

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

I.A. NO. _____ OF 2021

IN

CIVIL APPEAL NO. 13301 OF 2015

IN THE MATTER OF:

Subrata Bhattacharya

...Appellant

Versus

Securities and Exchange Board of India & Ors.

...Respondents

AND IN THE MATTER OF:

Dr. Ranjit Patel

...Applicant

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FILED ON: 22.02.2021

NEW DELHI

FILED BY:



(SURJENDU SANKAR DAS)

CODE-2455

ADVOCATE FOR THE APPLICANT

68, TODARMAL ROAD,

BENGALI MARKET

NEW DELHI -110001

PH: 91-11-23320050 (O); MO: 9810813651

e-mail: surjendu2003@gmail.com

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Dr. Ranjit Patel

S/o. Mr. Purshotam Patel

Aged about 53 years

Residing at 15515, Turtle OAK CT,

Houston, Texas (U.S.A.) – 77059

...Applicant

APPLICATION FOR IMPLEADMENT

To,

The Hon'ble Chief Justice of India and

His Companions

Justices of the Supreme Court of India

MOST RESPECTFULLY SHOWETH:

1. The Applicant is a medical professional practicing as a Neurologist at Houston, Texas, USA and is a Non-Resident Indian.

2. The above Civil Appeal is pending before this Hon'ble Court and the Application herein is being filed by the Applicant for impleading in the above matter as a party Respondent, being a necessary party to the above proceedings. The Applicant had entered into a registered Sale Deed dated 12 December 2011 for Flat No. A - 401, Type - A, 4th floor, Block A, Pearls Gateway Towers, Vadodara – 390 007, Gujarat. The said project is built on Survey Nos. 249, 248 and 246/1 situated in Vadodara, Gujarat constructed by Pearls Infrastructure Projects Limited (“**PIPL**”). The said Scheduled Property is under the auction list of the PACL Limited’s (“**PACL**”) property.

3. The Applicant had filed an objection before Shri R. S. Virk, District Judge (Retd.) under File No. 802 to remove the Scheduled Property from the auction / sale / attachment, etc. list of the proceedings relating to PACL. However, the same was wrongfully

rejected and dismissed by Shri R. S. Virk, District Judge (Retd.) on 20 January 2021. Aggrieved by the same, the Applicant has filed the present Application.

4. It is submitted that the Applicant, a Non-Resident Indian, is a *bona fide* purchaser for value without notice and an absolute owner of the flat bearing No. A – 401, Type – A, 4th Floor, Block – A, Pearls Gateway Towers, Vadodara – 390 007, Gujarat (“**Scheduled Property**”). The Scheduled Property was constructed by PIPL on Plot Nos. 47, 46 and 44/B falling within Survey Nos. 249, 248 and 246/1, respectively as per the plans approved by the Vadodara Municipal Corporation and issuance of completion certificate by the competent authorities.
5. The Scheduled Property was purchased vide registered Sale Deed dated 12 December 2011 and the Applicant is in possession of the flat since then. The Applicant has also paid the full consideration amount of Rs. 98,92,500/- (Rupees Ninety-Eight Lakhs Ninety-Two Thousand Five Hundred) by way of cheque / RTGS for the said purchase and, therefore, holds a clear title upon the Scheduled Property.

6. On around 14 April 2020, the Applicant learnt that the Scheduled Property, which is rightfully owned by the Applicant, forms part of the list of properties which are a subject – matter of investigation and falls within the list uploaded on www.auctionpacl.com for the proposed auction and sale in order to recover money of the investors. Pursuant to the same, the Applicant filed his objections before Shri R. S. Virk, District Judge (Retd.) on 23 November 2020, which was erroneously dismissed by Shri R. S. Virk, District Judge (Retd.) on 20 January 2021.
7. The Applicant has also filed an Application for directions and an Application for stay before this Hon'ble Court along with the present Application. The contents of the said Applications are not repeated herein for sake of brevity and to be treated as a part and parcel of the instant Application.

BRIEF BACKGROUND

(i) Relevant orders passed in the Appeal:

8. SEBI, through their Whole-Time Member, Shri Prashant Saran, called upon PACL to furnish details of the money collected by them under various collective investment schemes from investors. SEBI, vide Order dated 22 August 2014 found that PACL has

illegally collected a whopping amount of Rs. 49,100 Crores from almost 5,85,40,150 investors residing across the country and 33,48,656 field associates. SEBI issued instructions to PACL therein, abstaining them from collecting any money from investors or launch or carry out any Collective Investment Schemes.

9. The Securities Appellate Tribunal, Mumbai (“**SAT**”) on 12 August 2015 upheld the said Order dated 22 August 2014. The order of SAT was also challenged before this Hon’ble Court vide Civil Appeal No. 13394 of 2015. However, no stay was granted.

10. The Hon’ble Supreme Court, on 2 February 2016, directed constitution of a committee by SEBI to be headed by Hon’ble Mr. Justice R. M. Lodha, as its Chairman, in order to dispose of the land purchased by PACL to recover from the sale proceeds and pay back the *bona fide* purchasers who had invested money in the Company.

“...It would be open to the Hon'ble Chairman of the Committee to appoint such experts or other persons, as he might think it necessary, in consultation with the SEBI, so as to enable the Committee to sell the land and pay to the investors in a manner that might be decided by the said Committee....”

11. This Hon'ble Court thereafter, appointed Shri R. S. Virk, District Judge (Retd.) vide Order dated 15 November 2017 to hear grievances / objections / representations against attachment of various properties in the matter. The said appointment has also been notified in SEBI Press Release No. 66 dated 8 December 2017.

12. This Hon'ble Court further passed an Order dated 23 February 2018 directing the sale of property in terms of the Report of the Justice Lodha Committee and under their supervision. The said Appeal was last listed on 4 August 2020.

(ii) Relevant facts leading to filing of present Application:

13. In December 2010, the Applicant approached PIPL enquiring about their property, terms and conditions of purchase of flat, etc. in Vadodara, Gujarat. The Applicant expressed his willingness to purchase either of the two flats, i.e. A-401 and B1-402 of the said Scheme.

14. In furtherance of such enquiry, the representative of PIPL vide email dated 31 December 2010 shared the price breakup, terms

and conditions along with payment terms and a customer detail form for the Applicant to duly fill and resend to PIPL for their records.

15. The Applicant promptly shared with PIPL the filled Customer Details Form on 31 December 2010.
16. Vide email dated 3 January 2011, PIPL shared the Bank Account details with the Applicant along with the payment terms for the two proposed properties.
17. PIPL shared the Booking Acceptance Form for the Applicant to duly fill and resend to PIPL for their records. The Applicant thereafter, requested PIPL for a tentative contract to have a better understanding of the terms of transfer vide his email dated 4 January 2011.
18. PIPL vide email dated 5 January 2011 asked about the expected date of payment for the Scheduled Property from the Applicant.

19. PACL issued a Receipt No. 1111 dated 14 January 2011 in the name of the Applicant for Rs. 14,82,375/- (Rupees Fourteen Lakhs Eighty-Two Thousand Three Hundred Seventy-Five).
20. The Applicant booked the Flat No. A – 401 at Pearls Gateway Tower, Alkapuri, Vadodara. On 18 April, 2011, PIPL shared the payment terms for the said booked flat and again on 16 June 2011.
21. PIPL, on 18 June 2011, requested the Applicant for a PAN card copy and address proof of the Applicant and the Co-owner of the Schedule Property, i.e. Mrs. Nita R. Patel, the Applicant's wife for their records.
22. On 4 July 2011, PIPL requested the Applicant to pay the remaining instalment for the Scheduled Property in accordance with the terms of the Contract so as to avoid late payment charges. PIPL also highlighted Clauses 8 and 9 of the Booking Application Form for the Applicant's reference stipulating that punctual payments are an essence of the Contract and consequences of such failure.

23. Again, on 14 July 2011, PIPL requested to make the balance payment as soon as possible. PIPL also informed that they have sent the Buyer Agreement for the Applicant's signature.
24. On 22 July 2011, the Applicant gave his cousin brother, Mr. Rajesh Patel, the power of attorney to look after and manage the affairs in respect of the Scheduled Property.
25. PIPL vide email dated 1 August 2011 directed the Applicant to pay the remaining amount to avoid cancellation of the unit. PIPL informed the Applicant that the Agreement is a tri-partite one wherein PIPL transfers the unit first to PACL at the rate of Rs. 2,300/- per square feet. And, thereafter, PACL is selling the Scheduled Property to the Applicant at the rate of Rs. 3,350/- per square feet.
26. PIPL, on 4 August 2011, shared a tabular chart of the charges that are required to be paid by the Applicant and that the respective cheques are to be addressed to PACL. PIPL also included delay payment charges of Rs. 7,27,785/- (Rupees Seven Lakhs Twenty-Seven Thousand Seven Hundred Eighty-Five). The total outstanding amount was mentioned to be Rs. 96,21,210/-

(Rupees Ninety-Six Lakhs Twenty-One Thousand Two Hundred Ten).

27. After several requests from the Applicant, PIPL waived off the delay payment charges of Rs. 1,58,553/- (Rupees One Lakh Fifty-Eight Thousand Five Hundred Fifty-Three). PIPL directed the Applicant to make the remaining payment in order to initiate the registration process of the Sale Deed.
28. The Applicant paid the balance amounts to PIPL vide Cheque Nos. 000934, 000935, 000936, 000937 and 000938 dated 16 August 2011, i.e. totalling Rs. 88,93,425/- (Rupees Eighty-Three Lakhs Ninety-Three Thousand Four Hundred Twenty-Five).
29. On 17 August 2011, PIPL acknowledged payments of all the amounts apart from the delay payment charges and requested the Applicant to pay the same, without which PIPL shall not proceed with the registration of the Sale Deed.
30. It is pertinent to mention that one of the flat owners in the said Scheme had even conducted a Title Investigation Report to ensure that the said property will create a valid and enforceable

mortgage, from an expert. It was concluded vide the said Report dated 10 October 2011 that, the said property was absolute, clear and the flat owner can acquire marketable title over the said property after registration of the sale deed with the office of Sub-Registrar, Vadodara.

31. After the above series of correspondences and payment of the full amount for purchase of the Scheduled Property, PIPL and the Applicant entered into a Sale Deed dated 12 December 2011, wherein PACL was a Confirming Party. The said Sale Deed is duly registered with Sub-Registrar Office, Vadodara bearing No. 13854/2011. The total sale consideration for the Scheduled Property was Rs. 98,92,500/- (Rupees Ninety-Eight Lakhs Ninety-Two Thousand Five Hundred).
32. Clause 2.2 of the Sale Deed categorically states that the Vendor, i.e. PIPL is the absolute owner of the Schedule Property having a legally subsisting and marketable title and its sale to the Applicant shall be free from "*all encumbrances, court attachment or acquisition proceedings or charges of any kind*". Clause 2.6 of the Sale Deed, records the consideration of Rs. 98,82,500/- (Rupees Ninety-Eight Lakhs Eighty-Two Thousand Five Hundred) for

purchase of the Scheduled Property. Schedule A and B of the Sale Deed stipulate a detailed description of the Scheduled Property.

33. The Pearls Gateway Towers Owners Association vide Letter dated 27 February 2014 requested PIPL to release the maintenance deposits lying with them. The Association provided PIPL with consent forms and expressly stated that the owner of Flat No. A-401, i.e. the Applicant herein, is abroad and not available for signing the consent form.
34. However, Mr. Rajesh Patel, the authorized representative of the Applicant, gave a Consent Letter dated 9 March 2014 to PIPL giving consent and authorization to the Association of flat owners formed by the Promoters of PIPL vide meeting dated 1 December 2013.
35. PIPL, on 31 March 2014, entered into a Memorandum of Understanding with the Pearls Gateway Towers Owners Association, i.e. an association comprising of the allottees of the Pearls Gateway Towers Complex. PIPL therefore, admittedly stated that it sold and allotted 19 flats out of the total 24 flats.

Annexure "A" of the said Memorandum of Understanding expressly mentioned that the Applicant was transferred possession of the Scheduled Property on 12 December 2011 and had a liability of Rs. 60,671/- (Rupees Sixty Thousand Six Hundred Seventy-One) towards Maintenance Charges. The Applicant subsequently paid off the said amount of Rs. 60,671/-.

36. The Applicant therefore, is in a peaceful possession of the Scheduled Property since December 2011. The Applicant has also made payments towards the electricity and gas invoices issued by Madhya Gujarat Vij Company Limited and Vadodara Gas Limited, respectively, for the Scheduled Property.

37. The Applicant, being a *bona fide* purchaser for value without notice, was constrained to file his Objection Letter dated 23 November 2020 to Shri R. S. Virk, District Judge (Retd.) after becoming aware about the pending proceedings against PACL and that his Schedule Property was a part of the list of properties under investigation and are up for auction / sale for recovery of money.

38. The Applicant also referred to Clause 2.10 and 2.25 of the registered Sale Deed categorically stipulating the transfer of the title of the Scheduled Property to the Applicant and requested Shri R. S. Virk, District Judge (Retd.) to remove the said property from the auction list of PACL's properties.

39. On 20 January 2021, vide the Impugned Order, Shri R. S. Virk, District Judge (Retd.) erroneously dismissed the said Objection of the Applicant vide File No. 802. The Applicant is, therefore, aggrieved by the said Impugned Order dated 20 January 2021. Hence, the Applicant preferred the accompany Application seeking directions for setting aside the order and deletion of the Scheduled Property from PACL's auction list. The grounds have been set out in the said Application which may be read as part and parcel of the present Application.

40. It is submitted that the Applicant is an absolute owner and is in possession of the Scheduled Property. The registered Sale Deed and payment of the full amount of consideration evinces the intention of the parties to pass the ownership and title of the Scheduled Property to the Applicant with effect from the date of

execution of the Sale Deed. Registration of the Sale Deed is *prima facie* proof of the intention of transfer of the Scheduled Property.

41. The subject property has been wrongfully included in the list of properties forming the subject matter of investigation and should therefore, be removed from the list uploaded on www.auctionpacl.com for the proposed auction and sale. As the Sale of the said property took before 2016.
42. The Applicant is in lawful possession and is the rightful owner of the property since December 2011, i.e. much before the constitution of the R. M. Lodha Committee in 2016 or rather any kind of initiation of proceedings / investigation against PACL. In any event, the Applicant relied on the Title Investigation Report dated 10 October 2011, which refers to the subject Plot Nos. 47, 46 and 44/B falling within Survey Nos. 249, 248 and 246/1, that the subject Flat of the Report was unencumbered and the purchasers will be entitled to create mortgage and / or equitable mortgage against submission of title deeds pursuant to, registration of the sale deed.
43. Shri R. S. Virk, District Judge (Retd.) failed to consider the reply filed by PACL that "*PIPL was having an altogether different*

management and it does not have access to records of PIPL.” Shri R. S. Virk, District Judge (Retd.) failed to understand that PIPL and PACL are two different corporate entities registered separately under the provisions of Companies Act, 1956.

44. The observation of Shri R. S. Virk, District Judge (Retd.) that “*flat in question was constructed by PIPL from the corpus to the tune of Rs. 49,100 crores illegally collected by its principle company viz., PACL from as many as 5,85,40,150 investors spread all over India.*” is without any basis and gravely affects the legal rights of the Applicant.
45. Shri R. S. Virk, District Judge (Retd.) failed to appreciate the fact that there was no order passed against PIPL regarding not to part with or sell or enter into any transaction relating to any land or flat in the year 2011 in the above proceedings. No information / disclosure of whatsoever nature including of any pending litigation in respect of the Scheduled property were given by PIPL to the Applicant at the time of entering into Sale Deed dated 12 December 2011.
46. The Scheduled Property was included in the list of auction properties by the Committee of SEBI, without any notice or

hearing the Applicant. Therefore, the inclusion of the Scheduled Property is not justified in the present facts and circumstances. The Applicant did not have any opportunity of bringing on record the facts and documents evincing its title and position as a *bona fide* purchaser. On the other hand, Shri R. S. Virk, District Judge (Retd.) failed to consider the facts and circumstances and has arrived at an incorrect finding, dismissing the objection of the Applicant to remove the Scheduled Property from the list of PACL's properties available for auction.

47. The Order of Shri R. S. Virk, District Judge (Retd.) is only recommendatory in nature. Such recommendations were made without appreciating the facts in hand as well as the settled law.
48. The very nature of the findings of Shri R. S. Virk, District Judge (Retd.) in the said Order show that the subject matter is intrinsically connected with the above Civil Appeal and therefore, the Applicant humbly prays for its impleadment in the said Appeal.
49. The Applicant has also preferred an Application for setting aside the Order dated 20 January 2021 passed by Shri R. S. Virk, District Judge (Retd.). The Applicant apprehends that, in view of the Order, the Scheduled Property, owned and possessed by the

Applicant, may be auctioned. Hence, has preferred an Application seeking stay on auction / sale / attachment, etc. of the Scheduled Property.

50. In view of the Order passed by Shri R. S. Virk, District Judge (Retd.), the subject property is likely to be sold / auctioned by the Respondent / SEBI. The Applicant ought to be heard before any order of auction / sale of the Scheduled Property is passed by this Hon'ble Court and hence, the Applicant is a necessary party in the instant Appeal. The present Application is being moved to avoid multiplicity of petitions and suits.
51. The present Application is filed *bona fide* and made in the interest of justice, equity and good conscience.

PRAYERS

It is most respectfully prayed that this Hon'ble Court may be pleased to:

- (i) Pass an order to implead the Applicant as a party Respondent in the above proceedings, i.e. Civil Appeal No. 13301 of 2015;
- (ii) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of this case.

**AND FOR THIS ACT OF KINDNESS, YOUR HUMBLE APPLICANT AS
IN DUTY BOUND SHALL EVER PRAY.**

Drawn by:

Mr. Surjendu Sankar Das, Advocate

And Ms. Sakshi Tibrewal, Advocate

Settled by:

Mr. Bhavik G. Lalan,

Advocate, Bombay High Court

FILED ON: 22.02.2021

PLACE: NEW DELHI

FILED THROUGH:



(SURJENDU SANKAR DAS)

ADVOCATE FOR THE APPLICANT

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AFFIDAVIT

I, Ranjit Patel, son of Purshotam Patel, aged about 53 years, residing at 15515, Turtle OAK CT, Houston, Texas (U.S.A.) – 77059, do hereby solemnly affirm and state as under:

1. That I am the Applicant and I am fully conversant with the facts and circumstances of the case therefore, competent to swear this affidavit.
2. That the accompanying Application has been drafted under my instructions and I have read and understood the contents of the same. I state that the contents thereof are true and correct and to the best

of my knowledge and belief, based on records and legal advice received and nothing material has been concealed therefrom.

3. That the copy of the Annexures annexed with the Application are true copies of their respective originals.



DEPONENT

VERIFICATION

I, the abovenamed Deponent, do hereby verify that the contents stated herein above are true to the best of my knowledge. No part of it is false and nothing has been suppressed therefrom.

Verified at Houston, Texas, U.S.A. on this 19 day of February 2021.



DEPONENT