



Comp.A.Nos.5 & 6 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	20.07.2022
Order pronounced on	19.10.2022

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Comp. A.Nos.5 & 6 of 2022

in

Comp.A.No.297 of 2021

in

Company Petition No.57 of 1998

S.Dhanaraj

... Applicant
(in both applications)

vs.

1.The Official Liquidator,
High Court, Madras
As Provisional Liquidator of
Maxworth Orchards (India) Limited,
High Court, Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai, Chennai – 600 001.
(In Provisional Liquidation).

2.Ms.D.Nagasila Suresh
Administrator of Maxworth Orchards(India) Limited,
(In Provisional Liquidation)
No.1A, Akbarabad First Street,
Kodambakkam, Chennai – 600 024.

... Respondents
(in both applications)



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PRAYER IN C.A.Nos.5 & 6 of 2022: This Application is filed under Order

XIV Rule 8 of O.S. Rules r/w Rules 9, 11(B) of the Companies (Court)

Rules, 1959 praying to set aside the auction sale notice dated 03.12.2021 issued by the respondent in so far as it relates to land admeasuring 2.49 acres comprised in S.No.80/5 and 8.23 acres comprised in S.No.81/5, Sub Division S.No.81/5B, in all admeasuring a total extent of 10.72 acres, situate in Ezhuvaraimukki Village and Panchayat, Sattankulam Taluk, Tuticorin District belonging to the applicant; (b) grant stay of the impugned auction sale notice dated 03.12.2021 issued by the respondent and all proceedings pursuant thereto in so far as it relates to land admeasuring 2.49 acres comprised in S.No.80/5 and 8.23 acres comprised in S.No.81/5, sub-division S.No.81/5B, in all ad-measuring a total extent of 10.72 acres, situate in Ezhuvaraimukki Village and Panchayat, Sattankulam Taluk, Tuticorin District, pending disposal of the application for set aside.

Applicants	:	Mr.Madhan Babu for M/s.R.Parthasarathy
Respondents	:	Mr.Pamarthi Sridhar Official Liquidator for R1 Mr.H.Karthik Seshadri for Mrs.Nagasaila Suresh for Administrator for R-2



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COMMON ORDER

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These applications are presented by a person claiming title to lands ad-measuring 2.49 acres in S.No.80/5 and 8.23 acres in S.No.81/5B, at Ezhuvaraimukki village and Panchayat, Sattankulam Taluk, Tuticorin District.

2. In Company Application No.5 of 2022, the applicant seeks to set aside the auction sale notice dated 03.12.2021 and in Company Application No.6 of 2022, an interim stay of the auction sale is prayed for. In support of the claim for title, the applicant has placed on record two volumes of documents.

3. Learned counsel for the applicant, Mr.Madhan Babu, submitted that the applicant traces title from his ancestor, Mr.Renganatha Pillai. He submitted that Mr.Renganatha Pillai was the original owner of the property and that his daughter, Thiruvankadathammal, executed a deed of surrender dated 24.06.1955, which was registered as Document No.1726/1955 in favour of her adopted sons, Thiruparkadal Natha Pillai and T.K.Ramanujam Kavirajar. The applicant's predecessor in title, T.R.Kallapiran, was the



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beneficiary of a registered Will dated 05.11.1982 bearing Document No.50/1982. Thereafter, a sale agreement was executed by D.Langston in favour of T.R.Kallapiran, Periya Thiruvadi Pillai, T.Kallapiran and G.Parvathi. The said persons executed sale deeds in favour of the applicant under Document No.858/2021 and another document pending registration. Learned counsel also relied upon the pattas, kist receipts and village accounts in respect of the lands. Based on these documents, it was submitted that the company in liquidation does not have any right over the lands. The Prohibition of Benami Property Transactions Act, 1988 (Act 45 of 1988) was cited to contend that the claim made by the company in liquidation is barred under Section 4 thereof.

4. In response to these submissions, learned Administrator filed a report dated 27.01.2022. In the said report, it was asserted that the company in liquidation (the Company) acquired about 206.835 acres in Nazareth and Ezhuvaraimukki villages under 43 registered general powers of attorney in favour of N.Muthuraman and A.Arul. Pursuant thereto, the Company took possession of the entire extent of land, conducted a survey and plotted the land. As per records, in Survey No.80/5 and 81/5B of Ezhuvaraimukki Village, the Company acquired extents of 2.49 and 8.23 acres, respectively,



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through a general power of attorney (the GPA)(Document No.438/1996) in favour of its ex-employee, A.Arul, from the land owner, Mr.T.R.Kallapiran.

Further, learned Administrator produced the minutes of the proceeding dated 22.04.2011 by which it was recorded that the Official Liquidator took possession of the identified lands in Project Sattankulam of an extent of 262.41 acres by affixing a notice on the compound wall. Therefore, learned counsel for the Administrator submitted that these lands are lands of the Company and that the auction sale process should be proceeded with.

5. In the Compliance Report filed by the Official Liquidator, it is stated that Ajmal Steel Industries Private Ltd was declared as the successful bidder for the total consideration of Rs.3,40,00,000/- in the auction conducted on 11.01.2022 of lands ad measuring 229.37 Acres and constituting the Max-Sattankulam Project in Nazareth and Ezhuvarmooki village and that the entire sale consideration was remitted on 18.02.2022 by the bidder. It was further stated therein that, in pursuance to order dated 29.06.2022, the Official Liquidator convened meetings with the applicant and jointly identified the 10.72 acres over which title was claimed by the applicants.



6. Two questions warrant examination at this juncture. First and foremost, whether the Company has established right, title and interest over the property and, if the answer is in the negative, what are the consequences? Apart from the GPA, the Company has not produced any documents evidencing its right, title and interest in the property.

7. On perusal of the GPA, it is evident that the document is in the name of Mr.A.Arul. It is executed by Mr.T.R.Kallapiran. It specifies that no consideration was received by the land owner (principal) and the agent was required to maintain proper accounts (clause 6). The relevant recitals and clause 6 of the aforesaid GPA are reproduced below:

“WHEREAS the Principal is the absolute owner of agricultural dry land measuring 10.72 acre in Survey Nos.80/5 & 81/5B, situate at ELUVARAIMUKKI Village, SATTANKULAM Taluk, V.O.CHIDAMBARANAR DISTRICT, he having acquired the same by way of hereditary property more particularly described in the schedule hereunder written.

WHEREAS the Principal has decided to sell the said Property.

WHEREAS the Principal unable to attend to the same and to do the needful.

WHEREAS for the purpose of selling the above property, the Principal has decided to appoint a Power of Attorney and Agent.”

“6. No consideration received for this Power and the Power Agent should maintain proper accounts.”



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The recitals to the GPA indicate the intention of Mr.T.R.Kallapiran to sell the property through the agent by representing him as the absolute owner, and clause 6 indicates that no consideration passed between the parties in relation thereto. The next question is whether there are documents linking the Company with Mr.Arul. Both the terms and conditions letter signed by Mr.Arul and his joining report dated 11.11.1994 are on record, and these documents link Mr.A.Arul and the Company. By orders dated 24.04.2003 and 18.11.2003, this Court restrained Mr.Arul and other GPA holders from alienating the lands purchased with the funds of the Company.

8. Given the language of clause 6 of the GPA, a significant question that should be examined is whether there are any other documents evidencing that the GPA is coupled with interest. Learned Administrator did not produce any other documents, such as receipts, evidencing receipt of consideration by the land owner, Mr.T.R.Kallapiran, on the execution of the GPA in favour of Mr.Arul. The GPA was also not acted upon by executing conveyances in favour of the Company's customers. Hence, there is no basis to conclude that the GPA was coupled with interest or to conclude that the Company has title over the contested property. In view of this conclusion, it



is unnecessary to consider or decide on the contention based on Act 45 of 1988.

9. By contrast, the applicant has placed on record the deed of surrender bearing Document No.1726/1955 by which rights in these properties were surrendered in favour of Thiruparkadal Natha Pillai and T.K.Ramanujam Kavirajar. Thereafter, title is traced through a registered Will (which is referred to but is not on record), a sale agreement dated 25.07.2013 and the sale deeds of 23.04.2021, including the sale deed pending registration before the SRO, Nazareth in respect of 8.24 acres. The pattas in favour of the joint owners are also on record. Further, the Official Liquidator, as recorded in the minutes of proceedings dated 22.04.2011, took only constructive and not physical possession of the property. The above documents clearly provide some basis to assert title although it should be recognised that it is unnecessary to draw definitive conclusions on the title of the applicant in these proceedings, in view of the conclusion that the Company has failed to establish right, title and interest over the impugned lands for purposes of proceeding with the auction sale in respect thereof.



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10. On the basis of the evidence placed by the parties before the Court, the claim made by the Company is liable to be rejected. Merely on the basis of a power of attorney in favour of an ex-employee, title cannot be established especially in the absence of receipts or other evidence of receipt of consideration by the land owner. Consequently, the applicant is entitled to succeed.

11. For reasons set out above, Company Application No.5 of 2022 is allowed by setting aside the auction sale in so far as it pertains to lands ad measuring 2.49 acres in Survey No.80/5 and 8.23 acres in Survey No.81/5B, in all ad-measuring a total extent of 10.72 acres, in Ezhuvaraimukki village and Panchayat, Sattankulam Taluk, Tuticorin District. As a consequence of C.A.No.5 of 2022 being allowed, C.A.No.6 of 2022 is closed.

19.10.2022

Index : Yes
Internet : Yes
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Pre-Delivery Common Order
in
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