IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.06.2023

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

C.P.Nos.1 & 2 of 2023

1.Pattabiraman Ravichandran
2.Sureshkumar Kumar Abai
3.Swaminathan Rajavel

... Petitioners in C.P.No.1 of 2023

1.Raman Muthuswamy
2.T.Manickavasagam Nadar

... Petitioners in C.P.No.2 of 2023

versus

The Deputy Registrar of Companies,
Tamil Nadu, Chennai,
Having office at Shastri Bhavan,
26, Haddows Road, Chennai – 600 006

...Respondent in both C.Ps

Common Prayer: Company Petition filed under Section 463 of the Companies Act, 2013, praying to relieve the petitioners wholly from the alleged acts of default and liability complained by the respondent in E.O.C.C.No.73 of 2022, pending on the file of the Additional Chief Metropolitan Magistrate (Economic Offences – E.O-II), Egmore, Chennai.

For Petitioners :Mr.N.P.Vijay Kumar

For Respondent :Mr.A.R.Sakthivel
Senior Panel Counsel

COMMON ORDER

These Company Petitions have been filed by the petitioners, seeking to relieve the petitioners wholly from the alleged acts of default and liability complained by the respondent in E.O.C.C.No.73 of 2022, pending on the file of the Additional Chief Metropolitan Magistrate (Economic Offences – E.O-II), Egmore, Chennai.

2.Learned counsel appearing for the petitioners would submit that the Town Benefit Fund (Kumbakonam) Limited was incorporated on 05.08.1993, before the Registrar of Companies (ROC). It has been carrying on business after obtaining permission from Government of India on 13.12.2004. The company had purchased a property from one Mr.Jayaraman to an extent of 3181 sq.ft on 09.05.2011. Thereafter, the company decided to sell the land and building owned by it. Accordingly public auction was held on 12.05.2011. In the public auction, Mr.V.Kalyanaraman emerged as a successful bidder with the bid amount of Rs.1,39,00,300/- and the next highest bid was made by Mr.B.Mukundaramanujam for Rs.1,01,00,000/-. Mr.V.Kalyanaraman made a payment of Rs.60 Lakhs, towards purchase of property and thereafter he was unable to make further payment as per the terms and conditions of the auction notice. Therefore, a Tripartite Agreement was entered between the Mr.V.Kalyanaraman and Mr.B.Mukuntharamanujam on 08.09.2011 with certain terms and conditions and the same was confirmed by the company. After finalising the Tripartite Agreement, the Company decided to make the sale price to be an all-inclusive sale price which would include sale price of furniture and fittings within the building. As per the agreed terms and conditions, 30 sqft has to be conveyed to Mr.V.Kalayanaraman and 3151 sqft to Mr.B.Mukundaramanujam and the sale deeds were also executed. Later the company realised that there is an error in the Sale Deed No.2938 of 2012 as the extent was wrongly mentioned as 1682 sqft instead of 1282 sqft.

3.At this circumstances, Mr.V.Kalyanaraman filed suit in O.S.No157 of 2015, seeking to declare the Sale Deed Nos.6252 of 2011 and 2938 of 2012 as null and void as these sale deeds are conveying an extent which affects his rights and the suit was decreed. Against which A.S.No.27 of 2019 was filed by Mr.Mukundaramanujam and the same was dismissed. Thereafter, the company has preferred S.A.(MD).No.463 of 2021, challenging the judgment of appeal suit and the same is still pending.

4.While that being so, Mr.V.Kalyanaraman initiated series of complaint before ROC as if the company incurred loss of Rs.9,20,000/- since the company has recorded consideration of sale of land as Rs.1,29,80,000/- and has recorded Rs.9,20,000/- towards furniture and fixtures, which was not part of sale consideration as tender conditions specifically provided for sale of land and building alone and not for furniture and fixture and the alleged loss was not disclosed in the financial statements. ROC issued show cause notice to the petitioners and the petitioners also replied for the same. Thereafter, ROC initiated proceedings in E.O.C.C.No.73 of 2022 against the petitioners for violation of Section 628 of the Companies Act, 1956.

5.Learned counsel appearing for the petitioners further would submit that the petitioners have acted in terms of Board Resolution dated 09.05.2011 and 16.09.2011 and there was no complaint from any of the members, shareholders, Directors or depositors till date. Therefore, ROC cannot initiate proceedings under Section 628 of the Companies Act, 1956, when such prosecution has been barred under Section 465(2)(i) of the Companies Act,

2013. Apart from that, the Company is not impleaded as party in the said proceedings. Therefore, he would contend that there is no violation as contended by ROC and hence, the present application came to be filed seeking to relieve the petitioners from the proceedings in E.O.C.C.No.73 of 2022.

6.Learned counsel appearing for the respondent/ROC would submit that already the proceedings have been initiated. Therefore, no petition can be filed under Section 463(2) of the Act and it can be filed under Section 463(1) of the Act before the prosecuting Court. Hence, this petition is not maintainable.

7.In reply, learned counsel appearing for the petitioners would submit that this issue has already been settled by this Court in the case of **Visram Financial Service (P) Ltd., vs. V.Rajendran** reported in **2003 (6) CTC 183.** Therefore, this issue is no more res-integra. Further, this Court in number of cases has held that petition under 463(2) of the Companies Act, 2013 is permissible even if it was filed after the initiation of proceeding before the prosecution Court. The respondent has accepted the law laid down by this Court. Therefore, this issue is no more res-integra and the present petition is maintainable.

8.Heard the learned counsel appearing for the petitioners as well as the respondent and perused the materials available on record. The issue pertaining to the maintainability to the present petition is no more res-integra.

9.Upon perusal, it appears that one Mr.V.Kalyanaraman, who participated in the public auction conducted by the company has filed a complaint to the concerned ROC against the Company for illegal sale of land to their director cum purchaser Mr.B.Mukundaramanujam. The entire complaint relates to the sale of land by way of auction and the sale deeds executed in favour of Mr.V.Kalyanaraman and Mr.B.Mukundaramanujam. The Board has passed a resolution on 16.09.2011 and decided to sell the property for the sale consideration of Rs.1,39,00,300/-, which includes the price of furniture and fixtures i.e Rs.9,20,000/-.

10.The company has sold the property after taking due approval from the Directors. In the event, if there is any grievance for the shareholder, Directors, Depositors etc., they would have addressed their grievances before the appropriate authorities but in the present case, no Directors, Shareholder, Depositors etc., have expressed any grievance with regard to the sale of the property. The person who made a complaint is a third party and upon perusal of the document, particularly the Board of Resolution dated 16.09.2011, passed by the Board of Directors of the Company it is clear that after taking due approval only the property has been sold. If there is any dispute among the Mr.V.Kalyanaraman and Mr.B.Mukundaramanujam, it is only private dispute and the same can be adjudicated before appropriate forum and not before the ROC. The ROC cannot adjudicate any dispute among two private parties. In the event, if any complaint was received from the private parties, the ROC should have advised the respective parties to approach the Civil Court to resolve their issues. On the other hand, merely taking the complaint and initiating the prosecution even without considering the reply filed by the Board of Directors of the Company and the Board resolution passed for sale of properties, the ROC has not acted in accordance with law.

11.In view of the above, this Court finds that the petitioners have not committed any illegality as alleged by the ROC. Further, launching the prosecution under Section 628 of the Old Companies Act is also not permissible since the complaint has been filed under Section 628 of the Companies Act, 1956 (Old Act) and the new Companies Act commenced only from 2014 onwards. Any prosecution has to be launched in accordance with the provisions of Section 448 of the new Companies Act. Therefore, no prosecution can be launched under Section 628 of the old companies Act in view of the provision repealing Section 628 of the old Companies Act and hence, this Court feels that the present complaint is not maintainable.

12.For all these reasons, this Court does not find any jurisdiction on the part of the respondent to prosecute the petitioners in EOCC.No.73 of 2022 and this Court is of the prima facie view that the petitioners have not committed any offence as narrated by ROC and upon perusal it is clear that the petitioners cannot be prosecuted under Section 628 of the Old Companies Act. Therefore, all the petitioners are relieved from the prosecution in E.O.C.C.No.73 of 2022.

13.The parties are directed to file the copy of this order before the Additional Chief Metropolitan Magistrate (Economic Offences – E.O – II), Egmore, Chennai. Upon receipt of the this order, the E.O-II is directed to relieve the petitioners from the prosecution in E.O.C.C.No.73 of 2022.

14.With the above directions, these petitions are disposed of.

28.06.2023

rst

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

Note: Issue Order Copy on 10.07.2023.

KRISHNAN RAMASAMY.J.,
rst

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