

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, 13/04/2018 and 02/07/2018 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. 463

Objectors : Sanjay Kumar

Present : None

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. By way of the petition in hand filed through one Nitin Arora as his special attorney but signed by his advocate Praneet Dass, the objector above named seeks delisting of land measuring 50 Bighas comprised in Khasra Nos. 617/64 situated at village Kalawa, Tehsil Pachpadra, District Barmer, Rajasthan with the averments that he is a bonafide purchaser for value of the aforesaid land which was earlier owned by one Bhikharam son of Madrupa resident of Salt, Tehsil Pachpadra, District Barmer, Rajasthan from whom the objector had purchased the same vide registered sale deed dated 03/11/2006 for an amount of Rs. 1,32,500/- (One lakh thirty two thousand and five hundred) paid in cash, and pursuant thereto, mutation in respect thereof has also been entered in his own favour and that subsequent thereto he had sold the same to one Sohal Lal upon receiving the entire sale consideration.
3. It is averred inter-alia that when he visited the Patwari for recording entry in favour of Sohan Lal above named, he learnt that this land stood transferred in the name of one Mahender Kumar on the basis of an allegedly forged sale deed dated 30/08/2010

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whereupon he had filed Civil Suit No. 16 of 2014 before the District Judge, Balotra who decreed the same in his favour vide judgement and decree dated 17/05/2014.

4. It is claimed that subsequent thereto, the said land has been attached by the Committee although PACL Ltd has no right, title or interest, directly or indirectly, in the aforesaid land which is therefore liable to be removed from the list of properties attached by the committee.
5. Reference may at this stage be made to 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, 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

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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.

6. 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 :25-07-2018


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 :25-07-2018


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