IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (L) NO. 865 OF 2015
IN
COMPANY PETITION NO. 743 OF 1990

The Sub-Divisional Officer, Thane ….Applicant
In the matter between:

United Metachem Pvt. Ltd. ...Petitioner
vs.
The Official Liquidator, High Court, Bombay, appointed as Liquidator of Mafatlal Engg. Industries Ltd. ...Respondent

Mr. Janak Dwarkadas, Senior Advocate, along with Mr. Ashish Kamath, Sudeshna Guha Roy and Chinmayee Pendse, instructed by M/s. Vidhi Partners, for Defendant Nos. 10A, 11 ad 12.

Ms. Sowmya Srikrishna, along with Mr. Arun Siwach, Ms. Bhagyashree Lembhe, instructed by M/s. Cyril Amarchand Mangaldas for the Plaintiff in Suit No. 3156 of 1999.

Mr. J.P. Sen, Senior Advocate, and Mr. Rohaan Cama for the Official Liquidator.

Mr. Rohit Gupta along with Mr. Nikhil Rajani, instructed by M/s. V. Deshpande & Co., for Defendant No. 8A.

Mr. N.M. Ganguly, along with Mr. C.M. Lokesh and Ms. Karuna Yadav, for the Union.

Ms. Deepa Kamath for Mafatlal Sangharsh Samiti.

Mr. G.W. Mattos, A.G.P., for the State.

CORAM: S.J. KATHAWALLA, J.
DATE : 12th APRIL, 2016

P.C.

1. By this Application, the Applicant i.e. the Sub Divisional Officer, Thane has sought leave under Section 446 (1) of the Companies Act, 1956 to initiate proceedings for resumption of certain properties of the Company in Liquidation more particularly described in the Schedule annexed at Exhibit – I to the Affidavit in Support of the Company Application.

2. The present Company Petition came to be filed in 1990 by one M/s. United Metachem Pvt. Ltd., one of the creditors of the Company in Liquidation. On a recommendation by the BIFR that the Company be wound up and on the challenge by the Company against that recommendation being rejected, an Order dated 30th September, 1999 was passed by this Court winding up the Company and appointing the Official Liquidator to take charge of its properties and assets.

3. Meanwhile, there were also proceedings adopted by various secured creditors against the Company. ICICI Bank Ltd. filed Suit No. 485 of 1999 before this Court for recovery of amounts due to it as a secured lender from the Company. In that Suit, an Order came to be passed on 1st February 1999 appointing the Court Receiver, High Court, Bombay as Receiver in respect of the immovable and movable assets mortgaged/hypothecated in favour of ICICI Bank Ltd. Pursuant to the said Order, on 6th March 1999, the Court Receiver took possession of the mortgaged properties. The Suit itself was thereafter transferred to the Debt Recovery Tribunal where it was heard and disposed of and a Recovery certificate issued in favour of ICICI Ltd. ICICI Bank subsequently assigned its debt in favour of Kotak Mahindra Bank Ltd. who in turn assigned their debt in favour of Invent Assets Securitization & Reconstruction Ltd.

4. ICICI Bank Ltd., on 1st June 1999, also filed Suit No. 3156 of 1999 against the Company in its capacity as a Debenture Trustee. In that Suit, an order dated 23rd July 2003 was passed appointing the Court Receiver, High Court, Bombay as Receiver in respect of the properties offered as security to ICICI Bank Ltd. in its capacity as a debenture trustee with a power of sale. Further, one Miscellaneous Petition No. 27 of 2000 was filed for recovery of their dues by the Industrial Investment Bank of India Ltd. & Anr. against the Company in Liquidation under Section 13 of the Industrial Reconstruction Bank (Transfer of Undertakings and Repeal) Act, 1997. By an Order dated 12th October 2001, the Court Receiver, High Court, Bombay was re-appointed as a Receiver in respect of the properties mortgaged to the Petitioners in that proceeding, i.e. properties which were already in his custody.

5. On 18th March 2004, the Court Receiver, High Court, Bombay filed a report in Suit No. 3156 of 1999 and Miscellaneous Petition No. 27 of 2000 seeking a direction as to whether he should proceed to sell only the land of which he had been appointed as Receiver in the Suit and Miscellaneous Petition or the entire land belonging to the Company (by then in liquidation) including land in respect of which he had not been appointed as a Receiver. In that Report, the Sub-Divisional Officer (SDO), Thane filed an Affidavit dated 29th June 2004 where it claimed that the State had resumed possession of certain plots of land from the Company in Liquidation on account of an alleged breach by the Company of the terms and conditions on which they were allotted by the State Government. The lands which are the subject matter of the present Application were not included in the list of lands stated to have been resumed. In respect of the lands not resumed, the Affidavit proceeded on the basis that they could be sold subject to the State being entitled to 75% of the sale proceeds by way of "unearned income." This position was reaffirmed by the State in an Affidavit dated 4th August 2011 filed by the Sub Divisional Officer, Thane in response to Notice of Motion No. 1765 of 2011 in Suit No. 3156 of 1999 filed by ICICI Bank Ltd. This Notice of Motion was subsequently disposed of as withdrawn on 10th May 2012.

6. Meanwhile, the Sub-Divisional Officer, Thane filed two Notices of Motion, being Notice of Motion No. 2093 of 2005 in Miscellaneous Petition No. 27 of 2000 and Notice of Motion No. 2027 of 2005 in Suit No. 3156 of 1999 seeking that the Court Receiver be discharged in respect of the lands alleged to have been resumed by the State on 16th April, 1990 and 12th March, 1999 for non-payment of statutory dues by the Company in Liquidation. No discharge was sought in respect of the lands which are the subject matter of the present Application. The Notices of Motion filed by the Sub Divisional Officer, Thane were allowed by an Order dated 26th March 2007 and the Court Receiver was discharged in respect of the lands which were stated to have been resumed by the State. This Order also clarified that the "Receiver may proceed to sell the remaining lands of Mafatlal as directed in the Order appointing Court Receiver and as per the directions passed in the above Suit and/or Petition." The reference to "remaining lands" in the said order included the lands which are the subject matter of the present Application.

7. The Order dated 26th March 2007 was challenged by ICICI Bank Ltd. in Appeal No. 624 of 2007 and by Kotak Mahindra Bank Ltd. in Appeal No. 465 of 2007. These Appeals are pending before the Division Bench of this Court. No appeal was filed by the State Government against the said Order dated 26th March 2007.

8. Thereafter, directions have been issued from time to time for demarcation of the Company's properties and the construction of a compound wall around those lands which are vacant and un-encroached to facilitate their sale. In this behalf, an M.R. Plan was also prepared and submitted by the City Survey Officer indicating the lands available for sale. The State Government was a party to those orders and directions. During this process, neither the State Government nor the Sub Divisional Officer through whom it was acting raised any objection to the sale of the lands which form the subject matter of the present Application.

Nor did they express any intention to resume any part of it.

9. It is against this backdrop that, on 14th July 2015, the SDO issued a Notice to the Company to show cause as to why part of the Company's properties ought not to be resumed by the Government under certain provisions of the Maharashtra Land Revenue (Disposal of Government Land) Rule, 1971. Despite the fact that the Company was in liquidation and the Official Liquidator was in charge of its affairs, no copy of the notice was served upon the Official Liquidator. A copy was sought to be served upon a security guard posted at the property who in turn brought it to the notice of the Official Liquidator's Office on 29th July 2015.

10. Meanwhile, the Official Liquidator had filed a Report, being Report No. 209 of 2015 dated 31st March 2015 seeking various directions in aid of the proposed sale of the lands of the Company in Liquidation. These included a direction for possession of the Company's lands to be handed over by the Court Receiver to the Official Liquidator and the appointment of a Valuer. By an Order dated 16th April, 2015 on the said Report, this Court permitted the OL to appoint a valuer to submit a valuation report. After the Valuation report was received, at a hearing held on 23rd July 2015, this Court directed the Official Liquidator to prepare draft terms and conditions for the sale of the lands and to place them before this Court for consideration. At this hearing, the State Government, despite being represented by an Advocate, made no mention of the show cause notice dated 14th July 2015 which had by then been issued.

11. At a hearing held on 30th July 2015, the Official Liquidator brought to the notice of this Court the Show Cause Notice issued by the Sub Divisional Officer. The matter was stood over to the 31st to enable the Sub Divisional Officer to remain present. By its order dated 31st July 2015, this Court noted that the Show Cause Notice would not preclude the Official Liquidator from taking possession of the properties of the Company in Liquidation on 1st August 2015 at 11.00 a.m. A statement was recorded on behalf of the Sub Divisional Officer that the hearing of the Show Cause Notice would be held on 21st August 2015.

12. On 1st August 2015, the State Government applied to this Court (in Chambers) for a stay of the orders dated 23rd July 2015 and 31st July 2015. This application was rejected in the following terms:-

> "*3. It appears that on 14th July, 2015, the Officials of the Collector, Thane woke up from their deep slumber and issued a notice to the Company asking them to show cause as to why the Class II occupancy lands which were with the Company since 1949 should not be resumed by the Government. It is interesting to note that the process of the sale of the said lands including the Class II occupancy lands is in the offing since the last three years. The Office of the Collector, Thane is aware of the same and in fact, as can be seen from the records over the years, has participated in the process and has filed several affidavits through the Sub Divisional Officer, Thane admitting that the said lands are with the Company and that*

in the event of the sale of the Class II occupancy lands, the Government would be entitled to 75 per cent of the unearned income from the sale proceeds of the Class II occupancy lands. It is further interesting to note that the SDO, Thane, despite being aware of the fact that the Company has been wound up, has failed and neglected to issue the show cause notice to the Official Liquidator and has instead issued the same to the Company which is already wound up and served the same on the Security Guard posted at the suit land which was received by the Official Liquidator only on 29th July, 2015.

5. Today, an application is made before this Court for stay of the orders dated 23rd and 31st July, 2015, on the ground that the Government seeks to impugn the said orders before the Appeal Court. The question of stay of the said orders does not arise for the following reasons:

5.1. As stated earlier, the said lands including Class II Occupancy lands are in the custody of this Court since 1999.The only change that has been now effected is that the possession of the suit lands is now being transferred to the Official Liquidator from the Court Receiver. In view thereof by the said order, there will be no change qua the status of the land and the same will be continued in possession of this Court. Moreover, the implementation of the Orders dated 23rd July, 2015 and 31st July, 2015 would not materially affect the rights of the parties.

5.2 It is already clarified in the order dated 31st July, 2015, that the possession taken by the Official Liquidator of the suit land shall be subject to the final outcome of the proceedings in show cause notice *dated 14th July, 2015."*

Pursuant to the aforementioned Orders, the Court Receiver handed over to the Official Liquidator possession of the immovable properties of the Company on 1st August 2015. On 18th August 2015, the Official Liquidator submitted his response to the show cause notice in which he specifically raised the plea that in view of Section 446 of the Companies Act, the Sub Divisional Officer was not entitled to proceed further with the show cause notice without the leave of the Company Court.

13. Despite the aforementioned objection being raised by the Official Liquidator, the Sub Divisional Officer proceeded with the hearing on the show cause notice on 21st August 2015 and passed an Order on the very same day resuming the lands which were the subject matter of the show cause notice on the basis that the Company in Liquidation had committed a breach of the terms and conditions on which the land was allotted. A copy of the Order was forwarded by the Sub Divisional Officer to the City Survey Officer, Thane and Tehsildar, Thane "to immediately initiate action of vesting the said properties with government in record of right and submit the report of the same in return post."

14. A mutation entry was effected on the same day i.e. 21st August, 2015 by the Talathi, Kalwa on the basis of the Order deleting the name of the Company in Liquidation and inserting that of the State Government in respect of the lands which were the subject matter of the Show Cause Notice.

15. Official Liquidator's Report No. 534 of 2015 was filed by the Official Liquidator on 8th September, 2015 challenging the show cause notice, the Order of the Sub Divisional Officer passed thereon and the mutation entry effected by the Talathi for want of leave having been obtained by the Sub Divisional Officer from this Court under Section 446 of the Companies Act. By an Order dated 10th September, 2015, ad interim reliefs were granted in terms of prayer (d) of the Official Liquidator's Report restraining the State Government from creating any third party rights in respect of the said properties or from taking any further steps or acting upon or in pursuance of the show cause notice, the Order or the mutation entries.

16. When the Official Liquidators Report was heard on 16th October, 2015, the Learned Assistant Government Pleader conceded that leave was indeed required to be obtained under Section 446 by the SDO in respect of the proceedings pursuant to the Show Cause Notice. This Court set aside the Show Cause Notice dated 14th July, 2015 and the order dated 21st August, 2015 and directed the Sub Divisinal Officer, Thane, Tehsildar, Thane and Talathi, Kalwa to restore the status quo ante in the Record of Rights by restoring the name of the Company in Liquidation in respect of the lands which were the subject matter of the Show Cause Notice. In doing so, this Court observed:

"The manner in which the SDO has proceeded in the present matter

> *to issue a show cause notice and to proceed to pass an order thereupon despite the requirement to obtain leave under Section 446 having been specifically brought to his notice revels a determination to interfere with the possession of this Court over lands belonging to the Company in Liquidation. This was only compounded by the unusual haste with which the Tehsildar, Thane and the Talathi, Kalwa moved to effect a mutation entry to replace the name of the Company with that of the State Government in respect of the said lands. However, in view of the unconditional apology tendered by all three officers in their Affidavits dated 12th October, 2015 which is hereby accepted, I see no reason why further steps in the nature of criminal contempt ought to be taken in the present case."*

The State government was however, granted liberty to apply for leave under Section 446 if they so chose.

17. It is pursuant to the liberty so granted that the SDO has filed the present Application. The Application seeks leave under Section 446 (1) of the Companies Act "to resume the lands." Mr. Mattos, the learned AGP appearing for the SDO, however, clarified that while the language of the prayer was capable of being construed otherwise, the SDO was seeking the leave of this Court to issue a show cause notice under the provisions of the Maharashtra Land Revenue Code and to "initiate" proceedings for resumption of the said lands. In support of the Application Mr. Mattos submitted: a) that the lands in question are Class II Occupancy lands, b) that the Company (now in liquidation) has, without the consent of the State government, created mortgage interests in the said lands, c) that this constituted a breach of the conditions of the grant which entitled the state to resume the subject lands; and d) that, pursuant to the liberty granted in the order dated 16th October, 2015, the State government was entitled for leave under Section 446 (1) of the Companies Act, 1956 to initiate proceedings in respect thereof by issuance of a show cause notice.

18. Mr. Sen, on behalf of the Official Liquidator, opposed the grant of leave on the basis:

a) that, while leave under Section 446 (1) is usually granted liberally, this case is not typical insofar as the Applicant was not seeking the leave of this Court to initiate proceedings before an independent Court or Tribunal, but to initiate proceedings before itself. The Applicant was therefore a judge in its own cause.

b) that the conduct of the Applicant in the past during the events leading upto the Application inspired no confidence that any hearing that the Applicant may grant would be fair or effective.

c) that the form and tenor of the Affidavits filed by the Applicant in support of the present Application would show that it had prejudged the issue and that any hearing would be a mere empty formality. In support of the proposition that a hearing ought not to be permitted to proceed if the adjudicating Authority has prejudged the issue, Mr. Sen relied on the judgements of the Hon'ble Supreme

Court in *Oryx Fisheries Private Ltd.* v. *Union of India and Others*[1] and *Siemens Ltd.* v. *State of Maharashtra and Others*[2] and

d) that the Applicant would suffer no prejudice whatsoever if the Application is rejected insofar as the Applicant would be at liberty to file an Application, if so advised, before this Court under Section 446 (2) of the Companies Act urging its right to resume the said lands which would then be determined on its own merits.

19. Mr. Dwarkadas, on behalf of Secured Creditors/ Assignees of IDBI, IFCI and Kotak Mahindra Bank, while opposing the grant of leave under Section 446 (1), also submitted that the state government ought not to be permitted to file an Application under section 446 (2) to advance its claim. He contended that the State government was estopped from doing so on account of the fact that, despite being fully aware of the mortgage interests created by the erstwhile company, the State government had at no time prior to 14th July, 2015 raised any objection thereto or asserted any right to resume the lands on that basis. He relied on various occasions when the State government had expressed its willingness to have the said lands sold, subject only to a claim that they were entitled to 75% of the difference between the sale price and the cost of acquisition as unearned

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1 (2010) 13 SCC 427

2 (2006)12 SCC 33

income. He submitted that this stand was clearly inconsistent with any alleged right to resume the lands and that the government was seeking to take unfair advantage of the effort, time and expense invested by the secured creditors in fencing and securing the said lands. In support of his plea that the State government is estopped from resuming the said lands, Mr. Dwarkadas relied on the judgement of the Hon'ble Andhra Pradesh High Court in *A.P. Industrial Infrastructure Corporation Ltd.* v. *A.P. Refractories Ltd. (Under Liquidation) and Others*[3] where leave under Section 446(1) to resume the lands of the Company in liquidation was denied on the ground that a mortgage had been created without the consent of the corporation.

20. Ms. Deepa Kamat, on behalf of the workers of the Company in liquidation, also opposed the grant of leave as sought by the Applicant, inter alia, on the ground that the workers have waited several years for their dues and that the grant of such leave would further delay any distribution of the Company's assets in liquidation.

21. Mr. Mattos, in rejoinder, sought to distinguish, on the facts, the Judgments in *Oryx Fisheries* and *Siemens Ltd.* cited by Mr. Sen. He argued that, while in a particular case, a show cause notice may be quashed on the ground that the Adjudicating Authority had pre-judged the issue, in the present case the State

3 [2008] 146 Comp Cas 399 (AP)

Government had in fact not done so. He also argued that any show cause notice must necessarily set out the grounds that induced the Authority to form a tentative opinion and that held to the touchstone canvassed by Mr. Sen, every notice must fail. He further urged that, in the present case, even a show cause notice was yet to be issued. The Applicant was merely seeking the leave of this court to do so. As such, he argued, it was premature to consider whether any of the issues had been pre-judged. He further claimed that in any event, the Maharashtra Land Revenue Code provided for remedies by way of Appeal and revision in the event any party was aggrieved by the outcome of any proceeding pursuant to the proposed Show Cause notice.

22. Mr. Mattos also contended that this Court having accepted the unconditional apology tendered by the Applicant in the Official Liquidator's Report with regard to the manner in which he had proceeded with the earlier enquiry this conduct ought not to be taken into account in considering the present Application for leave under Section 446(1).

23. With reference to the Judgement of the Hon'ble Andhra Pradesh High Court in *A.P. Industrial Infrastructure Corporation Ltd.*, Mr. Mattos argued that it involved a case where the state government had in fact consented to a mortgage being created. The present case, he urged, was not one such.

24. Section 446 of the Companies Act under which the present Application is

made reads:

> *"Suits stayed on winding up order:*
>
> *446. (1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose.*
>
> *(2) The Court shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of--*
>
> *(a) any suit or proceeding by or against the company;*
>
> *(b) any claim made by or against the company (including claims by or against any of its branches in India);*
>
> *(c) any application made under section 391 by or in respect of the company;*
>
> *(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or rise in course of the winding up of the company;*
>
> *whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960*
>
> *(3) [Omitted]*

(4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court."

On a plain reading, Section 446(1) confers on this Court a discretion to grant, not to grant or grant subject to such terms as the Court may deem appropriate, leave to commence suits or other legal proceedings against a company in liquidation. It is also clear that the Company Court would have jurisdiction, under Section 446(1) to entertain and dispose of any claim made by or against the Company in liquidation including a claim such as the present one.

25. I have considered the submissions made on behalf of the various parties and am inclined to reject in the present case the application for leave. I find merit in the submission made on behalf of the Official Liquidator that the Applicant has prejudged the issue and cannot be expected to offer a fair or effective hearing to any of the stakeholders. Mr. Sen has read out several portions of the Affidavits filed on behalf of the Applicant which make this manifest. In his Company Application, the Applicant, inter alia, asserts:

"6. I say that Section 44A of theLand Acquisition Act restricts transfer by way of sale, mortgage, gift, lease or otherwise lands granted by the Government upon acquisition under the said Act without previous sanction of the appropriate Government…

7. I say that before mortgaging the said lands, the above

Defendant No.1 had not sought prior permission of the Government of Maharashtra and as such had violated the said provisions of Section 44A of the Land Acquisition Act, 1894. The said transactions were also in violation of Rule 15(2) of the Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971. Under Rule 15(1), every grant of land under Part III thereof shall be subject to the provisions of the Maharshtra Land Revenue Code, 1966 and in particular to the following conditions, that is to say,

a.i. The Grantee shall not mortgage, sell, assign or otherwise transfer the land or any portion thereof except with the prior sanction of the Collector

If the Grantee commits breach of the conditions specified in Sub Rule (1) of Rule 15, the Collector may resume and take possession of the land granted to him and the Grantee shall be liable to be evicted from the said land.

8. I say that on 25th April, 1978, the said Company created a Joint Equitable Mortgage by depositing its Title Deeds inter alia in respect of its lands at Kalwa, Taluka and District Thane in favour of some Banks and Financial Institutions, including the said lands granted by the Government to it…

10. I say that on 2nd May, 1983, a similar document as aforestated was executed by the above Company (In Liquidation) and the ICICI Bank. A copy of the Document dated 2nd May, 1983 is hereto annexed and marked as EXHIBIT "G".

I say that it is pertinent to note that the aforesaid 2 documents were *unregistered documents. I say that under Section 149 of the Maharshtra and Revenue Code, 1966, it was incumbent upon the banks and/or financial institutions to whom the said lands of the said Company were mortgaged to intimate the said transaction to the Talathi, Village Kalwa within 3 months from the date of execution of the documents. Proviso 2 to Section 149 provides that any person acquiring right with the permission of the Collector or by virtue of a registered document is exempted from the obligation to report the said fact to the Talathi. As aforestated, both the aforesaid documents were unregistered documents. Hence, the said transaction ought to have been reported by the mortgagees to the Talathi, Kalwa which they omitted and failed to do so, thus, violating the mandate as contemplated under Section 149 of the Maharashtra Land Revenue Code, 1966.*

19. I say that in view of the fact that the above Company (In Liquidation) inter alia has committed breach of the above provisions of law, the Class II Occuppancy lands admeasuring 35.02.7 Hectares equivalent to 3,50,270 square metres of land is liable to be resumed inter alia for breach of the said provisions of Law.

23. I say that the above Company (In Liquidation) had prior to mortgaging the Class II Occupancy lands not obtained previous sanction of the Government of Maharashtra as contemplated under Section 44(A) of the Land Acquisition Act, 1894. Furthermore, the mortgage of said lands by the above Company (In Liquidation) was in violation of Rule 15(2) of the Maharashtra Land Revenue (Disposal of land) Rules, 1971. Thus, the said lands admeasuring 31.87.48 Hectares equivalent to 3,18,747.08 as more particularly described in *the Schedule, Exhibit "I" hereto and as more particularly shown in yellow colour in the M.R. Plan No. 25/2013, Exhibit-J hereto, are liable for resumption inter alia for breach of the said provisions of law..."*

26. The Affidavit dated 10th March, 2016 filed by the Applicant in rejoinder to the Reply filed by the Secured Creditors contain assertions in a similar vein as would be evident from the excerpts reproduced hereinbelow:

> *"4. ....I say that the title of the Government is well established by virtue of the documents annexed by me in the Affidavit in Support of the above Company Application, which inter alia include the copy of the Award dated 5th June, 1951 in respect of the lands acquired by the Government under the Land Acquisition Act, 1894, the Mutation Entries etc. in respect of Class II Occupancy Lands. I say that the title of the Government in respect of the Class II Occupancy Lands is unassailable and is proved conclusively inter alia, by virtue of provisions of Section 157 the Maharashtra Land Revenue Code, 1966 which unambiguously states that a mutation entry in respect of a land is admissible in evidence, until the contrary is proved...... Thus, Defendant No. 10A could not be oblivious of the status of the Class II Occupancy Lands, which Lands, the Government is entitled to resume, since there is a breach of the provisions of law, the conditions of Grant, the Land Revenue Code and the Rules framed thereunder.*
>
> *5. ... I say that having taken the risk of entering into a transaction with the Defendant No.10 seeking assignment of the*

debt of the above Company (in liquidation), despite being fully aware of the pending litigation, it does not lie in the mouth of Defendant No. 10A to contend that it is going to be allegedly prejudiced by the above Company Application taken out by the Applicant seeking resumption of the Class II Occupancy Lands for inter alia for breach of the provisions of Section 44 A of the Land Acquisition Act, 1894, which land were mortgaged by the above Company (in liquidation) without prior permission of the Government on 25th April 1978 and 2nd May 1983, which act of the above Company (in liquidation) clearly inter alia violated the provisions of Section 44A of the Land Acquisition Act, 1894. I take strong exception to the Defendant No. 10A describing the Class II Occupancy lands that are sought to be resumed by the Applicant as the 'Mafatlal lands' as more particularly set out in Exhibit "I" to the above Company Application, (pages 156-161 of the above Company Application). I say that it is preposterous for Defendant No. 10A to describe the Class II Occupancy lands as Mafatlal Lands…

7. ….I say that the above Application unambiguously states the Government's right qua the said Class II Occupancy lands and has substantiated the powers under which it is entitled to resume the said lands…."

27. In its Application and Affidavit, , the Applicant asserts in no uncertain terms, on oath, its right to resume the subject lands which are described as being Class II Occupancy lands, a status which the Applicant claims to be "unassailable". Without going into the merits of the respective contentions

of these parties, it has to be noted that the status of the said lands, as to whether they are Class II Occupancy lands or otherwise, and the alleged right of the State government to resume the same on account of a purported breach on the part of the company of the conditions, if any of grant is precisely what would have to be determined by the Adjudicating Authority (the Collector or the SDO, as the case may be) on issuance of a show cause notice. The form and tenor of the Affidavits filed by and the arguments urged on behalf of the Applicant leave little doubt that these issues have been prejudged and_inspire no confidence that any hearing that the Applicant may offer would be effective and not an empty formality. Judged by any standard, this is not the language employed by an Authority that can be expected to objectively and dispassionately assess the facts and the law. It is the language of a party that has entered the arena. This concern is further compounded by the manner in which the SDO had earlier conducted himself in issuing a show cause notice, disregarding the requirement for leave under Section 446 (1) despite the same being brought to his notice and effecting a mutation entry virtually overnight in respect of the subject lands. The Applicant's contention that the issue has not been prejudged and that any show cause notice must contain the grounds for its issuance is somewhat disingenuous, given the categorical nature of the assertions made, both on oath and in the course of oral arguments, as to the merits of the Applicants right to resume the subject lands. I also do not find persuasive the Applicant's contention that the earlier unconditional apology by the Applicant and its acceptance by this court precludes this Court from taking into account the events following the earlier show cause notice culminating in the order dated 16th October, 2015 for the purpose of the present Application. I believe that any indication that a hearing before an Authority would not be effective is clearly relevant in deciding whether leave ought to be granted to that Authority under Section 446(1) to proceed in its own cause. I am persuaded that this is not a fit case for granting the leave sought by the Applicant.

28. I make it clear that I have not considered the merits of the Applicants' claim to resumption of the subject lands. I also express no view on the arguments urged by Mr. Dwarkadas as to why such a claim is flawed or as to how the State government is estopped from advancing it. It appears to me that these issues do not properly arise in an application for leave under Section 446 (1) and any consideration thereof would be premature.

29. I also make it clear that the Applicant shall be at liberty, if so advised, to make an application under Section 446(2) of the Companies Act before this Court for resumption of the said lands. He may do so within a period of four weeks from the date of uploading of this order. Such an Application, if filed, would be considered on its own merits.

30. The Application is dismissed with no order as to costs.

(S.J. KATHAWALLA, J.)