

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Company Application No.8 of 2018 in Company Appeal No.8 of 2008 in CAL No.27
of 2006 in Cal No.99 of 2005 in CAP No.7 of 2005

(M/s.Cozy Properties vs. Official Liquidator, M/s. Mah. Explosives Ltd.)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

*Mr.Sunil Manohar, Sr. Cl. with Mr.Tushar Darda, Advocate for
the appellant.*

Dr.Anjan De, Advocate for respondent no.1.

Mr.A.D.Sonak, A.G.P. for respondent no.2.

CORAM : P. N. DESHMUKH &
M. G. GIRATKAR, JJ.

DATE : 17.7.2018.

Heard Mr.Sunil Manohar, learned Senior Counsel for the applicant/appellant, Dr.Anjan De, learned Counsel for respondent no.1 and Mr.A.D.Sonak, learned Assistant Government Pleader for respondent no.2.

By this application, prayer is for issuance of directions to respondent no.2/State to mutate the name of applicant in the 7/12 extract of the property duly purchased by the applicant for a consideration of Rs.40 Crores, in view of Sale deed dt.5.5.2008 executed as per order of the learned Single Judge, dt.24.4.2008 passed in Company applications.

Mr.Sunil Manohar, learned Senior Counsel for the applicant, by adverting to the relevant paragraphs in the Judgment of Company Appeals delivered on 24.4.2008, has urged that, in compliance to it, applicant has already given undertaking and in view of the same, it is necessary to

mutate name of applicant in 7/12 extracts which, however, is not effected and by filing this application, therefore, sought directions to Respondent No.2 to mutate name of applicant as aforesaid, as such mutation is necessary for applicants to obtain finance for developing the property and financial institution demands mutation in the name of applicant, to process their claim. It is further submitted that though applicant submitted application to the respondents/Authority on 18.1.2018, Respondent no.2 failed to process the same and informed applicant to first pay unearned income.

During the course of hearing, learned Senior Counsel for the applicant has placed on record pursis stating that mutation would be subject to final decision of the Company Appeals and the applicant shall not claim any equity and prayed for necessary direction to Respondent No.2. The pursis is taken on record and marked as 'X' for identification

Dr.Anjan De, learned Counsel for the Official Liquidator and Mr.A.D.Sonak, learned A.G.P. while opposing the application have raised two fold objections, firstly that all the respondents in the application are not made party to the appeal nor they are party to the present application, though they are necessary parties and secondly that pursis is not signed by the appellant/company, but by its counsel on record. To the objections as aforesaid, learned Senior Counsel made a statement at the bar that admittedly all respondents are not made party to the appeal nor to this application being not necessary parties and further makes statement that, for non-joinder of parties,

whatever order is finally passed, it would be binding upon the appellants and shall suffer its consequences.

Learned Counsel for Respondent No.1 - Official Liquidator, as per its reply and by referring to para no.8 of the Sale deed, had submitted that appellant/company is required to pay dues particularly with regards to unearned income and also of land revenue claimed by the Collector, Wardha as well as any other amount payable to any other Revenue Authority or other Government Authority as per undertaking given before High Court so as to enable the Official Liquidator to make payment of dues of sale consideration as per provisions of the Company Act.

Learned Assistant Government Pleader for Respondent No.2 submitted that in the order dt.24.4.2018 passed by this Hon'ble Court, it is observed that out of 184.41 H.R. land, 47.27 H.R. land is government land and 137.15 H.R. of land is zudpi jungle land and that subsequent to the order dated 24.4.2008 passed by this Hon'ble Court, the respondent no.2 by order dated 6.4.2009 directed the respondent no.1 to deposit 62382099/- towards unearned income (including other revenue recoveries plus the amount audited by Accountant General till the period 2008-2009 for area 47.27 H.R. land). It is submitted that unless and until the applicant or the official liquidator deposits the above said unearned income, no mutation in the name of M/s.Cozy can be done according to the provisions of Maharashtra Land Revenue Code and accordingly prayed for passing appropriate orders.

In the background of facts in the application and submissions as aforesaid, admittedly, undertaking is given

by the applicant within 15 days as per directions of this Court passed in the Company Appeal from the date of order. Para 22 of the Judgment dt.24.4.2008 has been reproduced in para 4 of the application. On considering the same, we find that the applicant, who has purchased the subject property, is directed to give an undertaking within 15 days from the date of Judgment and thereafter, Official Liquidator is directed to register the sale deed as per law. Admittedly, undertaking is given by applicant and Respondent No.1 has thus registered the Sale-deed.

In that view of the matter and since in particular, it is noted that undertaking is given by the applicant in terms of directions of this Court passed in Company Appeal dt.24.4.2008, the respondent/State, particularly the Collector, Wardha cannot deny mutation of such registered sale deed executed by the Official Liquidator in favour of present applicant on the ground of unearned income. In fact, from the copy of Judgment, it is noted that said is not a condition precedent for registration as No Objection Certificate either from the State or from the Forest department is not found to be essential for the purposes of registration.

In that view of the matter and pending appeal, we, therefore, find that directions are necessary to be issued to the State for mutating name of applicant in 7/12 extracts of the property duly purchased by the applicant which is subject matter of appeal, pending decision of the same.

We, therefore, allow the application directing Respondent No.2 to take necessary steps for mutating the name of applicant as per its application dt.12.1.2018 in

7/12 extract in respect of subject, purchased property of applicant. However, we restrain the applicant from creating third party interest in any manner in respect of the said property.

With these directions, the application is disposed of as allowed.

JUDGE

JUDGE

**jaiswal*