

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. 529

MR Nos. 10741-16, 10742-16

Objector : Sheela R. Shah
Present : Applicant in person with Manthan Chinubhai Shah
(Aadhar No.329639048153) R/o 9/A, Shanaz Apartments, 90,
Nepean Sea Road, Mumbai, Malabar Hill, Maharashtra.

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 SubarataBhattacharaya 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 land in question bearing survey Nos. 638(1-60-86), 637 (3-75-35) and 741(2-78-22), total measuring 8-14-43 hectares; (New Survey Nos. 584, 582 and 599 respectively) situated at Village Bharadava of District Banaskantha, Gujarat with the averments that she had purchased the same from Kamlaben Mavjibhai Darji and Laduben Ranabhai Rajput for a total sale consideration of Rs. 30,95,000/- (Thirty lakhs ninety five thousand only) vide registered sale deed no.800/2012 dated 03/11/2012 and added that the payment was made through three separate bank transactions from her Account No. 270310100008792 with Bank of India, Textile Market Branch, Surat as detailed hereunder :-

S.No.	Date	Amount in Figures (INR)	Amounts in Words (INR)
1.	25/01/2012	Rs.8,50,000/-	Rupees Eight fifty thousand only
2.	05/10/2012	Rs.10,00,000/-	Rupees Ten lakhs only
3.	20/10/2012	Rs.12,45,000/-	Rupees Twelve lakhs forty five thousand only
	Total	Rs.30,95,000/-	Rupees Thirty lakhs ninety five thousand only

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3. The objector above named thus claims to be bona fide purchaser for value of the above described land. The objector has appended to the objection petition a copy of the bank statement of her account number 270310100008792 maintained with Bank of India, Textile Market Branch, Surat which contains entries corroborating the amount credited to the account of Laduben Ranabhai Raj by way of RTGS as detailed in the chart in para 2 of this order above.
4. The above named vendor Laduben Ranabhai Rajput and Darji Kamlaben Mavjibhai had earlier purchased the above described land through registered sale deed no. 101/2011 dated 14/02/2011 from Trivedi Manjulaben Kirtilal for an amount of Rs.12,00,000/-.
5. The above named Trivedi Manjulaben Kirtilal on her part had earlier purchased the said land from Rajput Manabhai Bhuraji and Rajput Bhanabhai Bhojabhai vide registered sale deed no. 4169/2010 dated 01/09/2010 for an amount of Rs.11,40,000/-.
6. The above named Rajput Manabhai Bhuraji and Rajput Bhanabhai Bhojabhai on their part had purchased this land from Patel Dalsukhbhai Nathubhai vide sale deed no. 807/2010 dated 3/03/2010 for an amount of Rs.4,90,000/-.
7. As per entries against MR Nos. 10741-16 and 10742-16, the CBI has shown purchase of the above described land by Patel Dalsukhbhai from Patel Dhaniben Hemabhai as detailed hereunder :-

SDEEDNO	BUYER	SELLER	DOP	AMOUNT
2650/08	Patel Dalsukhbhai Naththubhai r/o Kabosani Kampa, Tehsil Vadali Dist. S.K Gujrat	Patel Dhaniben Hemabhai r/o Bharadwa, Tehsil Wav, Dist B.K Gujrat	03.07.08	1290000
2649/08	Patel Dalsukhbhai Naththubhai r/o Kabosani Kampa, Tehsil Vadali Dist. S.K Gujrat	Patel Navuben Karmanbhai & Others Caste Patel r/o Bharadwa, Tehsil Wav, Distt. B.K. Gujrat	03.07.08	670000

8. In the face of the above described land having exchanged hands through registered sale deed dated 03/07/2008 executed by Patel Dhaniben Hemabhai in favour of Patel Dalsukhbhai; vide sale deed No.807/2010 dated 03/03/2010 executed by Patel Dalsukhbhai in favour of Rajput Manabhai Bhuraji and Rajput Bhanabhai

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Bhojabhai; vide sale deed No. 4169/2010 dated 01/09/2010 executed by Rajput Manabhai Bhuraji and Rajput Bhanabhai Bhojabhai in favour of Trivedi Manjulaben Kirtilal; vide sale deed No.101/2011 dated 14/02/2011 executed by Trivedi Manjulaben Kirtilal in favour of Laduben Ranabhai Rajput and Darji Kamlaben Mavjibhai; and lastly vide sale deed No. 800/2012 dated 03/11/2012 executed by Laduben Ranabhai Rajput and Darji Kamlaben Mavjibhai in favour of Sheelaben R. Shah, the objector above named is obviously a bona fide purchaser for value of the above described land.

9. I stand fortified in this view from the 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 entire consideration, would depend on the intention of the parties.

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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.”

10. 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.

11. In view of the foregoing discussion, the objectors above named are held to be bona fide purchasers 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 inclusion on www.auctionpacl.com. The petition is accordingly accepted.

Date : 06/08/2018


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 : 06/08/2018


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