IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 30TH DAY OF NOVEMBER 2016

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

C.S.No.742 of 2009
and
A.No.4251 of 2009
and
A.No.1737 of 2010

C.S.No.742 of 2009:
A.No.4251 of 2009:

Wealth Sea Pte Ltd
No.10, Anson Road
International Plaza
Singapore-079903
Represented by its authorized signatory
Mr.R.Ravichandran
A-9, Balaji Arcade, No.134 Arcot Road
Virugambakkam, Chennai-92 ... Applicant/Plaintiff

-Versus-

1.Jumbo World Holdings Ltd
Rep by Shri. Pramod Balakrishnan
121, Rukmani Lakshmipathy Road
Egmore, Chennai-600 008

2.V.N.Devadoss
No.23(Old No.11), Chellammal Street
Shenoy Nagar,
Chennai-600 030

3.Dunlop India Limited
Rep. by its Management
No.16, Whites Road
Royapettah,
Chennai-600 014. ..Respondents/Defendants

Civil suit praying that this Hon'ble Court be pleased to grant judgment and decree on following terms:-

a) A declaration that the sale deed dated 17.06.2004 registered as Document No.6939 of 2004 before the Office of the Sub-Registrar, Ambattur, Chennai-53 is null and void ab initio

b)a consequential permanent injunction restraining the second defendant herein by himself his heirs, representatives, assigns, successors-in-interest or any person claiming through or under him from acting upon the sale deed dated 17.06.2004 registered as Document No.6939 of 2004 before the Office of the Sub-Registrar, Ambattur, Chennai and manner alienating, transferring, leasing, letting, mortgaging, charging or in any manner dealing with the property conveyed there under and described in the schedule.

c)cost of the suit.

A.No.4251 of 2009:

Application praying that this Hon'ble Court be pleased to grant the applicant leave to file a separate suit on the same cause of action on a later date for claiming reliefs not claimed in the present suit.

A.No.1737 of 2010:

V.N.Devadoss
No.23(Old No.11), Chellammal Street
Shenoy Nagar,
Chennai-600 030 ..Applicant/2nd defendant

vs

1.Wealth Sea Pte Ltd
No.10, Anson Road
International Plaza
Singapore-079903
Represented by its authorised signatory
R.Ravichandran
A-9, Balaji Arcade, No.134 Arcot Road
Virugambakkam, Chennai-92 ... 1st respondent/Plaintiff

2.Jumbo World Holdings Ltd
Rep by Shri. Pramod Balakrishnan
121, Rukmani Lakshmipathy Road
Egmore, Chennai-600 008 ..2nd respondent/1st defendant

3.3.Dunlop India Limited
Rep. by its Management
No.16, Whites Road
Royapettah,
Chennai-600 014. ..3rd Respondent/3rd Defendant

Application praying that this Hon'ble Court be pleased to reject the plaint filed in C.S.No.742 of 2009 pending on the file of this Hon'ble Court.

This suit along with these application coming on this day before this court for hearing the court made the following order:

For the sake of convenience, in this order, the parties are arrayed as they were arrayed in the suit.

2. A.No.1737 of 2010 has been filed by the 2nd Defendant in CS.No.742 of 2009, seeking to reject the plaint in CS.No.742 of 2009 on the file of this court. A.No.4251 of 2009 has been filed by the Plaintiff in CS.No.742 of 2009, seeking leave to file a separate suit

on the same cause of action on a later date for the reliefs not claimed in the present suit.

3. The above suit had been filed by the Plaintiff, to pass a judgement and decree, against the Defendants:-

(a) declaring that the sale deed dated 17.06.2004 registered as Doc.No.6939 of 2004 on the file of the Sub Registrar, Ambattur, Chennai-53 is null and void ab initio.

(b) granting consequential permanent injunction, restraining the 2nd Defendant from acting upon the sale deed District 17.06.2004 registered as Doc.No.6939 of 2004 on the file of the Sub Registrar, Ambattur, Chennai-53 and in any manner, alienating, transferring, leasing, letting, mortgaging, charging or dealing with the property conveyed thereunder.

(c) granting costs of the suit.

4. CS.No.742 of 2009 had been filed on 11.08.2009. In the plaint, it had been stated that the Plaintiff had purchased major share holdings of the 3rd Defendant Company, viz. Dunlop India Limited on 28.11.2005. After taking control of the 3rd Defendant Company, the Plaintiff learnt that there were various illegalities committed by the 1st Defendant Company, viz. Jumbo World Holdings Limited, while it was in control and management of the 3rd Defendant Company. It had been further stated that the 3rd Defendant had conducted manufacturing operations in the lands assigned by the Government located at Ambattur and Athipattu Villages, Chennai. The lands vest with the Tamil

Nadu Government and the 3rd Defendant enjoyed right of use as a permanent assignee subject to the conditions contained in the assignment deeds. It had been further stated that the 3rd Defendant did not have power to alienate or encumber the lands. However, the 1st Defendant, while in control and management of the 3rd Defendant, had sold 60 acres and 86 cents of the said lands to the 2nd Defendant. It had been stated that the lands, which were worth about Rs.300 crores, were sold for Rs.24.34 crores. It had been stated that the sale is vitiated by fraud and is void abi initio and has to be set aside.

5. It had been further stated that the sale adversely affected the operations of the 3rd Defendant, since it was unable to restart its factory operations for want of space. After the 1st Defendant Company took over the 3rd Defendant Company in 1984, the 3rd Defendant had started to accumulate losses. It was, therefore, declared as a sick industrial unit on reference to the Board for Industrial and Financial Reconstruction (herein after referred to as BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985 (herein after referred to as SICA) in Case No.14 of 1998. From 1997 to 2005, the operations of the 3rd Defendant came to a complete standstill. The Plaintiff, then, took control and on 28.11.2005 purchased the majority of the share holdings. It had been stated

that the Plaintiff is in control and management of the 3rd Defendant Company. It was represented at the time of such purchase that the entire factory can be restarted and that the infrastructure was undisturbed. Accordingly, the Plaintiff made preparations once again, for restarting the manufacturing operations. At that stage, on 30.07.2007, the 2nd Defendant entered into the assigned lands with 8 bulldozers and 200 persons, demolished the compound wall and felled down 50 trees and also started constructing another compound wall, sealing entry. A police complaint was lodged, but to avail. The Plaintiff made enquiries and only then, they learnt that the 3rd Defendant was declared as a sick industrial company and that the 2nd Defendant in conspiracy with the 1st Defendant had usurped title of more than 60 acres of land in Ambathur along with infrastructure. It had been further stated that the Plaintiff came to know that the BIFR had drafted a rehabilitation scheme and after many negotiations and further appeal proceedings before the Appellate Authority for Industrial and Financial Reconstruction (herein after referred to as AAIFR), it had been suggested that the 3rd Defendant may sell the surplus assets and consequently, an Assets Sales Committee was constituted and thereafter, the surplus lands were sold pursuant to the paper publication dated 19.4.2004. In the paper publication, the description of the property or even the word 'Dunlop' was not mentioned. The 2nd Defendant had purchased the properties and sale deed dated 17.06.2004 was executed in Document No.6939 of 2004 in the office of the Sub Registrar, Ambathur. The entire sale was in contravention of the assignment order of the Government of Tamil Nadu and the scheme circulated by AAFIR. Thereafter, the 2nd Defendant and the 1st Defendant colluded together to make illegal gain from such transaction and the property, which was worth about Rs.300 crores, had been purchased by the 2nd Defendant for Rs.24.34 crores and consequently, the sale is void because of the fraud. Claiming that the Plaintiff is an investor, the Plaintiff had filed the said suit, seeking to set aside the said sale deed dated 17.6.2004 registered as Document No.6939 of 2004 and for other reliefs.

6. In the affidavit filed in support of the application in A.No.1737 of 2010 by the 2nd Defendant, the 2nd Defendant had stated that by assignment deed dated 17.08.1963, the Government of Tamil Nadu had assigned lands to an extent of 65.14 acres in Ambathur Village and to extent of Rs.52.28 acres in Athipattu Village to the 3rd Defendant Company at a consideration of Rs.4,73,065/-. It had been stated that the 3rd Defendant Company became a sick industry and was also declared as a sick unit by BIFR on 22.6.1998. Consequent to such declaration, surplus

properties and assets were sought to be disposed of by the BIFR and AAIFR, by forming an Assets Sales Committee by order dated 28.3.2001. Thereafter, publications were made and lands to an extent of 60.86 acres comprised in Ambathur Taluk were sought to be sold. The 2nd Defendant was the highest bidder for a sum of Rs.24,34,40,000/- and his offer was approved by the Statutory Authorities, viz. BIFR and AAIFR in the meeting held on 17.5.2004 and sale deed dated 17.6.2004 was executed in favour of the 2nd Defendant. This was much prior to the Plaintiff's purchasing the shares of the 3rd Defendant on 28.11.2005.

7. After stating the facts as above, it had been stated by the 2nd Defendant that originally WP.No.25962 of 2004 had been filed by Dunlop India Factory Employees Union against M/s.Dunlop India Limited, the 3rd Defendant, AAIFR, BIFR and Government Tamil Nadu, Commissioner of Labour, seeking to declare the sale deed dated 17.6.2004 as null and void. This court had considered the counter and a specific stand was taken that the sale deed cannot be held to be void. This court had finally passed an order authorising the Assets Sales Committee to complete the procedure for sale and after directions, the sale was completed. The said Writ Petition was dismissed on 21.12.2004.

8. It had been further stated that another Writ

Petition in WP.No.26671 of 2007 was filed by the 3rd Defendant for issuance of a Writ of Mandamus, forbearing the statutory body from granting permission for demolishing and putting up construction and to hold the sale deed dated 17.6.2004 as illegal and void. The 2nd Defendant was the 8th Respondent in the said Writ Petition. After hearing both sides, the Petitioner in the said Writ Petition gave up the prayer to hold the sale deed as null and void. It had been further stated that this court had stated that the Petitioner had no locus standi to seek the relief to set aside the sale deed.

9. It had been further stated that the Tamil Nadu Government, after hearing all the necessary parties and giving sufficient opportunity, had passed GO.Ms.No.183 Revenue (LA II) Department, dated 31.3.2008, declaring that the sale deed dated 17.6.2004 registered as Document No.6939 of 2004 on the file of the Sub Registrar, Ambattur, executed by the 3rd Defendant in favour of the 2nd Defendant was in order and had not violated any conditions under the provisions or stipulations of the Land Acquisition Act or the assignment deed.

10. The said Government Order was challenged by the Plaintiff in WP.No.13160 of 2008 and by the 3rd Defendant in WP.No.13095 of 2008. In both the Writ Petitions, the 2nd Defendant was shown as the 8th Respondent. In the said

Writ Petitions, after hearing elaborate arguments, this court had reserved the matter for pronouncing judgement. At that interregnum period, without awaiting judgement, the Plaintiff had filed the present suit to declare the sale deed as null and void, which relief was already rejected by this court in the earlier Writ Petition filed by the 3rd Defendant in WP.No.26671 of 2007 and which relief was substantially agreed in the Writ Petitions which were reserved for judgement.

11. It had been further stated that the proceedings before the BIFR and AAIFR did not suffer from any procedural or legal infirmity and that all formalities were followed and only thereafter, the property was brought to sale and finally the sale deed was executed in favour of the 2nd Defendant herein.

12. It had been further stated that under Section 26 of SICA, the jurisdiction of the civil court is completely barred from questioning or adjudicating any issue or any order passed by the BIFR or AAIFR. The 2nd Defendant specifically denied allegations on fraud and collusion. It had been, therefore, stated that the settled law, which had reached its finality, cannot be reagitated in a civil court. Consequently, this court cannot, once again, look into the bona fide of the sale deed. It had been further stated that the 2nd Defendant was the highest bidder and

had purchased the property after following all the procedures. It had been further stated that the Plaintiff had purchased 74.50% of equity shares and taken management and control of the 3rd Defendant Company on 28.11.2005 and has sought to set aside the sale deed registered much earlier on 17.6.2004 as null and void. Moreover, it had been stated that the suit, which had been filed on 17.8.2009, is barred by limitation since a declaration is sought against the sale deed dated 17.6.2004. Even if the date of acquisition of shares is taken into account, the same being 28.11.2005, the suit is again barred by limitation under Article 58 of the Limitation Act. It had been further stated that the lands are situated at Ambattur Village and consequently, are outside the territorial jurisdiction of this court and consequently, even on that ground, it had been stated that the suit is liable to be rejected.

13. This court had the benefit and privilege of hearing the extensive and lucid arguments as has always been their forte and reputation, advanced by Mr.B.Kumar, the learned senior counsel for the 2nd Defendant and by Mr.J.Sivam Sivanandaraaj, the learned counsel for the Plaintiff,.

14. **A.No.1737 of 2010:-** This application has been filed by the 2nd Defendant in the suit to reject the plaint in CS No.742 of 2009. As stated above, the suit has been

filed to declare the sale deed dated 17.6.2004 registered as Document No.6939 of 2004 before the Office of the Sub Registrar, Ambathur, Chennai as null and void. The 2nd Defendant is the purchaser and beneficiary under the said sale deed and consequently, is directly affected by any order passed with respect to the said relief of declaration.

15. The grounds, on which the 2nd Defendant sought to reject the plaint, are as follows:-

1. The 3rd Defendant Company had been declared as a sick industrial unit by the BIFR. After following necessary procedures, surplus lands were sought to be sold. The said order was challenged before the Appellate Authority, viz. AAFIR. The Appellate Authority had dismissed the challenge to the sale of the said lands. The suit has been filed for declaration to set aside the said sale deed, again raising the same issues, which had been considered by the BIFR and AAIFR. The same issues cannot be reagitated again and again before two forums particularly when a Competent Authority had considered all issues.

2. The said sale having been effected under the provisions of SICA by BIFR, affirmed by AAIFR, under Section 26 of the said Act, the jurisdiction of the court is specifically barred.

3. The sale having again been challenged by the 3rd Defendant in WP.No.26671 of 2007 and this court having specifically stated that the Petitioner has no locus standi and consequently dismissing the Writ Petition, relitigation on the same issue is an abuse of process of court of law.

4. The Plaintiff had filed WP.No.13160 of 2008 and the 3rd Defendant had filed WP.No.13095

of 2008 with respect to GO.Ms.No.183 dated 31.3.208, which GO has been passed affirming the sale deed in Document No.6939 of 2004, which is the subject matter of the suit and this court having dismissed the said Writ Petition and in the course of which, having discussed the issues relating to fraud and all similar issues raised again in the plaint, the present suit is an abuse of process of law and court.

5. The Plaintiff had acquired majority interest on 28.11.2005 and filed the suit on 11.8.2009 much after the period of limitation under Article 58 of the Limitation Act, the suit being barred by the law of limitation has to be rejected.

6. The Plaintiff being only a major share holder of the 3rd Defendant Company cannot claim any right over the property of the said Company and on that ground also, the suit is misconceived and has to be rejected.

16. The Government of Tamil Nadu, by assignment deeds, dated 17.8.1963 and 7.11.1964, had assigned lands to an extent of 65.14 acres in Ambathur Village to the 3rd Defendant Company, namely, Dunlop India Limited and the subject matter of the suit is 60.86 acres of lands. These lands had been assigned on condition that they shall be used for conducting rubber tyre manufacturing activities. The Government retained the right to resume the lands in the event the 3rd Defendant was wound up or in case of any violation of the conditions of the assignment. The Plaintiff had acquired major share holding rights in the 3rd Defendant Company on 28.11.2005. It is stated in the

plaint that on the date of acquisition of major share holdings, the Plaintiff had intention to utilise the lands of the 3rd Defendant Company and to restart re-manufacturing of the 3rd Defendant Company factory units. However, it had been stated that to the shock, on 30.7.2007, the 2nd Defendant entered into the assigned lands with men and bulldozers and demolished the compound wall and felled down trees and started to construct another compound wall, restricting entry. The Plaintiff has stated in the cause of action paragraph that the cause of action first arose on 30.7.2007 when the 2nd Defendant trespassed into the assigned lands.

17. In this connection, it is pertinent to point out here that the Plaintiff had not produced any transfer agreement, under which they had acquired the major shares of the 3rd Defendant Company. It is also not known or rather it has not been disclosed anywhere in the plaint as to whether at the time of acquisition of majority of shares, any written agreement or document or deed was signed by the Plaintiff. It is unbelievable that the Plaintiff Company would have acquired 74.50% of equity shares and claim ignorance and innocence of the fact that the Company which they seek to acquire was declared as a sick unit and had been revitalised only by influx of funds through sale of lands under direction of BIFR, a statutory authority. If there had been any such written agreement, it

would reveal the actual assets and infrastructural holdings of the 3rd Defendant Company, which were available as on the date of the acquisition on 28.11.2005. The Plaintiff, by not producing any such documents and moreover, by not disclosing what their actual knowledge was on the date of their purchase, had deliberately withheld the material information in the plaint and also documents and terms, under which they had acquired the major share holdings of the 3rd Defendant Company. If material facts had been suppressed to the Plaintiff by the 3rd Defendant Company, then the Plaintiff ought to allege fraud on the part of the 3rd Defendant Company and not on the external agencies.

18. Be that as it may, the 3rd Defendant had, even according to the plaint, sold the suit property much earlier on 17.6.2004 by a registered document. Needless to point out that registered documents are public documents. They would be reflected in another base document, always verified prior to any transaction involving properties, viz. encumbrance certificate. This sale was effected since the 3rd Defendant Company had been declared as a sick industrial unit by proceedings dated 22.6.1998. It is very strange that the Plaintiff claims total ignorance and seeks indulgence of this court to appreciate or may be sympathise with their ignorance of the actual state of affairs of the 3rd Defendant at the time when they acquired nearly 75% of

the shareholding rights. The BIFR, by proceedings, dated 22.6.1998 in the presence of the Managing Director, the Senior Vice President and Consultant, another official with the abbreviation SVPP and another Official with the abbreviation CS and one R.K.Kapoor of the 3rd Defendant Company and also in the presence of the Officials of the Standard Chartered Bank, Bank of Tokyo, State Bank of India, Allahabad Bank, Federal Bank, Catholic Syrian Bank, ESIC, Government of Tamil Nadu, Government of West Bengal, HSBC and IDBI, had stated that the IDBI had been appointed as the Operating Agency under Section 16(2) of SICA to look into the accounts of the 3rd Defendant Company and that after considering the facts on record and the submissions made by the above mentioned representatives determined that the Company cannot revive on its own. The BIFR held that it was necessary in the public interest to revive/rehabilitate the Company. The BIFR then appointed IDBI as the Operating Agency to submit a viability study report. Guidelines were also given to the Operating Agency. These guidelines have been framed extensively with specific intention to protect the interests of the 3rd Defendant Company. The Operating Agency was directed to submit its reports and comments. The 3rd Defendant Company was specifically directed not to alienate any of its assets under Section 22A of SICA without prior approval of BIFR.

This order was taken up in appeal before the Appellate Authority, viz. AAIFR, New Delhi. Again in the presence of all the stake holders, a draft rehabilitation scheme was prepared and sale of the assets, which are the subject matter of the suit and also sale of another premises at Kolkatta, were directed to be conducted. In pursuance of such direction, Newspaper advertisements were issued and with respect to the suit property, advertisement was issued in the Business Standard and Daily Thanthi, dated 19.4.2004.

19. The learned counsel for the Plaintiff, assailing fraud, had stated that the said advertisement did not mention the description of the lands or even the word 'Dunlop'. I disagree with such contention. The advertisement is a bid invitation and it runs as follows:-

"BID INVITATION

> Sealed tenders are invited from interested bidders for 61 acres or thereabouts of land at Ambattur, Chennai, Tamil Nadu as per the terms and conditions described elsewhere in the tender document for the outright sale, on, as is where is basis. The tenderer must furnish information, which brings forth the capacity, capability and experience of the tenderer along with its associates, if any. Details of the working assignment among the proposed associates, if any, along with the valid agreement to that effect should be enclosed along with the letter of intent.
>
> TENDERING SCHEDULE
>
> Tender Forms can be obtained from the office of Mr.R.D.Mehta, C/o.Jerom Trading and Investment

> Limited, from 10.00 a.m. to 5.00 p.m. between Monday to Friday, on payment of Rs.5000/- (Rupees five thousand only) by cash. The said Forms shall be available from the date of the publication of this advertisement up to April 26, 2004.
>
> Mumbai Mr.R.D.Mehta, c/o.Jerom Trading and Investment Limited, 16, The International, 5th Floor, New Marine Lines Cross Road, No.1, Churchgage, Mumbai 400 020. Tel:22001911. Fax: 22065703.
>
> Tenders duly completed in all respects along with Annexures, must be deposited at the above address on or before May 3, 2004 12.00 noon."

A similar advertisement had been issued in Tamil in the Tamil Daily 'Daily Thanthi'.

20. A reference to the Tender Forms mentioned in the advertisement clearly mentioning from whom the forms would be available, very clearly shows that the name of the Company is Dunlop India Limited and in a rough sketch, the property with land at Ambathur, Chennai along with the site plan had been very clearly given. Measurements have also been given. The payment schedules have been given. The eligibility conditions of the tenders had been given. The tender documents issued was very comprehensive and left no scope to doubt the lands offered for sale or the Company, whose lands were offered for sale. It is also to be mentioned that only such persons who advocate that particular trade would know the business procedures and the manner in which they are conducted. I reject the

contention that there has been fraud committed by BIFR and AAIFR. The proceedings of the BIFR and AAIFR are public proceedings. They had been attended by very senior officials of the 3rd Defendant Company and by the creditor financial institutions. Decisions were not taken in a single day. I reject the contentions that the Plaintiff was not aware of the BIFR and AAIFR proceedings. Indulgence to innocence can be sought by an innocent party alone and only when it is not clouded with suspicious of deliberate suppression of material facts. Moreover, SICA is a special Act operating with specific purposes of reviving a industry in the interest of public. While reviving a sick industry, there has to be influx of funds and sale has to be effected of surplus lands and only surplus lands have been sold while reviving the 3rd Defendant Company.

21. It is also to be noted that pursuant to the issuance of Newspaper advertisement and the tender documents and after determining the highest bidder, the members of the Board of Directors of Dunlop India Limited had passed a resolution unanimously on 17.5.2004 and approved the tender of the 2nd Defendant herein. The said resolution reads as under:-

> "THE EXTRACT OF THE CIRCULAR RESOLUTION PASSED UNANIMOUSLY BY ALL THE MEMBERS OF THE BOARD OF DIRECTORS OF DUNLOP INDIA LIMITED CIRCULATED ON 17TH MAY, 2004.

For the Company's Land at Ambattur Village in the State of Tamil Nadu:-

'RESOLVED THAT the consent of the Board of Directors of the Company be and is hereby accorded to sell/dispose off the Company's Property - approximately 61 Acres of the Company's Land at Ambattur Village in the State of Tamil Nadu to the Bidder - Mr.V.N.Devadoss at a bid of Rs.24,34,40,000/- (Rupees twenty four crores thirty four lakhs forty thousand only) as recommended and approved by the Assets Sales Committee of the Company at its Meeting held on 17th May, 2004."

'RESOLVED FURTHER THAT any one of Mr.P.Balakrishnan, Executive Director, Mr.Ram Gupta, Director, Mr.S.K.Kothari, Director and Mr.A.K.Agarwal, Company Secretary and Chief Legal Officer of the Company, be and is hereby severally and/or any two of them be and are hereby jointly authorised to sign and execute all necessary papers, letters, documents, agreement for sale, sale agreement, sale deed, deed of conveyance, etc. under the common seal of the Company wherever required and further to take all necessary steps, as may be required to give effect to above sale/disposal of the Company's aforesaid Property and handing over its possession to the said Bidder on behalf of the Company."

22. It is only thereafter that the sale deed had been executed in favour of the 2nd Defendant. In the said sale deed, which is under challenge, in the recitals, it had been very clearly mentioned that the lands had been assigned by the Government of Tamil Nadu and that during the course of business, the vendor, namely, Dunlop India Limited was declared as a sick unit under the provisions of SICA by order dated 22.6.1998 and as a step towards

rehabilitation, the BIFR had formed a scheme for sale of surplus assets and accordingly, tenders were floated and the 2nd Defendant was the highest bidder. The bid was approved by the Board of Directors in its resolution dated 17.5.2004 and the 2nd Defendant had paid the entire amount and the method of payment by demand draft had also been mentioned. It had been further covenanted that the vendor, namely, Dunlop India Limited had good right, title and interest to convey the lands. It had been further stated as follows:-

> "AND FURTHER THAT the VENDOR and all persons having or lawfully or equitably claiming or to claim any estate, right, title or interest at law or in equity in the SCHEDULE PROPERTY hereby granted, conveyed, sold, transferred, assured or any part thereof by from under or in trust for it the VENDOR shall and will from time to time and at all time hereafter at the request and cost of the PURCHASER do and execute or cause to be done and executed all such further and other lawful and reasonable acts, deeds, things, matters, conveyances and assurances in law whatsoever for the better further and more perfectly and absolutely granting conveying selling, transferring and assuring the SCHEDULE PROPERTY and every part thereof hereby granted conveyed, sold, transferred and assured unto and to the use of the PURCHASER in the manner aforesaid as shall or may be reasonably require by the PURCHASER. "

23. It is shocking to note that in spite of holding out such a covenant, the 3rd Defendant Company had filed Writ Petitions challenging the sale and the consequential

Government Order issued pursuant to and in approval of such sale. I hold that the Plaintiff, who has effectively, stepped into the shoes of the 3rd Defendant Company is prima facie also precluded from challenging the sale deed.

24. Pursuant to the sale deed, the 3rd Defendant Company, who was the vendor, had also handed over vacant possession to the 2nd Defendant Purchaser.

25. I hold that the ground of fraud is only superficial. When the learned counsel for the Plaintiff pointed out the advertisement stating that it does not contain the name Dunlop India Limited or the description of the properties, it was not pointed out in the same breath that the advertisement refers to a tender document and the said tender document gives minute and specific details about the lands to be conveyed. Moreover, the meetings conducted by the BIFR and AAIFR had been attended by responsible officials of the 3rd Defendant Company and the entire proceedings were transparent in nature. The BIFR proceedings had been challenged before the Appellate Authority, which had confirmed the order of the BIFR. Therefore, this court holds that the Plaintiff herein, who has not disclosed the terms under which they purchased nearly 75% of the equity shares and now seek indulgence holding out they purchased the same, without knowing the infrastructural holdings of the Company, cannot now turn

around and say that the sale is vitiated by fraud. The Plaintiff had deliberately suppressed the documents and details, under which they purchased the shares and also the list of the assets of the 3rd Defendant Company, which were disclosed at the time of purchase. A mere statement that the Company held out that all lands were available will not save the Plaintiff from being charged with deliberate suppression of material fact. Further, Section 26 of SICA makes it clear that the orders of BIFR and AAIFR cannot be challenged in a court of law and that the jurisdiction of the civil court, particularly, is barred.

26. Section 26 of SICA reads as follows:-

> "**Section 26- Bar of jurisdiction:-** No order passed or proposal made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Authority or the Board is empowered by, or under, this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. "

27. The learned counsel for the Plaintiff has stated that he has not challenged the AAIFR order and therefore, the civil court is not barred. According to him, the sale was vitiated by fraud. The fallacy in the argument lies in the argument itself. The order of AAIFR was to direct the sale of the land and sale can be challenged, only when the basis for such sale namely direction to sell by AAIFR

is also challenged. Fraud has to be specifically pleaded. Order VI Rule 4 of CPC is as follows:-

> **"Order VI Rule 4 of CPC:- Particulars to be given where necessary:-** In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

Fraud not having been specifically pleaded, this court holds that under Section 26 of SICA, the jurisdiction of the civil court, namely, this court, is specifically barred.

28. In this connection, the learned counsel for the 2nd Defendant has referred to the decision of the Honourable Supreme Court reported in **2015 1 SCC 298 (Ghanshyam Sarda Vs. Shiv Shankar Trading Company and others)**, in which, the Honourable Supreme Court had very clearly stated as follows:-

> "29. In Raheja Universal Ltd. v. NRC Ltd. [(2012) 4 SCC 148 : (2012) 2 SCC (Civ) 339] , it was observed in para 48 thus: (SCC p. 172)
>
> "48. … Chapter III, in fact, is the soul and essence of SICA 1985 and it provides for the methodology that is to be adopted for the purposes of detecting, reviving or even winding up a sick industrial company. Provisions under SICA 1985 also provide for an appeal against the orders of BIFR before another specialised body i.e. AAIFR To put it simply, this is a self-contained code and because of the non obstante provisions, contained therein, it has

an overriding effect over the other laws. As per Section 32 of SICA 1985, the Act is required to be enforced with all its vigour and in precedence to other laws."

The Act is a self-contained code and has conferred upon BIFR complete supervisory control over a sick industrial company to adopt such methodology as provided in Chapter III for detecting, reviving or winding up such sick company. The authority to determine the existence and extent of sickness of such company and to adopt methodology for its revival are, in the exclusive domain of BIFR and by virtue of Section 26 there is an express exclusion of the jurisdiction of the civil court in that behalf.

30. As laid down by this Court the Act is a complete code in itself. The Act gives complete supervisory control to BIFR over the affairs of a sick industrial company from the stage of registration of reference and questions concerning status of sickness of such company are in the exclusive domain of BIFR. Any submission or assertion by anyone including the company that by certain developments the company has revived itself and/or that its net worth since the stage of registration having become positive no such scheme for revival needs to be undertaken, must be and can only be dealt with by BIFR. Any such assertion or claim has to be made before BIFR and only upon the satisfaction of BIFR that a sick company is no longer sick, that such company could be said to have ceased to be amenable to its supervisory control under the Act. The aspects of revival of such company being completely within its exclusive domain, it is BIFR alone, which can determine the issue whether such company now stands revived or not. The jurisdiction of the civil court in respect of these matters stands completely excluded. "

29. This court, therefore, holds that since the jurisdiction of the civil court is barred, the suit has to be rejected.

30. The 2nd Defendant has raised a further issue of relitigation, stating that the 3rd Defendant Company had filed WP.No.26671 of 2007 to issue a Writ of Mandamus to forbear the Respondents 6 and 7 therein from granting planning or building demolition permission to the 8th Respondent therein (the 2nd Defendant herein) for putting up any constructions in the petition mentioned premises and to direct the 5th Respondent therein to hold the sale deed dated 17.6.2004 bearing Document No.6939 of 2004, registered in favour of the 8th Respondent therein (the 2nd Defendant herein), as illegal and void. In the said Writ Petition, this court, by order dated 8.8.2007, had held as follows:-

> "2. It is an admitted fact that the Petitioner had sold the property in dispute to an extent of 60 Acres to the 8th Respondent under the sale deed dated 17th June 2004, which was registered as document No.6939 of 2004 by the firth Respondent herein. In view of the said admitted fact, the Petitioner has no locus-standi to seek the relief as sought for in this Writ Petition and hence, this Writ Petition is liable to be dismissed and accordingly, it is dismissed. "

31. Again, shockingly, ignoring the above observation, , the 3rd Defendant Company had also filed another Writ Petition in WP.No.13095 of 2008 and the Plaintiff herein had filed WP.No.13160 of 2008 for the following reliefs:-

1. WP.No.13095 of 2008 was filed, seeking a Writ of Certiorari, calling for the records in

GO.Ms.No.183, dated 31.3.2008 of the 2nd Respondent and to quash the same.

2.WP.No.13160 of 2008 was filed, seeking a Writ of Certiorari, calling for the records of the Respondents 1 to 7 herein, culminating in GO.Ms.No.183, dated 31.03.2008 passed by the 2nd Respondent and to quash the same.

32. The 2nd Defendant herein was shown as the 8th Respondent in both the cases. It has to be mentioned that GO.Ms.NO.183, dated 31.03.2008, which was challenged in the said Writ Petitions, actually related to purchase of the said lands by the 2nd Defendant herein and the Government Order passed in pursuance thereof. In the said GO, reference has been made to WP.No.26671 of 2007, and the finding of this court that the Company had no locus standi to challenge the sales had been extracted. Finally, the Government Order had stated as follows:-

> "5. The Government have carefully examined the matter and decided to accept the report of the Special Commissioner and Commissioner of Land Administration. Accordingly, the Government consider that the sale deed dated 17.6.2004 registered as Document No.6939 of 2004 in the Office of the Sub Registrar, Ambattur, executed by M/s.Dunlop India Limited in favour of Thiru V.N.Devadoss is in order and the Company has not violated any conditions under the provisions of Land Acquisition Act, 1894, or as per the Assignment deed registered as Document No.2220/1965."

33. With respect to this GO, this court in the above Writ Petitions, filed challenging the said GO, had held as follows:-

"16. Apart from this, as far as the land in question is concerned, it was acquired for public purpose in 1959 and by two assignment deeds of the year 1963 and 1964, the lands were assigned to the Petitioner Company for a consideration. After the assignment of the said lands to the Petitioner, the terms of the assignment alone will bind. Hence, the contention of the learned senior counsel appearing for the Petitioners that prior permission has to be sought under Section 16A of the Land Acquisition Act will not hold good. Even assuming that Section 16A of the Land Acquisition Act is having its application, for the reasons discussed in the previous paragraph, the contention of the learned senior counsel appearing for the Petitioners has to be negatived. Besides, as far as the sale in question is concerned, it is not a sale between two individuals. It is a sale which has been effected in pursuance of a statutory scheme. Consequently, this stand of the learned senior counsel appearing for the Petitioners also will not hold good. That apart, having parted with the money of more than Rs.24 crores as early as in 2002 and after and after utilisation of the same by the Petitioners, the stand of the learned senior counsel appearing for the eighth Respondent that till date, on one ground or the other the Petitioners are raising vexatious litigations has to be accepted, that too, after the finality of the core issue, long back. In view of my finding that already the core issue, viz. the validity of the sale has attained its finality, the judgements relied on by the learned senior counsel for the Petitioners will not be of any help to the Petitioners and in view of the finality attained with regard to the core issue, the order under challenge in these Writ Petitions is only relating to the core issue. Besides, in view of the observation of the Honourable Supreme Court in the judgement reported in AIR 2006 SC 1489, Bombay Dyeing & Mfg. Co. Limited vs. Bombay Environmental Action Group and others, the court should make an endeavour to safeguard the interest of the bona fide purchasers and that apart, a bona fide purchaser of a scheme decree cannot be made to suffer for not fault on his part. Apart from this, since the impugned

> order also relates to the sale deed dated 17.6.2004 and with regard to the same sale deed, already, the issue has reached its finality, the question of re-examining the issue relating to the said sale deed based on the order under challenge is not warranted. "

34. This court has to express its serious concern and disappointment at the dedicated efforts made in re-litigating the same issue in different forms, which not only the High Courts, but also the Honourable Supreme Court have held as abuse of process of court and law. This has been consistently held from the year 1977. In this regard, it is relevant to refer to the following decisions of the Honourable Supreme Court, wherein strong views had been been expressed on the point of abuse of process of court through re-litigations.

35. In the decision of the Honourable Supreme Court reported in **AIR 1977 SC 2421 1 (T.Arivanandam Vs. T.V.Satyapal)**, the father had contested the eviction proceedings, lost it, appealed against it, lost again, moved a revision, suffered rejection of the revision petition and after that, his son re-litigated by filing a suit seeking that the eviction order has been obtained by fraud and collusion. In the said decision, the Honourable Supreme Court had stated as follows:-

> "2. Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application

> for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes a decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive. .."

36. In **1998-3-SCC-573 (K.K.Modi Vs. K.N.Modi),** the Honourable Supreme Court had stated as follows:-

> " 44. One of the examples cited as an abuse of the process of the court is re litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re litigate the same issue which has already been tried and decided earlier against him. The re agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

37. The same dictum and preposition of law had been reiterated with much advantage by this court in **2005 4 LW 206 (The Member Concern Department of Post, Government of India, Ministry of Communication Vs. Annapoorni and**

others), which is a case where the property of the Respondents in the civil revision petition had been acquired by the Postal Department for construction of a Post Office and a Postal Department Administration Block. Numerous litigations were filed by the wife and the family members of the land owner entwining the Postal Department in a number of litigations, which had been filed with the purpose of insisting reconveyance of land or getting more rent or to just keep the litigation alive. In such circumstances also, this court affirmed that relitigation at various forums with respect to the same subject matter would amount to abuse of process of court and law.

38. I hold that the suit in CS.No.742 of 2009 is an abuse of process of court and law and the plaint has to to be rejected. Rule of law has to be enforced with certainty to prevent such abuse.

39. With respect to the ground that the relief claim is barred by the law of limitation, it is seen that the Plaintiff had acquired majority shares of the 3rd Defendant on 28.11.2005 and the suit had been presented only on 11.8.2009. It is the claim of the Plaintiff that only when the 2nd Defendant herein trespassed into the lands on 30.7.2007, did they ever know about the sale and consequently, the suit had been filed within the period of limitation prescribed. However, the learned counsel for the

2nd Defendant has challenged this fact and stated that under Article 58 of the Limitation Act, period of limitation starts when the right to sue first accrues. According to the learned senior counsel, the right to sue had commenced on the date of acquisition of shares. The Plaintiff has not disclosed the terms of acquisition of shares and the disclosure made by the 3rd Defendant Company at the time of acquisition of shares. They have suppressed the details held out to them. It is to be pointed out that the Managing Director, Senior Vice President and Consultant, two other high ranking Officials and one Mr.R.K.Kapoor had participated in the BIFR proceedings as is evident from the documents produced and it is highly inconceivable that the Plaintiff was actually and truly innocent of the sale now under challenge.. Consequently, this court holds that the limitation started on 28.11.2005 and the suit having been filed on 11.8.2009, is also barred by law of limitation under Section 58 of the Limitation Act.

40. With respect to the contention of the learned senior counsel for the applicant that the Plaintiff being only a major share holder of the 3rd Defendant Company cannot claim any right over the property of the said Company, the Constitution Bench of the Honourable Supreme Court in **AIR 1955 SC 74(1) (Mrs.Bacha F.Guzdar, Bombay Vs.**

Commissioner of Income Tax) had held as follows:-

> "7. .... A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them. The interest of a shareholder vis-a-vis the company was explained in the *Sholapur Mills Case* [(1950) SCR 869, 904] . That judgement negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have the, sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in *Buckley's Companies Act* (12th Edn.), p. 894 where the etymological meaning of dividend is given as dividendum, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company. "

In view of the above decision, the Plaintiff as a shareholder of the 3rd defendant company cannot lay a claim on its properties and on this ground also, the suit has to be rejected.

41. I am conscious that orders in Writ Petitions have been considered as having the force of constructive res judicata in arriving at the conclusion that the suit has to be rejected. It is to be noted that the Writ Petitions mentioned above related to the same sale transaction and this Court had consistently held that the sale is not vitiated.

42. In this connection, a Constitution Bench of the Honourable Supreme Court in **AIR-2014-SC-2407 (State of Tamil Nadu Vs. State of Kerala & C.R. Neelakantan and Another Vs. Union of India and others)**, had held as follows :

> "162....The legal position with regard to rule of res judicata is fairly well-settled that the decision on a matter of controversy in writ proceeding (Article 226 or Article 32 of the Constitution) operates as res judicata in subsequent suit on the same matters in controversy between the same parties. For the applicability of rule of res judicata it is not necessary that the decision in the previous suit must be the decision in the suit so as to operate as res judicata in a subsequent suit. A decision in previous proceeding, like under Article 32 or Article 226 of the Constitution, which is not a suit, will be binding on the parties in the subsequent suit on the principle of res judicata.
>
> 163. For the applicability of rule of res judicata, the important thing must be seen is that the matter was directly and substantially in issue in the previous proceeding and a decision has been given by the Court on that issue. A decision on issue of fact in the previous proceeding - such proceeding may not be in the nature of suit - constitutes res judicata in the subsequent suit."

The above decision is directly binding on the facts of this case.

43.In W.P. No. 26671 of 2007, this Court had held that the Third Defendant had no locus-standi to question the sale.

44. In W.P. No. 13160 of 2008 and in W.P. No. 13095 of 2008, this court had held that the challenge to G.O. Ms. No. 183 dated 31.3.2008, which G.O., had been passed pursuant to the Sale Deed in Doc. No. 6939 of 2004, must fail, thereby affirming the sale, which sale is now being impugned in this suit.

45. I hold that the suit has to be rejected on the above ground also.

46. In spite of the above findings, this Court has an obligation to examine the plaint, its averments and the allegations of fraud having been perpetrated. The learned counsel for the Plaintiff has stated that judgement or orders obtained by fraud cannot be a judgement or order in law.

47. In this connection, learned counsel for the plaintiff relied on **1994-1-SCC-1 (S.P.Chengalvaraya Naidu Vs. Jagannath)**, wherein, the Hon'ble Supreme Court had observed as follows :

> "It is a settled proposition of law that a judgement or decree obtained by playing fraud

> on the court is a nullity and non est in the eyes of law. Such a judgement / decree by the first court or by the highest court has to be treated as a nullity by every court whether superior or inferior. It can be challenged in any court even in collateral proceedings."

The learned counsel further relied on the decision of the Honourable Supreme Court reported in **2007-4-SCC-221 (A.V. Papayya Sastry Vs. Government of Andhra Pradesh)**, wherein again the same proposition had been reiterated and observed as follows :

> "39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est in law and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgement, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every Court, superior or inferior."

45. In the present case, in the plaint, it had been averred as follows:-

> "14. It is submitted that in its scheme before the AAIFR the First Defendant referred to the assigned lands as "surplus assets". As such this declaration was incorrect. Firstly the assigned lands were not an asset of the Third Defendant. The assigned lands were acquired under Part II of the Land Acquisition Act 1894 for a public purpose by the then Government of Madras and assigned to the Third Defendant for setting up rubber tyre manufacturing unit. The Third Defendant is the permanent assignee and the Government is the assignor. Hence, these lands are not the absolute property of the

Third Defendant. Secondly the First Defendant fraudulently misrepresented that the said lands were "surplus"....."

"15..... The paper publication issued did not contain a description of the property to be sold. Even the name of the company "Dunlop India" was not mentioned in it. It also did not state that the lands were assigned by the Government or were in possession of the Third Defendant by virtue of its position as a permanent assignee. It is manifestly clear that the First Defendant had already arrived at a collusive understanding with the Second Defendant herein to illegally sell the said lands to him. The paper publication was a mere eye wash to make it appear as if some semblance of a procedure has been followed..."

"16..... The assignment deed referred to in the impugned sale deed and is a registered document bearing no. 2220 of 1965. A bare perusal of the same would clearly establish that the Third Defendant was merely a permanent assignee of the said acquired lands. It had no alienable title to the said lands. If that be so, the person selling the said lands to the Second Defendant, did not have any title to sell the same. Consequently, no legal title could have passed to the buyer i.e. Second Defendant herein. The Second Defendant's title is therefore non-existent and nugatory as the sale deed in his favour is void *ab initio.*"

48. In effect, the plaintiff has alleged that the sale of the lands to the second defendant is null and void and is hit by fraud. However, a perusal of the documents filed along with the plaint paints a different picture.

49. Document No. 3 filed with the plaint is Record of Proceedings in BIFR dated 22.6.1998. There were two members on the Bench, namely Shri Ashim Chatterji and S.L.Kapur. The proceedings were attended by:-

S.No	Present	Name & Designation of rep (s)
1.	M/s. Dunlop India Ltd.	1. P.J. Rao MD. 2. A.K. Banerji. SVPP 3. M.K. Guha. Sr. VP 4. Dr. R.N. Chakraborty, CS 5. A. Mukhopadhyay, GH 6. R.K. Kapoor
2.	Standard Chartered Bank	Charusanita, Asstt. ARM
3.	Bank of Tokyo Mitusubiani Ltd.	C. Dey, Sr.Manager
4.	UBI	1. S. Basu, GM 2. R. Palchauduri, AGM
5.	State Bank of India (SBI)	1. A.K. Sharma DGM 2. M.K. Sreekumar CM
6.	Allahabad Bank	H.O.K. Leharkaa, Manager
7.	Federal Bank	1. P.M. George, CM 2. A.M. Madhu Mohan, Manager
8.	Catholic Syrian Bank	Joseph Bernard Mathew, AGM
9.	ESIC	H.L. Tassal, Inspector
10.	Govt. Of Tamil Nadu	E.N. Natarajan Rao
11.	Govt. Of West Bengal	1. Sunil Mitra 2. K.R. Garg
12.	Hongkong & Shanghai Bkg. Corp.	P. Verma, Manager
13.	IDBI (OA)	Inderpal S. Kalra

50. It is thus seen that contrary to the allegations in the plaint, the decision to sell the lands under question was taken by a Committee represented by the officials of the Third Defendant, the creditor Banks and also, more importantly in the presence of the officials of the

Government of Tamil Nadu and also West Bengal. The plaintiff has not alleged fraud on these officials. They took the decision.

51. Further, in consonance with the procedures adopted by the BIFR, the IDBI was appointed as the Operating Agency (OA). The representative was heard in length. In the record of the proceedings, it has been stated that the Operating Agency had reported that :-

> "...He also mentioned that since the last hearing, the company has sent to them its Balance sheet for the year ending December 31, 1997. This is audited and clearly brings out that the company is sick. He further added that as per the audited Balance Sheet approved by the Board of Directors as on 31.12.97, the company posted a loss of around Rs.62 crores. He said that while examining the balance sheet for the period 1.4.97 to 31.12.97. It transpires that the company has suffered a net loss of around Rs.62 crores. If this is read with the reconstructed balance, as calculated by the IDBI in their status report, there was clear indication that the networth of the company is fully eroded. He further stated that the balance sheet for the period 1.4.97 to 31.12.97 does not indicate any unusual features..."

It was finally held as follows:-

> "..The Bench was, therefore, satisfied that the company could not revive on its own and that it was necessary in public interest to revive/rehabilitate the company and accordingly, in terms of the powers vested under section 17(3) of the Act appointed IDBI as the operating Agency (OA) to examine the viability and submit its report for revival of the company. The Bench appointed Shri Virendra Prakash, CI/2, Tilak Lane, New Delhi-110001, as Special Director..."

Substantial guidelines were also issued for examining the viability and preparation of a viable study report for revival of the company.

52. On perusal of Document No. 4, filed with the plaint, the Record of proceedings in AAIFR in Appeal No. 1 of 2002, it is clear that the AAIFR also had opportunity to consider the guidelines issued by the BIFR and the finding given that the company was a sick company. They affirmed the order and the guidelines. An Asset Sales Committee was formed and it was further mentioned as follows:-

> "(f) Directions have been given to ASC for sale of DIL's assets at Mumbai, Chennai and Bangalore and for identification/ valuation of other assets for sale."

Finally, the AAIFR also directed that the progress of implementation of the scheme shall be monitored. In this connection, the following directions were issued :

> "Monitoring : The progress of implementation of the scheme shall be monitored by BIFR with the assistance of IDBI as the monitoring agency (MA). IDBI (MA) shall appoint concurrent auditors at the cost of DIL. DIL shall submit six-monthly progress reports duly certified by concurrent auditors, to IDBI (MA) (with advance copy to BIFR) who shall examine the same and submit their reports to BIFR with advance copies to concerned banks, debenture-holders and central/state government authorities. BIFR shall be free to exercise all their powers under SICA without being constrained by the fact that the scheme has been sanctioned."

The order has been signed by Shri J.B. Goel, Chairman, Dr.J.K. Bagchi and M.S. Dayal, Members. It is thus seen that the sale which is now challenged on the ground of fraud was pursuant to a considered decision of all the stakeholders in public interest. The present suit has been instituted in private interest, and I reject the allegations of fraud imputed in the plaint.

53. From Document No. 5 annexed with the plaint, it is evident that apart from the suit schedule properties, which were sold pursuant to the decisions of AAIFR, the following "prime premises" at Kolkata were also sold to enable the Third Defendant in their process of rehabilitation:_

S.No	Description	Area
1.	46/B, Kings Court, Choringhee Flat Nos. 1, 5, 8, 9, 11, 12, 14, 17, 18, 19, 21, 24	Approx. 2508 sq.ft., each with proportionate undivided portion of the land and parking area
2.	Flat no. 5, 32/B, Brittania Court, Villa Kuthi, New Road, Alipore	Approx. 3,000 sq.ft., and proportionate undivided one tenth share of land
3.	Flat no. 43, 8th Floor, 105 Park Street, Kohinoor Building, Kolkata	Admeasuring approximately 800 sq.ft., (1 flat)

54. Document No. 7 filed with the plaint is the copy of the advertisement issued and it is to be mentioned that

the advertisement, both in Business Standard and the Tamil Daily, Daily Thanthi dated 19.4.2004 contained the following details, which had been omitted in the plaint :

> "Tendering Schedule : Tender Forms can be obtained from the office of Mr. R.D. Mehta, c/o Jerom trading & Investment Limited, from 10.00 a.m., to 5.00 p.m., between Monday to Friday, on payment of Rs.5000/- (Rupees Five Thousand only) by cash. The said Forms shall be available from the date of the publication of this advertisement up to April 26, 2004."

55. Document No. 8 filed with the plaint is the Tender Document, referred in the advertisement and it is in the name of "Dunlop India Ltd." It is a comprehensive document and contains important dates, and introduction to Dunlop India Ltd., name of the property, the description of property for sale, general terms and conditions of the offer, tendering schedule, evaluation criteria and annexures. A site plan showing their location of the property has also been given.

56. I hold that there is no suppression or attempt to mislead in the advertisement and in the tender documents either with respect to the company which is going to sell or with the respect to the lands which are offered for sale.

57. Document No. 9 filed with the plaint is the Board Resolution passed by the Directors of the Third Defendant dated 17.5.2004 and it had been specifically stated that :

> "Resolved that the consent of the Board of Directors of the Company be and is hereby accorded to sell / dispose off the Company's Property - approximately 61 Acres of the Company's Land at Ambattur Village in the State of Tamil Nadu to the Bidder - Mr. V.N. Devadoss at a bid of Rs.24,34,40,000/- (Rupees Twenty Four Crores Thirty Four Lakhs Forty Thousand only) as recommended and approved by thee Assets Sales Committee of the Company at its Meeting held on 17th May, 2004."

It is, thus, seen that contrary to the allegations in the plaint, the First Defendant had no role in the sale of the property under question. It was recommended by the Assets Sales Committee formed by the BIFR and approved by the AAIFR and the Second Defendant was the higher bidder and consent had been accorded by the Third Defendant.

58. Document No. 18 filed with the plaint is the Government Order pertaining to the sale and a reading of the same exposes the hollowness of the interpretation of the plaintiff with respect to the Assignment Deed.

59. It must be kept in mind that the Government of Tamil Nadu was represented by E.N.Natarajan Rao, in the proceedings of the BIFR dated 22.6.1998, which is Document No.3, when the third Defendant was declared as a sick industry and when the IDBI was appointed as Operating Agency to suggest means to revive the industry in public interest.

60. It also transpires from Document No.4 filed with the plaint, the proceedings of AAIFR that the State

Government of Tamil Nadu was also affirmed as an interested stake holder.

61. In Document No. 18 filed with the plaint, which is G.O. (Ms) No. 183, dated 31.3.2008, Revenue (LAII) Department, it had been mentioned that:-

> "3. The Special Commissioner and Commissioner of Land Administration, in his letter 4th read above, has reported that M/s. Dunlop India Limited was assigned the land on collection of cost and that the assignment was governed by the conditions 1 to 5 as laid down in the Deed registered in Document No. 2220/65 dated 19.1.1965 and that these conditions have not been violated and that the applicability of 16 (A) and 16(B) of the Land Acquisition Act is doubtful and certainly not mandatory..."

> "4....M/s. Dunlop India Limited headed by the present management filed Writ Petition No. 26771/2007...and that the High Court held that M/s. Dunlop India Limited has no locus-standi to attack the sale deed....that the sale proceeds were utilised to restart the company and for settlement of dues to the workers...in order to revive and fulfil the basic objectives and conditions laid down in the assignment deed and that the lands were assigned on collection of cost and that it was governed by Registered Assignment Deed and not under Land Acquisition Act.....the company incorporated under the Companies Act is a separate legal entity and whatever decision is taken by previous or the erstwhile management of the company binds on the next management of the company also..."

Thus, the contentions in the plaint that the sale is vitiated since it was contrary to the clauses in the Assignment Deed is also not correct. It is thus seen that in reality, the fraud which the plaintiff alleges is fraud only at the time of his purchase of majority share holdings and not in the sale of the suit properties.

62. For all the reasons stated above and more particularly, on the basis of the documents filed along with the plaint, I reject the contentions of the learned counsel for the plaintiff that fraud had been perpetrated during the proceedings of the BIFR, AAIFR and the subsequent sale of the lands to the Second Defendant.

63. The learned counsel for the plaintiff relied on **2008-12-SCC-661 (Kamala and others Vs. K.T.Eshwara Sa and others)**, wherein it had been held as follows :

> "21. Order VII Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint...".
>
> "24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by law."

In this case, it has been held that the jurisdiction of the Civil Court is specifically barred under Section 26 of SICA and on that ground I hold that the suit has to be rejected.

64. The learned counsel for the plaintiff consistently pointed out the sale was for a sum of Rs. 24 crores, when the property was worth nearly 300 crores, and on this ground also urged that fraud is implied. This contention is rejected by me.

65. In the first place, no material has been placed that the value of the suit lands were actually worth Rs. 300 crores at the time of sale. Secondly, the very same sale document had been proceeded with under Section 47A of the Stamp Act, 1899 by the Registering Authority. The Second Defendant had challenged the same and Hon'ble Supreme Court in **(2009) 7 SCC 438, V.N. Devadoss Vs. Chief Revenue Control Officer-cum-Inspector** and others had held as follows :-

> "14. In the instant case, the factual scenario shows that the vendors of the appellant i.e. M/s. Dunlop India Ltd., became a sick industry and was declared so under the provisions of the 1985 Act. Consequent upon such declaration, surplus properties and assets belonging to the said Company were disposed of on the basis of orders passed by BIFR and AAIFR by forming an Assets Sales Committee. The appellant submitted that his tender along with others and his offer of Rs.24.34 crores approximately was the highest, and the same was accepted by the Assets Sales Committee and also by the statutory authorities. The Company was granted permission to execute the sale deed in favour of the appellant.
>
> "15. The stand of the state is that what has been disclosed is clearly a sale value and the same cannot be termed as market value. There is fallacy in this argument.
>
> "16. Market value is a changing concept. The Explanation to sub-rule(5) makes the position clear that value would be such as would have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance. Here, the property was offered for sale in the open market and bids were invited. That being so, there is no question of any intention to defraud the

> revenue or non-disclosure of the correct price. The factual scenario as indicated above goes to show that the properties were disposed of by the orders of BIFR and AAIFR and that too on the basis of value fixed by Assets Sales Committee. The view was expressed by the Assets Sale Committee which consisted of members such as representatives of IDBI, debenture-holders, Government of West Bengal and Special Director of BIFR. That being so, there is no possibility of any such undervaluation and therefore, Section 47-A of the Act has no application. It is not correct as observed by the High Court that BIFR is only a mediator."

I, therefore, reject the contention of the learned counsel for the plaintiff that the sale stands vitiated on gross under valuation. This contention has been rejected by the Hon'ble Supreme Court itself, as pointed out above.

66. In view of the above reasons, discussions and in the light of the decisions cited supra, A.No.1737 of 2010 filed by the 2nd Defendant is allowed as prayed for. Since the Plaintiff has indulged in relitigation held to be an abuse of process of law and court, he has to suffer costs, quantified at Rs.10,000/- payable to the Chief Justice Relief Fund.

67. A.No.4251 of 2009:- This application has been filed by the Plaintiff under Order II Rule 2 of CPC, seeking leave to reserve right to institute a separate suit for further reliefs. In view of the fact that in

A.No.1737 of 2010, the suit itself in CS.No.742 of 2009 is rejected, this application is dismissed.

Sd/ C.V.K.J

30.11.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/23.03.2017 COURT OFFICER
From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.