IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on	**04.09.2024**
Order Pronounced on	**22.01.2025**

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Company Application Nos.349 & 350 of 2021
in Company Application No.58 of 2020
in Company Petition No.57 of 1998

In both applications:

S.V.Srinivasulu ... Applicant

-vs-

1.The Official Liquidator,
High Court, Madras
(Provisional liquidator of Maxworth Orchards (India) Private Ltd.,)
Corporate Bhawan, 2nd Floor,
No.29, Rajaji Salai, Chennai 600 001.

2.Mrs. D.Nagasaila,
(Administrator of) Maxworth Orchards (India) Private Ltd,
Old No.38/1, New No.14/1,
Akbarabad 2nd Street,
Kodambakkam, Chennai-600 024.

3.M/s. Thanishq Grande Hotels and Resorts Pvt. Ltd.,
No.555, RMV Second Stage,
HIG Layout,New BEL Road,
Benguluru, Karnataka 560 094.

4.The Sub-Registrar,
Denkanikottai Sub-Registrar Office,
Denkanikottai, Krishnagiri District-635 107.

5.S.Abiramaiah
S/o Srinivasappa
No.3/224, Kalinayakanapalli Village,
Bommathanur Post,
Kelamangalam,
Krishnagiri- 635 113

6.N.Surya
S/o Nagesh,
No.85, Prasad Street,
Denkanikottai,
Krishnagiri- 635 107 ... Respondents

(Respondents 5 and 6 are impleaded as per order dated 18.07.2022 in C.A.Nos.80 & 81/2022 and time extended as per order dated 06.03.2024)

Prayer in Comp.A.No.349 of 2021: Judge's Summons filed under Order XIV Rule 8 of the Madras High Court Original Side Rules Read with Section 460(6) of the Companies Act, 1956 and Rule 9, 11(B) of the Companies Court Rules, 1959, to pass an order setting aside the sale of the schedule mentioned properties auctioned by the 1st and 2nd respondents on

20.11.2020 confirmed by this Court on 18.01.2021 in Comp.A.No.58/2020 in C.P.No.57/1998 in favour of the third respondent in Document No.8051/2021 at the office of the 4th respondent in respect of the properties mentioned in the schedule in the Judge's summons.

Prayer in Comp.A.No.350 of 2021: Judge's Summons filed under Order XIV Rule 8 of the Madras High Court Original Side Rules Read with Section 460(6) of the Companies Act, 1956 and Rule 9, 11(B) of the Companies Court Rules, 1959, to pass an order Ad-Interim Injunction restraining the 3rd respondent from interfering with the applicant's possession and enjoyment of the schedule mentioned properties by the 3rd respondent or its men or anyone claiming from the 3rd respondent following the auction held on 20.11.2020 confirmed by this Court on 18.01.2021 in Comp.A.No.58/2020 in CP.No.57/1998 in favour of the third respondent in Document No.8051/2021 registered at the office of the 4th respondent.

In both applications:

For Applicant : Mr.V.Athikesavan

For R1 : Ms.Ambili B., Deputy Official Liquidator

For R2 : Mr.H.Karthik Seshadri, assisted by

Mrs.D.Nagasaila, Administrator

For RR3, 5 & 6 : Mr.Ravi, Senior Advocate
for M/s.Gupta and Ravi

For R4 : No appearance

COMMON ORDER

Background:

Maxworth Orchards (India) Limited (the Company) was engaged in the business of acquiring lands to set up fruit orchards/plantations thereon. In course of business, one of the projects developed by the Company was the Maxworth-Karandapalli project. According to the Company, it acquired about 91.65 acres of land in Karandapalli village. After paying full sale consideration, the Company states that general powers of attorney were executed in favour of B.Karthikeyan, an employee of the Company. As agent of the Company, it is stated that B.Karthikeyan executed sale deeds in favour of 52 customers between 1996 and 1997.

2. The Company thereafter faced financial difficulties; a winding up petition was presented by a creditor on or about 24.02.1998; and an

Administrator was appointed in said petition to take charge of the assets and affairs. Later, the Official Liquidator was also appointed as Provisional Liquidator. After excluding the extents of land sold to customers in the Maxworth-Karandapally and Maxworth-Bogasandiram Projects, on the basis of orders of this Court, the remaining extents of 78.75 acres in Erudhukottai village and 56.06 acres in Karandapally village, aggregating to 134.81 acres, were sold through an auction. The sale was confirmed on 18.01.2021 in favour of the highest bidder, Thanish Grande Hotels and Resorts Private Limited, which is the 3rd respondent herein. The 3rd respondent, in turn, applied for cancellation of the consolidated sale certificate and for issuance of fresh certificates in favour of nominees and itself. This request was acceded to by order dated 23.07.2021 in Comp.A.No.138 of 2021.

3. Five separate sale certificates were issued thereafter in respect of the aggregate extent of 134.81 acres. Out of these, three sale certificates pertain to lands at Erudhukottai village and two to lands at Karandapalli village. The present applications were filed in the above facts and

circumstances by S.V. Srinivasulu, who asserts title to five parcels of land in Karandapalli village, which are detailed in Schedules A-E in the Judge's summons. The persons to whom sale certificates for lands at Karandapalli village were issued, namely, S.Abiramaiah and N.Surya, were impleaded as the 5th and 6th respondents by order dated 18.07.2022 in Comp.A.Nos.80 & 81 of 2022.

Counsel and their contentions:

4. Mr.V.Athikesavan, learned counsel, made submissions on behalf of the applicant. Mr.Karthik Seshadri, learned counsel, made submissions on behalf of the Company, and he was assisted by Mrs.D.Nagasaila, learned Administrator. Mr. S. Ravi, learned senior counsel, made submissions on behalf of the auction purchasers.

5. Mr.V.Athikesavan submitted that the applicant acquired five parcels of land, which are described in Schedules A to E, respectively, of the Judge's summons from the original land owners or their respective legal heirs under registered sale deeds. In particular, he referred to and relied upon the following sale deeds and pattas:

(i)Sale deed dated 14.02.2007 registered as Document No.808/2007;

(ii) Sale deed dated 29.01.2009 registered as Document No.514/2009;

(iii)Sale deed dated 18.02.2009 registered as Document No.599/2009;

(iv) Sale deed dated 18.02.2009 registered as Document No.598/2009

(v) Sale deed dated 19.03.2009 registered as Document No.993/2009; and

(vi) Patta nos.1217, 1745, 1158, 317 & 14 issued by the Tahsildar, Denkanikottai.

6. The next contention of learned counsel was that the general powers of attorney, which the Company relies on, ceased to be valid upon the death of the principal, Ramaiah. By placing on record the death certificate dated 28.10.2005, he contended that Ramaiah passed away on 13.10.2005 and that the power of attorney ceased to have any validity on and from the said date. Although sale certificates were issued in favour of the successful bidder's nominee, he contended that such sale certificates are not valid since the Company is not the owner of the property and could not have transferred title thereto.

7. In response to these contentions, Mr. Karthik Seshadri submitted that an aggregate extent of 91.65 acres in the Maxworth-Karandapalli project were acquired by paying full sale consideration to the original land owners and obtaining registered powers of attorney in the name of B.Karthikeyan (Employee Code No.01655). Pursuant thereto, he submitted that the agent executed sale deeds in favour of 52 customers in the years 1996 & 1997. He next submitted that the said Karthikeyan fraudulently executed a special power in favour of one K.Balasubramanian, who was also an ex-employee of the Company. By using the said alleged special power, K.Balasubramanian executed sale deed bearing Document No.740/2007 dated 12.02.2007 in respect of an extent of 45.17 acres and sale deed dated 14.02.2007 bearing Document No.780/2007 for an extent of 8.76 acres. The purchasers, in turn, sold the land to Achievers Agri India (P) Limited (Achievers Agri India) in the year 2011. The lands over which the applicant claims title are the same lands over which Achievers Agri India had unsuccessfully claimed title on the basis of the above mentioned transactions of K.Balasubramanian. He further submitted that an order of

interim injunction was obtained restraining both B.Karthikeyan and K.Balasubramanian from dealing with the Company's lands under order dated 24.04.2003 in C.A.No.740/2003 in C.A.No.63 of 2001.

8. In order to establish that the claim of the applicant is not *bona fide*, Mr. Karthik Seshadri submitted that the applicant claims title to the lands under five sale deeds. As regards lands covered by sale deed bearing Document No.808/2007, he submitted that the Company acquired 0.19 acres in S.No.590/1C and registered 0.14 acres in favour of its customers. Only the remaining extent of 0.05 acres in the said survey number was brought for auction sale. The applicant asserts title over this remaining extent of 0.05 acres in undivided survey No.590/1C. Similarly, as regards the claim made under sale deed bearing Document No.599/2009, he submitted that the Company acquired 3.56 acres in S.No.589/4 and registered about 1.68 acres there from in favour of its customers. Only the remaining extent of 1.88 acres was brought for auction sale. The same 1.88 acres is being claimed by the applicant in undivided survey No.589/4. Likewise, as regards lands claimed under sale deed bearing Document

No.993/2009, in Survey No.589/3A, the Company acquired 1.07 acres and registered 0.38 acres in favour of its customers. Only the remaining extent of 0.68 acres were brought for auction sale. Once again, the applicant claims to have acquired the remaining extent of 0.68 acres in S.No.589/3A when the said land had not been subdivided.

9. He next pointed out that the original parent documents are in the custody of the Company/Administrator. He also relied upon a receipt for a sum of Rs.8.50 lakhs in respect of acquisition of lands in Karandapalli, Bogasandiram and Geragoor. He concluded his submissions by reiterating that the registered sale deeds in favour of customers in respect of lands in the very same survey numbers would have been reflected in the encumbrance certificate. If the applicant were a *bona fide* purchaser, he submitted that the applicant would have refused to purchase the remaining extent in the same survey numbers.

10. Mr.Ravi, learned senior counsel, advanced arguments on behalf of the auction purchaser and its nominees. He commenced his submissions by

pointing out that the challenge is confined to lands sold under two sale certificates to the 5th and 6th respondents. Even with regard to these sale certificates, he pointed out that such challenge is limited to an extent of about 2.46 acres from and out of the total extent of 26.13 acres conveyed to the 5th respondent and to about 13.4 acres from and out of the total extent of 29.93 acres conveyed to the 6th respondent. By referring to the relevant survey numbers, he pointed out that Mr.Ramaiah was not the principal as regards the relevant general power of attorney. Consequently, he contended that the alleged death of Ramaiah has no impact on the validity of the general power of attorney. He further submitted that the sale in favour of the 3rd respondent was confirmed by this Court by order dated 18.01.2021 and that the sale certificate was also issued in favour of the nominees of the 3rd respondent. In these circumstances, he submitted that no interference is warranted at the instance of the applicant.

11. By way of a brief rejoinder, learned counsel for the applicant submitted that the receipt for Rs.8.50 lakhs was issued in the name of S.R.Venkatachalam and not in the name of the original land owners. Hence,

he contended that there is no evidence of payment of consideration to the original land owners.

Discussion, analysis and conclusions:

12. At the outset, a preliminary issue should be set out. Pursuant to the auction, two sale certificates were issued in respect of lands in Karandapally village and three sale certificates in respect of lands at Erudhukottai village. Prior thereto, the applicant filed Comp.A.D.Nos.86486 and 86487 of 2020 in respect of the lands in Karandapally village, and later sought leave to withdraw the same. By order dated 09.04.2021, the request was rejected. Those applications were not prosecuted thereafter. Instead, the present applications were filed. Therefore, these applications are not maintainable. Nonetheless, without prejudice to this conclusion, in view of extensive submissions having been made by all parties, the applications are also examined on merits. I first turn to the scope of these applications.

13. Since the applicant asserts title only in respect of lands at Karandapally village, it is sufficient to examine whether interference is warranted with the two sale certificates relating to lands therein. One sale certificate was issued to N.Surya, the 6th respondent, in respect of an aggregate extent of 29.93 acres in about 25 survey numbers. If the survey numbers and extents mentioned in the sale certificate are compared with the survey numbers and extents over which the applicant asserts title (i.e. as set out in the Judge's summons), it is clear that the rival claim is restricted to about 5 survey numbers in Schedule A of the Judge's summons (Survey Nos.599/3, 599/1, 590/2, 599/2,590/1C), all three survey numbers in Schedule B thereof (Survey Nos.590/6, 593/4 and 593/7), the only survey numbers in Schedules C and D thereof (Survey Nos.589/4 and 590/2, respectively) and one survey number in Schedule E thereof (Survey No.599/3). If a similar comparison is made with regard to the sale certificate issued to S.Abiramaiah, the 5th respondent, it is clear that the rival claim is restricted to two survey numbers in Schedule A of the Judge's summons (Survey Nos. 582/2C and 582/3), and two survey numbers in Schedule E

thereof (Survey Nos.586/4C and 586/5A). With this preamble, I proceed to examine the rival claims.

14. The Administrator filed two volumes of documents in support of the Company's claims. In both volumes, the employment details of B.Karthikeyan by way of joining report, service register, performance review, etc. have been enclosed. These documents clearly establish that B.Karthikeyan joined the employment of the Company on or about 21.06.1995, and that he was posted initially at Hosur in Krishnagiri District. Copies of about six relevant general powers of attorney have been placed on record by the Administrator. Each power of attorney is in favour of B.Karthikeyan and was executed after he joined the employment of the Company.

15. On perusal thereof, it is evident that GPA Document No.76/1996 dated 29.02.1996 *inter alia* covers material Survey Nos.593/1A and 593/2A. This document was executed by M. Beemalanayaka and others. Patta No.622 in the name of Beemalanayaka has been placed on record.

GPA Document No. 314/1995 dated 11.12.1995 *inter alia* covers material Survey Nos.586/5A and 586/4C. This document was executed by R.Venkatasamy and others. The parent document by way of sale deed bearing Document No.362/1981 in favour of R.Venkatasamy for undivided Survey No.586/4 has been placed on record, and it is asserted that the original is in the custody of the Company. GPA Document No. 316/1995 dated 11.12.1995 *inter alia* covers material Survey Nos.599/1, 599/3, 599/2, 582/2C, 582/3 and 590/1C. This document was executed by V.Vijayamma and others. Parent gift deed bearing Document No.117/1979 in favour of V.Vijayamma for Survey No.599/2 and patta number 317 in the name of Chinnappa (the predecessor in interest of Vijayamma) in respect of Survey Nos.582/2C, 582/3 and 590/1C have been filed, and it is asserted that the originals are in the custody of the Company.

16. GPA Document No. 17/1996 dated 23.01.1996 *inter alia* covers material Survey Nos.589/4 and 590/2. This document was executed by M. Venkataraju. Parent gift deed`in respect of S.No. 589/4 bearing Document No.382/1976 in favour of M. Venkataraju has been placed on record. Patta

No.1217 in the name of M. Venkataraju for Survey Nos. 589/4 and 590/2 has been filed. It is asserted that the originals are in the custody of the Company. GPA Document No. 4/1996 dated 04.01.1996 *inter alia* covers material Survey Nos.590/6, 593/7 and 593/4. This document was executed by R. Chakrinayaka and another. Patta No.236 in the name of Chakrinayakan has been filed, and this document covers all the three survey numbers mentioned above. Once again, it is asserted that the originals are in the custody of the Company.

17. Apart from the above, a voucher indicating that a sum of Rs.8.50 lakhs was paid towards land advance for Karandapalli, Bogasandiram and Geragoor is on record. This document indicates that this amount was paid to an employee, S.R.Venkatachalam, whose Employee Code was 1654. Thus, on a holistic consideration of the above documents, including the voucher, the conclusion that follows is that the powers of attorney were coupled with interest. Consequently, the alleged death of one of the principals, Ramaiah, of GPA Document No.76/1996 would not impact the validity thereof.

18. In the counter affidavit of the Administrator, it is stated that the Company paid the full sale consideration to the land owner in respect of lands covered by sale deed Document No.808/2007 and obtained GPA Nos.316/1995 & 42/1996. One of the survey numbers covered under this sale deed is S.No.590/1C. The Administrator has averred that 0.14 acres from and out of 0.19 acres were registered in favour of customers and only the remaining extent of 0.05 acres was brought for auction sale. In view of S.No.590/1C not being sub-divided, it was asserted that the applicant could not have identified 0.05 acres in the said survey number and purchased the same in a *bona fide* manner. A similar assertion is made in respect of S.No.589/4, which the applicant claims to have acquired under sale deed Document No.599/2009. Likewise, as regards S.No.589/3A, which forms the subject of the sale deed bearing Document No.993/2009, the Administrator states that 0.38 acres from and out of 1.07 acres were registered in favour of customers and only the remaining extent of 0.68 acres was brought for auction sale.

19. The Administrator has also set out details of the fraudulent transfers by K.Balasubramanian, purportedly under special power of attorney executed by B.Karthikeyan, to and in favour of Achievers Agri India under Document Nos.332/2011, 333/2011 and 335/2011. The Administrator has placed on record the order dated 18.01.2021 in C.A.No.58/2020 rejecting the claim of Achievers Agri India. The lands claimed by Achievers Agri India are the same lands over which the applicant claims title. According to the Administrator, if the applicant had exercised due diligence, these registered conveyances would have come to light. Indeed, it is contended that it strains credulity that the applicant would have been unaware of these transactions in relation to lands claimed by him.

20. The rival claim of the applicant hinges on five registered sale deeds: Document Nos.808/2007, 514/2009, 598/2009, 599/2009 and 993/2009. These sale deeds were executed between 14.02.2007 and 19.03.2009, which is almost a decade after the commencement of winding up on or about 24.02.1998. The recital in each sale deed with regard to the

title of the respective vendors is in substantially identical terms. By way of illustration, the recital from Document No.808/2007 is set out below:

> *"Whereas the VENDORS are the absolute owner of the property hereunder by way of Ancestral and also to convey good and clear title and thus the vendor is entitled to the schedule mentioned properties and they are legal and lawful possession of their respective rights."*

It is conspicuous that the title of the respective vendors has not been traced in any of the sale deeds relied on by the applicant. Indeed, even revenue records like the patta are not referred to therein. Except for these sale deeds and pattas in the name of the applicant, no antecedent documents have been placed on record by the applicant.

21. When the above facts and circumstances are looked at cumulatively, it is clear that the alleged acquisition by the applicant is not *bona fide* especially in the factual context of multiple registered sales by the

Company, including of lands in the same survey numbers. While holding that the acquisition of immovable property should be by way of a registered conveyance, the Hon'ble Supreme Court carved out an exception in *Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2009) 7 SCC 363* (*Suraj Lamp I)* and *Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656* (*Suraj Lamp II)* in favour of power of attorney transactions for legitimate purposes, including those in favour of a developer. Paragraphs 26 and 27 of Suraj Lamp II are as under:

> "26....*The said "SA/GPA/will transactions" may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered into before this day, they may be relied upon to apply for regularisation of allotments/leases by development authorities. We make it clear that if the documents relating to "SA/GPA/will transactions" have been accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue*

Authorities to effect mutation, they need not be disturbed, merely on account of this decision.

27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a power of attorney empowering the developers to execute agreement of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding

> *"SA/GPA/will transactions" are not intended to apply to such bona fide/genuine transactions."*

For reasons set out above, the claim of the Company falls within the exception carved out in *Suraj Lamp II.*

22. As stated at the outset, the winding up commenced on the date of presentation of the petition, i.e. on or about 24.02.1998. The applicant asserts title to the properties described in the schedule to the Judge's summons under five sale deeds. Each of these sale deeds was executed long after the commencement of the winding up. Consequently, unless validated by this Court, these conveyances are void in terms of section 536(2) of the Companies Act, 1956. Dispositions after the commencement of the winding up may be validated, if the Court concludes that such transactions were in the interest of the Company concerned. In this case, the claim made by the applicant is clearly adverse to the interest of the Company. Hence, no case is made out for validation.

23. In the result, Comp.A.Nos.349 & 350 of 2021 are dismissed by holding that all the sale deeds in favour of the applicant are void. As a corollary, the mutation of revenue records on such basis is also void. The auction purchasers may take all necessary action to mutate the records in the offices of the jurisdictional sub-registrar and revenue authorities. There will be no order as to costs.

22.01.2025

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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To
High Court, Madras
as provisional liquidator of
Maxworth
1.The Official Liquidator,
Orchards (India) Private Ltd.,
Corporate Bhawan, 2nd Floor,
No.29, Rajaji Salai, Chennai 600 001.

2.The Sub-Registrar,
Denkanikottai Sub-Registrar Office,
Denkanikottai, Krishnagiri District-635 107.

SENTHILKUMAR RAMAMOORTHY J.

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Pre-delivery order in

Company Application Nos.349 & 350 of 2021
in Company Application No.58 of 2020
in Company Petition No.57 of 1998

22.01.2025