

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 in civil appeal no. 13301/2015 Subrata Bhattacharya Vs SEBI, and notified in SEBI Press release no. 66 dated 08/12/2017).

File no. 534

MR No. 9958-15

Objector : Mr. Muniyappa s/o Late Chanappa

Argued by : Sh. Sudheer H.M., Advocate, Bangalore (Enrolment No. KAR/428/2005)

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. For some inexplicable reasons best known to the objector herein, this objection petition has been instituted on 08/08/2018 despite the fact that the order of the Supreme Court dated 15/11/2017, quoted in my designation head note above, clearly specified that such like matters were to be dealt with on an urgent basis and I was required to submit my report within four months, to be computed from the date of my joining (which was 06/12/2017). My appointment for dealing with objections/representations in the matter of PACL Ltd was duly notified in SEBI Press release no. 66 dated 08/12/2017. No doubt, my tenure was subsequently extended by the Hon'ble Supreme Court vide orders dated 13/04/2018 and 02/07/2018, yet the objectors herein have no justification in having not filed the objections in hand expeditiously, soon after attachment of the properties in question herein, following the order of the Hon'ble Supreme Court dated 02/02/2016 in Civil appeal No. 13301/2015 titled Subrata Bhattacharya Vs SEBI. The objection petition in hand should in fact have been filed shortly after my taking up this assignment on 06/12/2017.

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3. The objector Muniyappa above named seeks delisting of the land measuring 11 guntas, comprised in Survey No.59/3 and land measuring 10 guntas, comprised in Survey No. 59/2 situated at Village Bychapura, Kasba Hobli, Taluk Devanahalli, District Bangalore (Rural) with the averment that it was purchased by him vide registered sale deed no. 270/1979-80 dated 09/07/1979 **(copy whereof has been produced on record on 27/09/2018)**.
4. (a) The objector Muniyappa above named has however produced on record copy of registered sale deed no. 2046/93-94 dated 23/02/1994 (copy whereof is Annexure B-1 at pages 05-12 of the objection petition) pertaining to land measuring 10 guntas comprised in Survey No. 59/3 situated at Village Bychapura, Kasba Hobli, Taluk Devanahalli, District Bangalore (Rural) statedly executed in his favour by Smt. Lakmamma and six others including three minors **without any indication of having obtained requisite permission of the court under Section 8 of the Hindu Minority and Guardianship Act, 1956** for an amount of Rs.9000/- paid in cash.
- (b) The objector has also produced on record registered rectification deed no. 1402/02-03 dated 26/10/2002 (copy whereof is Annexure B-2 at pages 13-19 of the objection petition) wherein with reference to sale deed no. 270/79-80 dated 09/07/1979 (copy whereof has not been produced on record) it is mentioned by the executant thereof namely Munithayamma, stated adopted son of Late Muniyamma, that the said Smt. Muniyamma had executed the said sale deed dated 09/07/1979 wherein the survey number of the land being sold by her was wrongly mentioned as 95/2 although the correct number of the land thus sold was actually 59/2.
5. (a) The objector Muniyappa has also produced on record registered sale agreement no. 5287/10-11 dated 21/02/2011 (copy whereof is Annexure B-3 at pages 20-37 of the objection petition) executed by him and his family members including 4 minors **without any indication of having obtained requisite permission of the court under Section 8 of the Hindu Minority and Guardianship Act, 1956** through their GPA holder B.R. Madhusudhan acting as such on the strength of registered GPA no. 594/10-11 dated 19/02/2011 (copy whereof has not been produced on record) whereby they had statedly agreed to transfer the land comprised in Survey Nos. 59/2 and 59/3 situated at Village Bychapura, Kasba Hobli, Taluk Devanahalli, District Bangalore (Rural) in favour of M/S PACL India Ltd represented in the said agreement by its authorized representative Venkatesh Mutta, for an amount of Rs.8,00,000/- which was paid simultaneously on behalf of PACL to the above named objector **in cash**.

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(b) The above referred sale agreement no. 5287/10-11 dated 21/02/2011 (copy whereof is Annexure B-3) was however cancelled vide registered cancellation deed no. 5633/10-11 dated 14/03/2011 (copy whereof is Annexure B-4 at pages 38-49 of the objection petition) at which time the entire sale consideration was statedly **refunded in cash.**

6. Subsequent thereto, C. Muniyappa above named along with nine others including four minors, executed another sale agreement no. 5634/10-11 dated 14/03/2011 (**without any indication of having obtained requisite permission of the court under Section 8 of the Hindu Minority and Guardianship Act, 1956**) copy whereof is Annexure B-5 at pages 50-64 of the objection petition, agreeing to sell the above described land comprised in Survey Nos. 59/2 and 59/3 in favour of M/S Ecom Tradeworld Pvt. Ltd for an amount of Rs.8,00,000/- which was paid on behalf of the proposed purchaser above named to the objector above named **in cash.** No further action is claimed or shown to have been taken in furtherance thereof.
7. The objector above named thus claims continued title to the land in question on the strength of sale deed no. 270/1979-80 dated 09/07/1979 (**copy whereof has not been produced on record**).
8. In the absence of any material being available on the file regarding the source of money involved in the purchase of the different parcels of land as under attachment as detailed above, the objector above named cannot be considered to be genuine owner of said lands because the money collected by way of "collective investment scheme" without obtaining requisite permission under Section 11AA of the Securities and Exchange Board of India Act, 1992 from millions of investors on false pretexts of multiplied returns has been misappropriated by PACL for buying property in personal names of its associates, or companies, to the exclusion of the gullible investors and apparently used in the purchases of lands forming the subject matter of the above detailed nine objection petitions. No legal sanctity can therefore be attached to the various sale transactions relied upon by the objectors in the above noted objection petition. I stand fortified in my above view from the observations of the Hon'ble Supreme Court in the case bearing the title S. P. Chengal Varaya Naidu (Dead) By Lrs. Versus Jagannath (Dead) By Lrs. and others reported in (1994) 1 Supreme Court cases 1 wherein it was held that "*a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's*

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loss. It is 'cheating' intended to get an advantage". It was further held therein that:-

"Fraud avoids all judicial acts, ecclesiastical or temporal observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and nonest in the eyes of law. Such a judgment / decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

9. On the above analogy, the question of utilization of misappropriated money in acquiring ownership of the lands detailed above can certainly be looked into by this committee.
10. In view of the foregoing discussion, the objection petition in hand is hereby dismissed.


Date : 27/09/2018


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 : 27/09/2018


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