

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY APPLICATION NO.166 OF 2014
IN
COMPANY PETITION NO.521 OF 1992**

M/s Hencal Chemicals India Ltd.	...	Petitioner
And		
Shri Kanjibhai Vashibhai Rabari	...	Applicant
Versus		
The Official Liquidator of M/s Garware Nylons Ltd. (in Liqn.)	...	Respondent

**WITH
COMPANY APPLICATION NO.460 OF 2014
IN
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IN
COMPANY PETITION NO.521 OF 1992**

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And		
M/s Hencal Chemicals India Ltd.	...	Petitioner
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The Official Liquidator of M/s Garware Nylons Ltd. (in Liqn.)	...	Respondent

.....

Mr. Amir Arsiwala a/w Sameer P. Khedekar i/b Ms. Pratima Shelar for the Applicant.
Ms. Yogini Chauhan, Deputy Official Liquidator.

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CORAM : S.C.GUPTE, J.

DATE : 24 NOVEMBER 2016.

P.C. :

. This Company Application seeks directions against the Official Liquidator for compensation towards an alleged loss suffered by the

Applicant in terms of short fall of an area of 312 sq. meters in the land purchased by the Applicant in a Court sale based on the Official Liquidator's report. The Applicant also seeks directions against the Official Liquidator for correction of the area of the plot of land in the conveyance deed executed on 30 April 2011 read with the rectification deed executed in March 2013.

2 The application arises in the following facts :-

The subject land, which is described as a freehold land belonging to M/s Garware Nylons Ltd. (in Liqn.), is part of Block No.165, Account No.102, Village-Dhanot, Chhatral-Kadi, Highway, Opposite Bhairwanath Textile, Near Village-Dhanot, Takuka-Kalol, District Gandhinagar. In the survey record maintained by the Land Office this property is described as Survey/Block No.165 paiki, Account No.102 and is said to be admeasure 1879 sq. meters. In the process of winding up of the affairs of the Company by administration of its assets, a Court Auction was held in respect of the subject plot of land on 21 October 2010. The Applicant participated in that auction and purchased the subject plot. The Applicant paid the entire consideration of Rs.42,00,000/- for purchase of the plot, whereupon a deed of conveyance was executed by the Official Liquidator in favour of the Applicant and the possession of the plot was handed over to the Applicant. That was sometime in April 2011. The deed of conveyance has been duly registered with the Office of Sub-Registrar of Assurances at Gandhinagar. The Applicant claims that it realized after the execution of the deed of conveyance that the description of the property mentioned in the deed was incorrect in as much as boundaries as also the

area of the subject plot mentioned in the deed was incorrect. There was some correspondence between the Applicant and the Official Liquidator in connection with the incorrect description of the property, which finally led to the filing of a Company Application on the part of the Applicant herein, namely, C.A. No.21 of 2012. That Company Application merely required the boundaries of the subject plot to be rectified. That Company Application was allowed by the Company Court by its order dated 2 March 2012, directing the rectification deed to be executed by the Official Liquidator. In spite of this order, no rectification deed was executed by the Liquidator for sometime. The Applicant also claims to have realized that the area of the subject plot fell short by about 312 sq. meters. (the area being 1567 sq. meters instead 1879 sq. meters mentioned in the auction notice as well as the conveyance deed). This led to the Applicant moving another Company Application, namely, Company Application No.530 of 2012. In this application, the Applicant prayed for directions to the Official Liquidator to execute the rectification deed and also sought directions for compensation to be paid to the Applicant for the loss of 312 sq. meters suffered by him. This Court by its order dated 7 February 2013, disposed of the Company Application by recording the statement of the Official Liquidator that the order for execution of the rectification deed was not complied with for failure of the Applicant to attend the Office of the Official Liquidator and also recording the assurance on the part of the Applicant that he would attend the office of the Official Liquidator on the date and time fixed by the latter. Insofar as prayer for compensation is concerned, this Court held that there was no question of grant of any compensation at that stage. After disposal of this Company Application, the Official Liquidator, sometime in March, 2013, executed the deed of

rectification rectifying the boundaries of the subject plot described in the Schedule to the original deed of conveyance. The rectification deed specifically mentions that there was no change in the area mentioned or price paid under the deed of conveyance and that the rectification deed was executed only for correcting the boundaries of the subject plot.

3 In the backdrop of these facts, some time in July 2013 the Applicant has moved the present Company Application for directions to the Official Liquidator to compensate the Applicant for the shortfall of 312 sq. meters and also for correction of the area of the subject plot in the conveyance deed read with the rectification deed already executed.

4 It is submitted by learned Counsel for the Applicant that the description of the subject plot in the sale notice, which, in turn, is based on the inventory list of fixed assets prepared by the valuer appointed by the Official Liquidator, was clearly incorrect inasmuch as the boundaries mentioned in the sale notice and the inventory were incorrect. It is submitted that the subject plot forms part of Survey/Block No.165, whereas the boundaries mentioned in the sale notice and inventory were of the entire Survey/Block No.165 and not the subject plot which forms only a part of that Survey or Block. Learned Counsel submits that the Applicant was accordingly misled. He further submits that due to non-existence of any boundary marks, the Applicant was not in a position to take actual measurements of the plot or survey the area. Learned Counsel also relies on judgments of Madras and Gujarat High Courts in the cases of **M/s TCI Distribution Centres Ltd.Vs. The Official Liquidator, High Court,**

Madras as the Liquidator of M/s Fidelity Industries Ltd.¹ and Aakar Developers Vs. O.L. Of Yamuna Mills Ltd.², respectively, as also a decision of our Court in the case of **Jaikisandas Balchand Pamnani Vs. Municipal Corporation of Greater Bombay³** in support of his submission that it was the responsibility of the Official Liquidator to state the correct area of the plot under sale and that the actual area of the plot falling short of the stated area, a suitable compensation ought to be paid to the Applicant by proportionately reducing the price of the subject plot.

5 On the other hand, it is pointed out by the Representative of the Official Liquidator that the sale of the plot was on 'as is and where is' basis and that the sale notice specifically put the onus of measurement and ascertainment of the area, description and boundaries of the property on the purchaser. It is also submitted that the area of the plot mentioned in the valuation report and in the said notice was correctly described as 1879 sq. meters, which was the area reflected in 7/12 extract in respect of the property.

6 It is apparent from the facts narrated above and the documents annexed to the Company Application that the subject plot was described as "part of Survey/Block No.165". It was never communicated to the purchaser that what was being sold was the entire Survey/Block No.165. In fact 7/12 extract of the subject plot makes it clear that the Survey/Block No.165 was a large plot of land admeasuring over 31800 sq. meters., and there were several plots carved out of this large plot, one of which

¹ 2009-4-L.W.681

² C.A. No.125/2005 in OLR No.58/2003 dated 01.09.2006 HC of Gujarat at Ahmedabad.

³ AIR 1991 Bom 341

(described as A/c 102) was the plot held by the Company (in Liqn.). This plot was said to be admeasuring 1879 sq. meters. There is also a copy (said to be a true copy) of the survey record which puts the area of the subject plot as 1867 sq. meters. Accordingly, the description of the plot, its survey number and its area are correctly reflected in the inventory list and also the sale notice in respect of the subject plot issued by the Official Liquidator in pursuance of the inventory list. As for the boundaries of the plot, the inventory list, on which the sale notice is based, does not describe the boundaries of the subject plot, but the entire plot, namely, Survey/Block No.165. The boundaries mentioned are of "Plot No.165" and not "Plot No.165 paiki". This description of the boundaries was carried into the deed of conveyance, but this was subsequently rectified in pursuance of the order passed by the Company Court, which is referred to above. In other words, the correct location, Plot/Survey No., area of the land as well as boundaries are now reflected in the rectified deed of conveyance. The Applicant, however, claims that upon actual measurement of the area of the plot, the same is found to be 1567 sq. meters., instead of 1879 sq. meters. as described in the conveyance. For this, the Applicant relies on a survey report prepared by a licensed surveyor which describes the subject Plot as Plot No.3 and puts its measurement at 1567 sq. meters.

7 The question is whether the Applicant is entitled to any compensation or reduction of price on the ground that the actual area, assuming the area mentioned by the Applicant to be the correct area, of the plot falls short of the area reflected in the land record and consequently in the description of the land in the sale-notice and the conveyance. If one has regard to the terms and conditions of the sale, the land was being sold

on “as is where is and whatever there is basis”. The intending purchasers were not entitled to raise any objection as to any mis-description of the property or deficiency in its area as the same were believed to be and taken as correct and if any error or misstatement or omission were to be discovered in the particulars or the conditions of the property, the same was not to annul the sale and the purchaser was not entitled to any compensation from the Official Liquidator in that behalf.

8 On these facts and such unequivocal notice to the purchaser, it cannot be suggested that if there was any shortfall in the actual area of the property, the Official Liquidator was liable to pay compensation to the purchaser. The judgments relied by learned Counsel for the Applicant are entirely on different footings. In the case of **TCI Distribution Centres Ltd.** (supra), the Court sale was based on the title and possession of the land with the Company (in Liqn.). Those bases were found to be incorrect. In other words, what was in question in that case was the very title as also possession of the land. It was in these circumstances that the sale effected by the Official Liquidator and confirmed by the Court was set aside and the Official Liquidator was directed to refund the compensation paid by the Applicant. The case of **Aakar Developers** (supra) was also decided on its own peculiar facts and circumstances. The area described in the sale notice in that case was incorrect due to a bonafide mistake or error on the part of the Official Liquidator; that for want of availability of the City Survey No., due to the peculiar circumstances existing in respect of lands in the locality, the Applicant in that case could not have ascertained the correct area of the land. It was in these peculiar facts and circumstances that the Gujarat High Court ordered compensation to the Petitioner. The Court held that

considering the fact that the Court was under an obligation to see that the purchaser of the property under the Court auction was conferred a legal, valid and perfect title, it was the duty of the Court and its officer to convey the correct area of the land in the Court sale and receive a just price towards such sale. In the premises, a part of the compensation paid by the Applicant was refunded to the Applicant. The Bombay case of **Jaikisandas Balchand Pamnani** was a writ petition challenging the court sale on the principles of public law. The land described in the Court sale was 244.91 sq.mts., but in reality it admittedly admeasured 813.112 sq.mts. The Court held that this was in no way an approximation of the actual size of the property and the word 'thereabout' in the description of the property could not be taken as an approximate measure of the actual area of the property. The Court held that a fair reading of the advertisement gave an impression that what was being sold was a land admeasuring 244.91 sq. meters and as a result intending purchasers interested in larger properties would not have entered into the fray. The material mis-description in the sale proclamation would in such a case vitiate the sale; had the correct description of the property been given in the advertisement, the bidding would have been at a much higher price. These facts are completely different and have no bearing on the controversy in the present case. In the present case, the description of the property was clearly correct, the area mentioned in the sale notice as well as the conveyance deed being correctly given on the basis of the land records maintained by public authorities. It is only that the actual area is said to fall short of the area reflected in the land record. If that be the case, there is no question of payment of any compensation on the part of the Official Liquidator. The sale notice as well as the conveyance executed

in respect of the subject plot makes it clear that it was for the purchaser to satisfy himself about the correctness of the description of the land including its area. In fact, the conveyance contains the following two clauses which have a direct bearing on the subject matter :

“The Official Liquidator shall not provide any guarantee as to the quality, quantity or specifications on the schedule mentioned assets offered for sale. The tender bidders are to satisfy themselves in this regard after physical inspection of the immovable assets of the company. The Purchasers will be deemed to have made offer with knowledge as to defects, if any in the descriptions, of the immovable property sold and the Official Liquidator shall not entertain any complaint in this regard after the sale is over.

The property is being sold “as is where is and whatever there is basis” and the Purchaser shall not be entitled to raise any objection as to mis-description or quantity or quality as the same are believed to be and shall be taken as correct and if any error or misstatement or omission shall be discovered in the particulars or these conditions, the same shall not annul the sale nor shall be entitled to any compensation from the Official Liquidator.”

9 In these facts, there is no case either for payment of any compensation or for any correction in the area mentioned in the subject conveyance. The Company Application is, accordingly, dismissed. No order as to costs.

(S.C.GUPTE, J.)