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O.S.A.No.10 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE C. KUMARAPPAN

O.S.A No.10 of 2015

M/s. Shree Vijayalakshmi Charitable Trust,
Mr.A. Senthil Kumar
107-A, Sengupta Street,
Ramnagar, Coimbatore 641 009. .. Appellant

Vs.

1. The Official Liquidator
High Court, Madras,
As the Liquidator of
M/s. SIV Industries Ltd.,
(In liquidation)
2. Fairdeal Supplies Ltd.,
Rep.by its Director,
No.4, B.B.D. Bag(East),
5, Stephen House, 1st Floor,
Kolkatta – 700001. .. Respondents

Prayer: Original Side Appeal is filed under Order 36 Rule 11 of O.S.Rules



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r/w clause 15 of the Letter Patent to set aside the order dated 17.02.2014 made in Company Application No.350 of 2013 in Company Petition No.17 of 2004.

For Appellant : Mr. G. Arulmurugan
For Respondent : Mr. S.R. Sundar [for R1]
Mrs.K. Vasuki [for R2]

JUDGMENT

[Judgment of the Court was delivered by **S.S.SUNDAR, J.**]

This Appeal is preferred against the Order of the learned Single Judge in Comp. Application No.350 of 2013 in Company Petition No.17 of 2004.

2. A vast extent of land of 270 Acres in Sirumugai Village belong to M/s.SIV Industries Limited, a company in liquidation. In a portion of land belong to M/s.SIV Industries, a Matriculation Higher Secondary School was run by the Appellant's Trust for the benefit of children of its workers. The entire premises were brought to sale by the Official Liquidator in terms of Order of this Court dated 22.09.2008 passed in Company Application No.2782 of 2007.



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3. On the application filed by the Workers Union of the Company, seeking permission to purchase the specified area of the land belong to the company which was put in use for running the school for a total consideration of Rs.2.5 Crores. This Court by Order dated 14.11.2008 accepted the offer and confirmed the sale in favour of M/s. INTUC Workers Union for a total consideration of Rs.2.75 Crores. Later, the Workers Union appears to have nominated the present appellant to purchase the property. It is admitted that the prayer of the Workers Union was considered and this Court has permitted the Official Liquidator to execute the sale certificate in favour of the Appellant, who was later impleaded as the 1st Respondent in C.A.No.350 of 2013. It is also admitted that the Official Liquidator sold the remaining portion in favour of the 2nd Respondent. Later, the 2nd Respondent who has purchased the remaining land, came up with an application that there is a shortage of extent. It was later found that the appellant who purchased only 7 Acres of land, is found to be in possession of more extent. It is admitted that an extent of 2 Acres and 13.5 cents in excess is in possession and enjoyment of the Appellant, even though he purchased the lesser extent.



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4. In this context the Official Liquidator has moved an application for a direction to the Appellant to surrender the excess land of 2 Acres and 13.5 cents available in the premises that was encircled by the Appellant and to convey the same to the 2nd Respondent. A learned single Judge of this Court allowed the Application by directing the 1st Respondent to arrive at a settlement with the Appellant and the 2nd Respondent to purchase the excess land for construction of school. In case the Official Liquidator is unable to arrive at any settlement with the Appellant, the Official Liquidator was permitted to repossess the excess land of 2 Acres 13.5 cents and hand over the same to the 2nd Respondent. It is this Order which is challenged by the Appellant

5. The Appellant has filed the Appeal mainly on the ground that the Appellant purchased the land as is where basis and therefore there is no necessity for the Official Liquidator to take possession of the land and to handover the same to the 2nd Respondent. The Appellant further submitted that a compound wall has been constructed surrounding the property and



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that due to movement of elephants inside the school there is no possibility of taking excess possession.

6. Though several grounds raised in challenging the order, the learned counsel for the Appellant fairly conceded that the Appellant is more interested in getting the property for a reasonable price that may be fixed by this Court. Since the Appellant is agreed to pay the price that may be fixed by this Court, Commissioner was appointed during the pendency of proceedings and he has filed a Report.

7. The Commissioner has actually valued the property by assuming that the property to be conveyed may not be valued on the market price. Therefore, this Court was unable to agree with the Report. Since the 2nd Respondent has valued the property at the rate of 2.5 Crore per Acre and the Appellant to pay the said sum or to give the property, learned counsel appearing for the Appellant submitted that the Appellant is ready to surrender the excess land.



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8. In these circumstances, this OSA is dismissed. This Court is directed the Appellant to handover the possession to the 2nd Respondent. The Official Liquidator is directed to take possession from the Appellant within a period of three months from the date of receipt of copy of this Judgment. The Official Liquidator shall get the assistance of the surveyor and the revenue officials by showing this order to them and take possession from the Appellant and hand over the same to the 2nd Respondent within a period of three months.

9. It is open to the Official Liquidator to identify the portion to be repossessed and hand it over to the 2nd Respondent without affecting the constructed portion as far as possible.

[S.S.S.R., J.] [C.K., J.]
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Index : Yes/No.
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