

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. 469

MR No. 18709/16

Applicant : Karampal Singh Pundir

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 property attached bearing MR No. 18709/16 comprised in Khata Nos. 736 and 519, Khasra No. 3195 (area 0.2236 Hectares); Khasra No. 3196 Min (area 0.0349 Hectares); Khasra No. 3197 Kha Min (area 0.0600 Hectares); Khasra No. 3199 Gha Min (area 0.0399 Hectares) totalling 0.3584 Hectares all situated at Mauza Shankarpur Hakumatpur, Pargana Pachwadun, District Dehradun, Uttrakhand with the averments that he is a bona fide purchaser of the above described property for an amount of Rs. 46,00,000/- which comprised Rs. 8,00,000/- paid by DD No. 096524 dated 05/01/2015 issued by Oriental Bank of Commerce, Branch Selaqui, Dehradun and the balance amount of Rs. 38,00,000/- was sent to the vendor viz PACL Ltd through RTGS on 10/03/2015 from A/c No. 12791131002050 of the objector maintained with the aforesaid bank. Original copy of statement of Account issued by the above named bank has been appended to this petition. Subsequent thereto, mutation of this transfer effected vide sale deed no. 2285 dated 06/01/2015 was also statedly duly recorded by the revenue authorities as detailed in column No. 7 of the chart hereunder:-

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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)	PACL Ltd.	KaramPal Singh Pundir S/o Sh. Kadam Singh	2285 06/01/2015	0.3585 Hectare (total)	Rs. 46,00,000/-	2756/15/28.03.2015 Khata No. 736	Oriental Bank of Commerce DD. No. 26524 & RTGS dated 10.03.2015

3. The above named vendor viz PACL on its part had prior to the sale deed in question (No.2285), purchased certain land including the land covered by the above sale deed from the previous owner named Mohammad Iqbal Son of Ibrahim vide sale deed no. 1955/09 dated 21/04/2009.
4. With reference to the objection petition in hand, details of transfers of amounts totalling Rs. 46,00,000/- each, detailed in para 2 above, from Account number 12791131002050 of the objector Karampal Pundir are reflected in the certificate dated 21/09/2016 issued by Oriental Bank of Commerce, Selaqui Branch, Dehradun.
5. Learned counsel for the objector contends that he is a bona fide purchaser, for valuable consideration, of above property already paid for by it to PACL and in the event of these two properties being put to auction, the PACL as ultimate beneficiary of the sale consideration derived there from (which will go to its account) will be a double beneficiary in as much as it has already received aforesaid amounts of sale consideration qua the said property from the objector and any further amount fetched during auction would again be credited in its account, even if for disbursement to its investors. I find merit in this argument.
6. Learned counsel for the objector has argued that above described transfer of land in question by PACL through its authorised agent Rajiv Kumar as per authorisation letter signed by Gurjant Singh Gill, Director, PACL in pursuance of the meeting of Board of Directors of PACL Ltd held on 16/08/2014 (copy attached) 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 to the public 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.

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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, 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.”

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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.)