of Andhra Pradesh, thereafter possession of entire assets, i.e., land to an extent of Acs.28.30 guntas in Survey Nos.296 to 299 of Kallakal Village, Gajwel Taluq, Toopran Mandal, Medak District along with the machinery, structures, sheds etc., was handed over by the Official Liquidator to M/s Mahalakshmi Profiles Pvt Ltd on 28.01.2010.”

At page-7 of the sale deed, it is recited as under:

“that the Official Liquidator hereby declares that M/s Satya Steel Strips Ltd (in liqn) is the absolute owner of the schedule property and it has got marketable title, vested rights and possession of the schedule property and therefore, the Official Liquidator being the liquidator of M/s Satya Steel Strips Ltd (in liqn) having been appointed as such by the Hon’ble High Court of Andhra Pradesh, Hyderabad has absolute rights to alienate the schedule property in favour of the vendee as ordered and directed by the Hon’ble High Court of Andhra Pradesh, Hyderabad as stated supra.”

The above reproduced recitals of the sale deed would show in unequivocal terms that the land belonged to the company and possession of which was delivered to the nominee of the auction purchaser was only an extent of Acs.28.30 guntas of land in Survey Nos.296 to

299 of Kolakal Village, Gajwel Mandal, Medak District besides the machinery, structures and sheds. If in the process, the auction purchaser has come into possession of any land, in excess of Acs.28.30 guntas, belonging to the applicants, the same has nothing to do with the Company Petition. This Company Application is filed on the sole premise that in the absence of clear survey and demarcation of the land, the Official Liquidator has handed over the land in excess of Acs.28.30 guntas to the auction purchaser. No shred of evidence in support of this assertion by the applicants is filed by them. If any part of Acs.18.38 guntas of land in Survey Nos.296 and 297, in respect of which ownership is claimed by the applicants, forms part of the land allegedly occupied by the auction purchaser or its nominee, the applicants are entitled to initiate appropriate legal proceedings before the competent forum for recovery of possession thereof. As the sale deed, dated 08.02.2010, executed by the Official Liquidator in favour of the nominee of the auction purchaser is in respect of Acs.28.30 guntas of land in Survey Nos.296 to 299 only and possession thereof was stated to have been delivered by the Official Liquidator to the auction purchaser/its nominee, it is wholly unnecessary for this Court to consider and adjudicate as to whether the applicants are the lawful owners of Acs.18.38 guntas of land in Survey Nos.296 and 297 which does not form part of the said extent of Acs.28.30 guntas of land in Survey Nos.296 to 299. Therefore, the relief claimed in this Company Application is wholly misconceived.

If the applicants assert their title to the said extent of Acs.18.38 guntas of land, which does not form part

of Acs.28.30 guntas, and with reference to which there is no dispute, they shall be free to initiate appropriate legal proceedings in respect thereof.

Subject to the liberty given to the applicants as above, the Company Application is dismissed.

As a sequel to dismissal of the Company Application, Company Application Nos.365 and 366 of 2010, 243 of 2013, 410, 1203 and 1204 of 2014 stand disposed of as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

*28th January, 2015
DR*