

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE R.MAHADEVAN

O.S.A.No.156 of 2012
and

M.P.No.1 of 2012

The President,
Akriti Flat Owners Association,
New No.221, Old No.163/138,
Velacherry Main Road,
Sembakkam, Chennai-600 073. ... Appellant/2nd Respondent

Vs

1.T.P.Mathew

2.Mr.M.Ravindran,
Senior Advocate, Administrator,
Anubhav Group of Companies,
Chennai. ... Respondents/Applicant
I Respondent

Original Side Appeals filed under Order XXXVI, Rule 9 of
Original Side Rules read with Clause 15 of Letters Patent
against the order dated 22.06.2011 made in C.A.No.3227 of 2007
in C.P.No.130 of 1999 on the file of this Court.

For Appellant : Dr.P.Vasudevan

For Respondents : Mr.K.Thiruvengadam for R1
Mr.S.R.Sundar for R2

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief
Justice)

M/s.Anubhav Group of Companies went into liquidation and is
now represented through the Official Liquidator. Prior to
liquidation proceedings, the said respondent has developed the
property and constructed flats on property No.221 (Old No.163/
138), Velacherry Main Road, Sembakkam, Chennai, which was sold to
different flat owners. The flat owners acquired rights to
different flats along with undivided proportionate shares of the
land.

2. It is the adjacent property plot bearing No.131/18, which was sold on "as is where is" basis in a public auction, after the liquidation proceedings, to the first respondent. It is the case of the first respondent that when they purchased the property on "as is where is" basis they were shown access to the property through the common pathway of the appellant. But subsequently, the appellant has blocked that way and is not permitting them access. This has resulted in the land sold to respondent No.1 through the Court process, being land locked.

3. Company Application No.3227 of 2007 in Company Petition No.130 of 1999 was filed by respondent No.1 seeking direction against the appellant, being the Flat Owners Association, to provide pathway right to respondent No.1 from their property. The learned Single Judge, on hearing the learned counsel for parties, came to the conclusion that the pathway has been sought by respondent No.1 on the principle of easement of necessity and the fact that the land was sold on "as is where is" basis cannot be a ground to deny access of the pathway to respondent No.1. The Court endeavoured for an amicable settlement, but that did not materialise. Thus, a Local Commissioner was appointed to visit the site, to see from which area the path could be provided. On the report being submitted, it was found that the path can be provided to the land of respondent No.1 either on the western side of the flats or on the eastern side. However, on the western side, a septic tank was coming in the way and thus, it was found that the path could be provided on the eastern side.

4. The learned Company Judge went beyond that and got the land valued and gave access subject to payment of the price of the land. This was in view of the submission of the first respondent that they were willing to compensate the appellant in this behalf. The request was, however, opposed by the appellant.

5. The learned Company Judge, however, came to the conclusion that the application was liable to the allowed and rights given to the first respondent, subject to payment of the market value of Rs.48,00,000/- to the appellant. We may note that the apparent consideration for which the land was purchased by respondent No.1 was only Rs.6,50,000/-. The appellant, aggrieved by this, has preferred the present appeal.

6. We have heard the learned counsel for parties.

7. We are in agreement with the conclusion of the learned Company Judge that the property having been sold on "as is where is" basis, it will not preclude the first respondent from

claiming easementary rights, especially as the original title to both the properties of the appellant and respondent No.1 vested with the Company in liquidation. The first respondent cannot be left without access to the property.

8. It appears from the submission that the concerns of the appellant also emanate from the fact that if title of the property is vested with respondent No.1, there may be an issue arising from what is laid under the land, whether it was sewerage pipes and other pipes etc.

9. We are of the view that within the limited jurisdiction of the Company Court, the only relief which could have been granted was to provide access to the first respondent, the property having been sold under Court auction, and the predecessor-in-title of the appellant, being the Company in liquidation, which had, in turn, developed the property and sold the flats. The question of transfer of title to a portion of the property of the appellant is not something which can be envisaged without the consent of the parties and obviously, as it is apparent from the submission of the learned counsel, the appellant, even now on instruction, is unwilling to compromise on this issue. Thus, if there are other rights which the first respondent claims, those can only be provided in the civil proceedings to be initiated in accordance with law.

10. We may, however, hasten to add at this stage that this will not take away from the legality of the impugned order of the learned Company Judge, to the extent that arrangements were made for access to the land. However, this right can be only for access to the property of respondent No.1 and will not give the first respondent any right to use any part of the land of the appellant for parking or any other purpose, but the right would be limited to approach the property either by foot or by car/vehicles through the passage from the property of the appellant to the property of the first respondent. The appellant would thus take necessary steps towards this to ensure such access within one month from today.

11. The appeal is thus partly allowed to the aforesaid extent, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

bbr

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.K.Thiruvengadam, Advocate, S.R.No.53600
+1cc to Dr.P.Vasudevan, Advocate, S.R.No.53443
+1cc to Mr.S.R.Sundar, Advocate, S.R.No.53389

O.S.A.No.156 of 2012

UG (CO)
CA(28/09/2016)



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