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

COMPANY APPLICATION NO.85 OF 2017
IN
COMPANY PETITION NO.481 OF 1975

Dinesh V. Mistry & Anr.	...Applicants
V/s.	
The Collector & District Magistrate Office, Mumbai City Survey & Land Records & Anr.	...Respondents

Mr.Manoj Vishwakarma i/b MKV Juris for the Applicant.

Mr.Kedar Dighe, A.G.P. for the State – Respondent.

Ms.Yogini D. Chauhan, Deputy Official Liquidator present.

CORAM : R.D. DHANUKA, J.
DATE : 8TH MARCH, 2017.

P.C. :-

1. By this company application, the applicants seek an order and direction against the Collector and the District Magistrate Office / City Survey Officer to enter the name of the applicants in the property card as per the Conveyance Deed executed by the Official Liquidator in favour of the auction purchaser i.e. late Vishnubhai Bhagwanji Mistry in respect of the property described in prayer clause (a) of the company application. The applicants claim to be the legal heirs of late Vishnubhai Bhagwanji Mistry.

2. Learned counsel appearing for the applicants invited my attention to the Deed of Indenture dated 30th September, 1991 between the Official Liquidator and Vishnubhai Bhagwanji Mistry in respect of the property in question. He submits that the said property was purchased by the said Vishnubhai Bhagwanji Mistry in an auction conducted by the Official Liquidator. The applicants have produced the photocopy of the said Indenture Deed duly certified as true copy by the Sub-Registrar of Assurances. My attention is invited to Index – II issued by the concerned authority in respect of the property recording the name of the said purchaser in Index – II. My attention is also invited to the correspondence exchanged between the Official Liquidator and the Collector, Bombay and informing the authority about the sale of the said property by the Official Liquidator to Vishnubhai Bhagwanji Mistry. I have also perused the notices issued by the Municipal Corporation and the Department of Planning and Statistic addressed to Vishnubhai Bhagwanji Mistry and also the public notice issued by the Official Liquidator for sale of the property in question.

3. The applicants have applied to the Collector for recording the name of the legal heirs of the said Vishnubhai Bhagwanji Mistry in the property card. The learned Collector has however, refused to enter the name of the legal heirs of the said Vishnubhai Bhagwanji

Mistry in the records in respect of the property in question. The applicants have thus filed this application *inter-alia* praying for the directions against the Collector and the District Magistrate Office / City Survey Office to issue property card based on the Conveyance Deed executed by the Official Liquidator in favour of the auction purchaser Vishnubhai Bhagwanji Mistry.

4. The applicants are unable to produce the original of the said Deed of Indenture which was executed in the year 1991 but has produced the certified copy of the said Deed of Indenture duly authenticated.

5. Mr.Dighe, the learned A.G.P. for the respondent no.1 invited my attention to sections 296 and 297 of the Maharashtra Land Revenue Code and would submit that since the applicants have not complied with the said provisions, the respondent no.1 has rightly refused to transfer the name of the legal heirs of the late Vishnubhai Bhagwanji Mistry in the records. He submits that this company application is not maintainable.

6. Leaned A.G.P. for the respondent no.1 also invited my attention to section 247 of the Maharashtra Land Revenue Code in support of his submission that the remedy of the applicants would be to file an appeal before the Appellate Authority and not a company application. In my view, in view of the peculiar facts and

circumstances of this case and more particularly that the property in question was sold in an auction conducted by the Official Liquidator pursuant to an order passed by this Court and in view of the fact that this Court having sanctioned the sale of the property in question, the applicants shall not be required to file any appeal against the order of the Circle Officer refusing to enter the names of the applicants. This objection of the learned A.G.P. for the respondent no.1 is accordingly rejected.

7. A perusal of the document annexed by the applicants in the company application clearly indicates that the Official Liquidator had issued a notice for sale of the property in question. The Official Liquidator has also entered into a Deed of Indenture on 30th September, 1991 with Vishnubhai Bhagwanji Mistry in respect of the property in question. Based on the said documents, various authorities have already recorded the name of Vishnubhai Bhagwanji Mistry in the record. The Municipal Corporation has also issued various notices from time to time to the said Vishnubhai Bhagwanji Mistry. A perusal of the correspondence indicates that the Official Liquidator has informed about the sale of the property in question in favour of Vishnubhai Bhagwanji Mistry to various authorities, including the Collector of Bombay as far back as on 5th August, 1991. In my view, the authority thus cannot be plead ignorance of the sale

of the property in question effected by the Official Liquidator in favour of the said Vishnubhai Bhagwanji Mistry.

8. Insofar as reliance placed on sections 296 and 297 of the Maharashtra Land Revenue Code by the learned A.G.P. for the respondent no.1 – Collector is concerned, it is not in dispute that the sale of the property in question was effected by the Official Liquidator after making enquiries about the title. The company in liquidation has not challenged the sale in respect of the property. No other party has come forward to challenge the sale of the property effected by the Official Liquidator as far back in the year 1991. Reliance thus placed by the learned A.G.P. for the respondent no.1 on sections 296 and 297 of the Maharashtra Land Revenue Code in the facts of this case is misplaced.

9. The respondent no.1 is accordingly directed to record the name of late Vishnubhai Bhagwanji Mistry in the record of rights in respect of the property in question within four weeks from the date of the applicant furnishing an authenticated copy of this order.

10. Insofar as the application of the applicants for entering their names in the record of rights is concerned, after the name of late Vishnubhai Bhagwanji Mistry is recorded in the record of rights in respect of the property in question, the applicants can apply for recording their names before the concerned authority. If such

application is made by the applicants, the same shall be considered on its own merits by the Collector or other concerned authority expeditiously.

11. The company application is made absolute in aforesaid terms. No order as to costs.

12. All concerned parties to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)