

Before Shri R.S. Virk, District Judge (RETD.)
appointed to hear objections/representations in the matter of PACL Ltd.
(as referred to in the orders dated 15/11/2017 and 13/04/2018 of the Hon'ble
Supreme Court passed in civil appeal no. 13301/2015 titled Subrata
Bhattacharya vs SEBI, and also duly notified in SEBI Press release no. 66 dated
08/12/2017).

File no. 471

MR Nos. 12085/16, 12081/16, 18704/16

Applicant : Sharat Negi

Present : Sh Abhay Pratap, Advocate

Order :

1. It may be noticed at the outset that vide order dated 02/02/2016, passed in civil appeal no. 13301/2015 bearing the title Subarata Bhattacharaya Versus Securities & Exchange Board Of India, the Hon'ble supreme court had directed constitution of a committee by SEBI to be headed by Hon'ble Mr. Justice R.M. Lodha former Chief Justice of India as its Chairman for disposing of the land purchased by PACL so that the sale proceeds recovered there from can be paid to the investors who have invested their funds in the company for purchase of the land.
2. The objector above named seeks delisting of the lands purchased separately from three different persons namely Rajiv Kumar S/o Ramesh Chand as authorised agent of PACL as per its board resolution dated 16/08/2014, Devendra Bhatt S/o Shri Ram Lal Bhatt and Tarlochan Singh S/o Shri Sadhu Singh for varying amounts and mutations whereof have also been entered in the revenue record in favour of the objector as detailed hereunder :-

S.No.	Vendor	Buyer	Sale Deed No. & Date	Area	Sale Consideration	Mutation (by the order of Naib Tehsildar)	Bank Name with mode of Payment
(i)	Rajiv Kumar s/o Sh. Ramesh Chand	Sharat Negi s/o Narottam Singh	1382 07/01/2015	0.2710 Hectare	Rs. 23,97,000/-	5392/15/06.06.2015 Khata No. 906	Andra Bank, Branch- Dehradun, DD No. 110198 & Cheque No.

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							394971 dated 10.04.2015
(ii)	Sh. Devendra Bhatt s/o Sh. Ram Lal Bhatt	Sharat Negi s/o Narottam Singh	142 07/01/2015	0.2727 Hectare	Rs. 24,20,000/-	3148/14-15/23.5.15 Khata No. 386	Andra Bank, Branch- Dehradun, DD No. 110196 & Cheque No. 394974 dated 10.04.2015
(iii)	Sh. Tarlochan Singh S/o Sh. Sadhu Singh	Sharat Negi s/o Narottam Singh	758 07/01/2015	0.1540 Hectare (total)	Rs. 25,00,000/-	3714/14-15/23.5.15 khata No. 372	Andra Bank, Branch- Dehradun, DD No. 110197 & Cheque No. 394973 dated 10.04.2015

3. It is mentioned that the above described properties stand attached vide MR No. 12085/16, 12081/16, 18704/16 which are comprised in Khata No. 906, Khasra No. 3202 (area 0.2710 Hectares); Khata No. 386, Khasra No. 3157 Min (area 0.2727 Hectares) and Khata No. 372, Khasra No. 3199 Kha (area 0.1155), Khasra No.3200 (area 0.0385) totalling 0.1540 Hectares, all situated at Mauza Shankarpur Hakumatpur, Pargana Pachwadun, District Dehradun, Uttrakhand.

4. (i) The above named vendor viz Rajiv Kumar s/o Ramesh Chand on his part had, prior to the sale deed in question (No.1382), purchased the land covered by the above sale deed from the previous owner named Om Prakash S/o Shyam Singh vide sale deed no. 7201/06 dated 05/09/2006.

(ii) Similarly, the second vendor Devendra Bhatt s/o Ram Lal Bhatt on his part had, prior to the sale deed in question (No.142), purchased the land covered by the above sale deed from the previous owner named Dinesh Chand S/o Jainarayan vide sale deed no. 9281/06 dated 02/11/2006.

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(iii) Similarly, the third vendor Tarlochan Singh S/o Sadhu Singh on his part had, prior to the sale deed in question (No.758), purchased the land covered by the above sale deed from the previous owner named Mohammad Hanif s/o Karimuddin vide sale deed no. 1302/10 dated 04/03/2010.

5. With reference to the objection petition in hand, details of transfers of varying amounts detailed in para 2 above, from Account number 120910027070164 of the objector Sharat Singh Negi are reflected in the certificate Lr. No.1209/Misc/42/2018 dated 18/06/2018 issued by Andhra Bank, Dehradun Branch.
6. Learned counsel for the objector has argued that above described transfer of land in question was prior in time to the order of the Hon'ble Supreme Court dated 02/02/2016 passed in civil appeal no. 13301/2015 titled Subrata Bhattacharya Vs SEBI and without notice of any wrong doing on the part of the vendor and therefore the objector above named is a bona fide purchaser of the land in question which therefore needs to be removed from the list of the attachment of properties detailed in www.auctionpacl.com.
7. Learned counsel for the objector has cited observations of the Hon'ble Supreme Court in the case bearing the title Kaliaperumal Versus Rajagopal & Anr. (civil appeal no. 5800 of 2002) wherein it was observed, in para 8 thereof, as under :-

“Sale is defined as being a transfer of ownership for a price. In a sale there is an absolute transfer of all rights in the properties sold. No rights are left in the transferor. The price is fixed by the contract antecedent to the conveyance. Price is the essence of a contract of sale. There is only one mode of transfer by sale in regard to immovable property of the value of Rs.100/- or more and that is by a registered instrument. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of title, as Section 54 of Transfer of Property Act, 1982 ('Act' for short) defines 'sale' as a transfer of ownership in exchange for a price paid or promised or part paid and part promised. If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price,


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under section 55(4)(b) of the Act. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by Section 92 of Evidence Act.”

Similar view has been expressed by the Hon’ble Supreme Court in the case bearing the title Vidhyadhar Versus Manikrao & Anr. reported in AIR 1999 SC1441.

8. In view of the foregoing discussion, the objector above named is held to be a bona fide purchaser for value of the property in question and the same is therefore liable to be removed from the list of properties attached by the committee as per www.auctionpacl.com. The petition is accordingly accepted.

Date :06/07/2018


R. S. Virk
Distt. Judge (Retd.)

Note:

Two copies of this order are being signed simultaneously, one of which shall be retained on this file whereas the other one, also duly signed, shall be delivered to the objector as and when requested /applied for. No certified copies are being issued by this office. However, the orders passed by me can be downloaded from official website of SEBI at www.sebi.gov.in/PACL.html.

Date :06/07/2018


R. S. Virk
Distt. Judge (Retd.)