

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. 461

MR NO. 2850-14

Objectors : Rupa Ram & 5 others

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 by Praneet Dass, Advocate on behalf of the objectors above named they are seeking delisting of land measuring 212.03 Bighas comprised in Khasra Nos. 121 situated at village Borawas, Tilwada, 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 as many as 9 persons namely Aawardan and eight others from whom the same was purchased by one Sanjay Kumar, (a government employee posted as Tehsildar in UP), vide 'nine' separately registered sale deeds, all dated 03/11/2006, as detailed hereunder:-

S.No.	Date of Sale Deeds	Original Owner/Seller	Purchaser/Predecessor-in-title i.e. Sanjay Kumar
1.	03/11/2006	Aawardan S/o Kishoredan	Sanjay Kumar S/o Shri Balbir Singh
2.	03/11/2006	Mahendradan S/o Kishoredan	Sanjay Kumar S/o Shri Balbir Singh
3.	03/11/2006	Shaitandan S/o	Sanjay Kumar S/o Shri

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		Kishoredan		Balbir Singh
4.	03/11/2006	Ashokdan Kishoredan	S/o	Sanjay Kumar S/o Shri Balbir Singh
5.	03/11/2006	Mooldan Moolsingh Karnidan	@ S/o	Sanjay Kumar S/o Shri Balbir Singh
6.	03/11/2006	Ishwardan Karnidan	S/o	Sanjay Kumar S/o Shri Balbir Singh
7.	03/11/2006	Khimdan Karnidan	S/o	Sanjay Kumar S/o Shri Balbir Singh
8.	03/11/2006	Harisingh Karnidan	S/o	Sanjay Kumar S/o Shri Balbir Singh
9.	03/11/2006	Tejdan Karnidan	S/o	Sanjay Kumar S/o Shri Balbir Singh

3. The above named Sanjay Kumar had thereafter statedly sold the above described land more than seven years later in favour of the objectors herein vide 'six' separately registered sale deeds, all dated 11/03/2014, as detailed hereunder:-

S. No	Fee Sr. No. of Schedule properties	Date of Registration of sale deed	Area of land purchased (Bigha)	Document Sr. No.	Amount paid in INR	Name of the Owner as per the sale deed
1	2014000473	11/03/2014	35	2014000566	Rs.16,00,000/- in cash	Sh Rupa Ram S/o Varda Ram
2	2014000474	11/03/2014	35	2014000567	Rs.16,00,000/- in cash	Sh Kalu Ram S/o Puna Ram
3	2014000477	11/03/2014	37.03	2014000570	Rs.16,70,000/- in cash	Sh Bhura Ram S/o Chetan Ram
4	2014000476	11/03/2014	35	2014000569	Rs.16,00,000/- in cash	Sh Sohan Ram S/o Tulsi Ram
5	2014000472	11/03/2014	35	2014000565	Rs.16,00,000/-	ShBagda

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					in cash	Ram S/o Parsa Ram
6	2014000475	11/03/2014	35	2014000568	Rs.16,00,000/- in cash	Sh Parka Ram @ Parka s/o Vakata Ram
Total			212.03			

4. It is claimed that a dispute regarding title had occurred between Sanjay above named and one Moolchand in respect of the lands detailed above whereupon Sanjay above named had moved the Assistant Collector cum SDO, Balotra, Rajasthan for cancellation of mutation number 505 dated 20/10/2010 as entered in the name of Moolchand above named and pursuant thereto, above described officer vide his order dated 10/09/2013, had directed the Tehsildar, Pachpadra for recording the mutation of the land in question in favour of Sanjay Kumar in place of Moolchand and the said Tehsildar on his part had vide his letter no. 654 dated 06/03/2014 directed the Patwari to comply with the above referred order dated 10/09/2013 of the Assistant Collector cum SDO and it was thereafter that the objectors herein had purchased the above described land from Sanjay Kumar above named vide six separately sale deeds dated 11/03/2014 as detailed in para 3 of this order above and mutation of said land has also been entered in their favour on 05/09/2014.
5. It is averred inter-alia that pursuant to the objectors herein purchasing the above described land from the above named Sanjay Kumar for amounts mentioned in column no. 6 of the chart in para 3 above, they are in possession thereof ever since and that mutation of said purchase has also been entered in the revenue record in their favour.
6. It is asserted that 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.
7. 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

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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 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."

8. 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.
9. 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.)