

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CP No.81 of 2011 (O&M) in
CP No.60 of 2007
Date of decision : 19.05.2015

M/s Golden Land Development (India) Ltd. (In Liqn.)

...Petitioner

Versus

The Joint Sub Registrar, Ahmedabad & ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Eklavya Gupta, Advocate with
Mr. M. Jayakumar, Official Liquidator for the petitioner.

Mr. Pankaj Maini, Advocate
for the respondent No.3.

Mr. Puneet Kansal, Advocate
for Investors.

AMIT RAWAL, J. (Oral)

The Official Liquidator has filed present petition under
Section 456 read with Sections 468, 536, 537 and 538 of the
Companies Act, 1956 for issuance of appropriate directions to the
respondent No.1 and 2 i.e. Joint Sub-Registrar, Ahmedabad, AHD-3,

MGR, Gujarat & District Magistrate/District Collector Ahmedabad, respectively for cancellation of the illegal transfer/sale of the property of company in liquidation executed vide sale deed dated 03.11.2006 (Annexure P-3).

It has been submitted that M/s Golden Land Development (India) Ltd. (In Liqn.) in CP No.69 of 2003, CP No.242 of 2003 and CP No.60 of 2007 was wound up vide order dated 14.01.2009.

As per the averments, the intimation of the winding up order dated 14.01.2009 was received by the Official Liquidator on 17.02.2009 and thereafter, the possession of the registered office of the company in liquidation situated at SCO No.824-25, Shivalik Enclave, Manimajra, Chandigarh was sought to be taken but the same could not be taken as the company had vacated the same about seven years ago.

On the basis of the information provided by the Creditors, the Official Liquidator wrote a letter dated 27.04.2009 to Duty Magistrate/District Magistrate of Haridwar (Uttaranchal), Ambala & Panchkula (Haryana), Patiala & Hoshiarpur (Punjab), Distt. Khera, Dhegaon (Gujarat) and Meerut (U.P.) and letter dt. 14.10.2009 to the Distt. Magistrate Khura (Orissa) & Gangam (Orissa) to provide the full details of the properties of the company for the purpose of making necessary entries.

The Official Liquidator had assigned the job of preparation of the Valuation Report of the properties to the Valuer on the panel of his office. The Valuer assessed the value of the property in the presence

of representatives of Official Liquidator and the creditors and submitted the valuation report. Copy of the same is Annexure P-2. However, during this exercise, the Official Liquidator acquired knowledge that apart from the various other properties, property measuring 582 sq. yards (54.06 Sq. meters constructed) i.e. Navrangpura, Ahmedabad at Samundra Complex has allegedly been sold by Mr. R.K. Gupta to Mrs. Rajeshwari Nilesh Jain. The copy of the sale deed dated 03.11.2003 is Annexure P-3.

The aforementioned sale deed was executed on the basis of some authority alleged to have been executed by one Mr. R.K. Gupta. It has been submitted that aforementioned sale is in violation of provision of Section 456, 532, 536 & 537 of the Companies Act, 1956.

Notice of this petition was issued to the respondents. Respondent No.4 is beneficiary transferee/vendee of the property in question. However despite issuance of various notices no one has put in appearance on behalf of respondent No.4.

As per office report, it appears that respondent no.4 had been effected service and one of the report which was not legible & in fact is in Gujarati Language clearly indicate the factum of service. Since the provision of Section 537 of the Companies Act, 1956 envisages that any sale of the property of the company in liquidation without a leave of the Company Court after the commencement of winding up shall be treated as void. Since the winding up order was passed on 14.01.2009, therefore the said sale is hit by provisions of

Section 537 of the Companies Act, 1956.

It is a matter of record that winding up proceedings commenced on 25.09.2003 and the interpretation of Section 537 of the 1956 Act is no longer res integra.

In order to lend support of the aforementioned submissions, learned counsel for the company (In Liqn.) has relied upon a judgment of this Court in Titan Industries Ltd. Vs. Punwire Mobile Communication Ltd. {2002}40, SEBI & Corporation Laws, 117, Punjab and Haryana High Court. The relevant para 17 of the same be read as under:-

“17. In my considered view, the aforesaid claim merits acceptance. Section 537 in unambiguous terms mandates that after the commencement of a winding up petition against a company, an order inter alia of the attachment of its properties or effects shall be void except when the same is with the leave of the Court. Insofar as the commencement of winding up proceedings is concerned, section 441 of the Companies Act does not leave any ambiguity in the matter. It has been expressly provided therein that winding up of a company by the court would be deemed to have commenced with effect from the date of presentation of a petition of winding up. It is not disputed that the winding up proceedings have commenced against the respondent-company prior to the passing of the order of attachment dated 2.2.2000. The order of attachment having been passed without leave of this Court, it is liable to be

considered as void in terms of the mandate of section 537. A void order is an order which does not exist in the eyes of law. In view of the fact that the order dated 2.2.2000 i.e. the order of attachment has been found to be an order which does not exist in the eyes of law, the order of appointment of receivers dated 18.12.2000 based thereon (order dated 2.2.2000) must be necessary implication be deemed to have been nullified/abated and for the same reason must be considered to be non-existent in the eyes of law.”

Since the property has been sold during the pendency of the winding up petition therefore the said sale deed is not only bad in law but has to be treated null and void.

Accordingly, sale deed dated 03.11.2003 (Annexure P-3) is hereby set aside/canceled.

The Official Liquidator is directed to take over the possession of the said property in accordance with law.

He shall be at liberty to take the assistance of the concerned Duty Magistrate/District Magistrate, Ahmedabad, Gujarat.

Duty Magistrate/District Magistrate, Ahmedabad, Gujarat is also directed to provide assistance to the Official Liquidator and police help in case of any necessity or occasion arises.

The petition stands disposed of.

19.05.2015

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**(AMIT RAWAL)
JUDGE**