

**Before Shri R.S. Virk, District Judge (Retd.)
In the matter of PACL Ltd.**

File no. 606

MR Nos.7398/16 & 7399/16

Objectors : Shri Kishore Singh and four others, Rajasthan

Argued by : Shri Aditya Kumar Chaudhary, Advocate [Enrolment No.D/884/97(R)]

Order :

1. (a) 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.

(b) 2nd Status Report (Volume-I) of the Justice (Retd.) R.M. Lodha Committee (in the matter of PACL Ltd) submitted before the Hon'ble Supreme Court, had at page 77 thereof, proposed as under :-

“It would be in the interest of the investors of the Company, that all objections based on documents purportedly executed after 02-02-2016 be scrutinized and then heard and disposed of by a retired Judicial Officer(s) assisted by requisite number of Advocates, appointed by the Committee.”

(c) The aforesaid proposal of committee was accepted by the Hon'ble Supreme Court.

2. (a) Subsequent thereto, I have been appointed by the said committee to hear objections/representations against attachments of various properties in the matter of PACL Ltd which appointment has been duly notified in SEBI Press release no. 66 dated 08/12/2017.

(b) My said appointment is also duly mentioned in the order dated 15/11/2017 (to be read with orders dated 13/04/2018, 02/07/2018 and 07/12/2018) of the Hon'ble Supreme Court in civil appeal no. 13301/2015 Subrata Bhattacharya Vs SEBI.

R.S. Virk

3. The objectors above named seek delisting of the land in question measuring 3.493 hectares as detailed hereunder, from the list of properties shown attached on www.auctionpacl.com :-

- i. Khasra No. 113 (3.01 hectare)
- ii. Khasra No. 111 (0.02 hectare)
- iii. Khasra No. 112 (0.02 hectare)
- iv. Khasra No. 114 (0.02 hectare)
- v. Khasra No. 116 (0.03 hectare)
- vi. Khasra No. 117 (0.20 hectare)
- vii. Khasra No. 118 (0.07 hectare)
- viii. Khasra No. 119 (1.02 hectare)
- ix. Khasra No. 120 (0.19 hectare)
- x. Khasra No. 121 (0.06 hectare)
- xi. Khasra No. 122 (0.21 hectare)
- xii. Khasra No. 123 (0.26 hectare)
- xiii. Khasra No. 124 (0.34 hectare)
- xiv. Khasra No. 125 (0.27 hectare) sale of total land kitta 13

4. It is claimed that the above described land was purchased by the objectors herein vide registered sale deed dated 29/12/2014 from GAD Decent City Developers Pvt. Ltd through its director cum authorised representative/signatory named Sita Ram Kajala for an amount of Rs.1,85,00,000/- in all, which amount was paid through bank transactions as detailed hereunder :-

S. No.	Buyer Name	Bank	Cheque No. & Date	Amount	Encashment Date
1	Om Prakash	Bank of Baroda	0030 & 16/10/2014	Rs.50,00,000/-	28/10/2014
2	Om Prakash	Bank of Baroda	0031 & 21/10/2014	Rs.50,00,000/-	Not specified
3	Vineet Aggarwal	HDFC Branch Bharatpur	075337 & 29/12/2014	Rs.13,00,000/-	Not specified
4	Vinay Kumar Singhal	PNB Branch Bharatpur	446795 & 29/12/2014	Rs.13,00,000/-	12/01/2015
5	Kishore Singh	Axis Bank Branch, Khyatushyamji	038090 & 29/12/2014	Rs.29,50,000/-	12/01/2015
6	Narayan Singh	SBBJ Branch Khyatushyamji	001554 & 29/12/2014	Rs.29,50,000/-	12/01/2015

5. It is contended that at the time of purchase of the above described land, the above named seller had a clear title to the land in question and the objectors were not aware of the

seller having been a sister concern of PACL Ltd and added that in any case, the purchase in question was prior to the order dated 16/02/2016 of Hon'ble Supreme Court (passed in civil appeal no. 13301/2015) in the matter of Subarata Bhattacharya Versus SEBI. It is averred that the objectors came to know only recently regarding the property in question being attached.

6. Pursuant to notice of this objection petition having been issued to PACL at its given email address amarjit.bedi@gmail.com vide my order dated 28/02/2019 for 27/03/2019, it has filed a reply dated 20/03/2019 (which is common to objection petition nos. 605 & 606) wherein it is contended as under :-
 - (a) That the CBI had raided in February, 2014 the office of PACL Ltd at which time title deeds of various properties including those forming the subject matter of the petition in hand had been seized by the CBI and therefore it is not understandable as to how the objectors could have purchased the property in question,
 - (b) SEBI had restricted sale of properties of PACL Ltd and its associate companies/directors vide order dated 22/08/2014,
 - (c) And that :-
 - (i) All the cheque dates and encashment dates are after the date of SEBI's order dated 22/08/2014 which restricted any sale of assets of PACL Limited and its associate companies,
 - (ii) In the payment details one cheque was issued on 21/12/2014 and it was encashed on 20/10/2014 is wrong and impossible to digest,
 - (iii) In another entry date of cheque as 29/12/2014 is mentioned but no encashment date is specified.
7. It may be pointed out at this stage that as per reply bearing the no. PACL/JRMLC/2016-035 dated 21/06/2016 submitted by PACL Ltd through its Director, Gurjant Singh Gill to Shri Rakesh Kumar Singh the then Nodal Officer cum Secretary, Justice (Retd.) R.M. Lodha Committee in the matter of PACL Ltd (in response to his letter no. 90 dated 15/06/2016), the above named vendor GAD Decent City Developers Pvt. Ltd is one of the 639 associates/subsidiaries of PACL Ltd as its name finds mention at Sr. No. 158 of the list attached to the aforesaid reply dated 21/06/2016.
8. It may be highlighted at this stage that the joint sale deed, dated 29/12/2014, executed by GAD Decent City Developers Pvt Ltd in favour of the five objectors herein does not mention as to when, and in what manner, and for how much amount, the land in question was earlier purchased by it from the previous owners before selling the same in favour of the objectors herein vide sale deed dated 29/12/2014 and nor has any copy of the said earlier sale deed been produced on record.

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9. It may be highlighted here that there is no material available on the file of this objection petition that the money utilised by GAD Decent City Developers Pvt. Ltd in earlier purchase of the land in question from the previous owners came out of its personal assets and was not taken out by it from the money illegally collected by PACL Ltd from crores of gullible investors spread all over India.

10. (a) Reference becomes necessary at this stage to the fact that the CBI in file no. 367/2 (decided by me vide order dated 16/05/2018 and uploaded by catalogue No. 211) had mentioned that its Bank Securities & Fraud Cell Branch had, upon conversion of Preliminary Enquiry No. PE/BD1/2013/E/0003 registered an FIR vide No. RC-BDA/2014/E/0004/CBI/BS&FC/ND on 19/02/2014 under sections 120-B r/w 420 IPC in pursuance of order of the Hon'ble Supreme Court of India dated 12/03/2013 passed in Civil Appeal No. 6572 of 2004 in the matter of M/s PGF Ltd Versus Union of India and others against :-

- (i) M/s PGF Ltd through its Managing Director namely
 - (a) Shri Nirmal Singh Bhangoo,
 - (b) And directors namely S/Shri Harchand Singh, Chander Bhushan Dhillon and Prem Seth
- (ii) As well as against M/s PACL Ltd
 - (a) through its Managing Director namely Shri Sukhdev Singh, and
 - (b) Whole time directors namely S/Shri Gurmeet Singh and Subrata Bhattacharya & Additional director namely Shri Gurjant Singh Gill and some unknown others,

(b) It was averred therein before me by the CBI that investigation revealed that the conspiracy is having National and International ramification in as much as directors of M/s PGF and M/s PACL in pursuance of criminal conspiracy with each other and others had illegally collected Rs.45,184 Crores from 5.46 Crore gullible investors and diverted the wrongful gain/fund through Sham Land Developments (11,000 Crore approximately). Further, in pursuance of said conspiracy, thousands of crores were paid illegally to the agents and PACL had also diverted those funds through sham transactions at all India level and also at International level to Dubai, Australia etc.

(c) It was further claimed therein before me that during investigation of the aforesaid case, it had transpired that M/s PACL Ltd had purchased land/properties in the name of itself, its associate companies, its employees and in the name of other individuals, purportedly utilizing the deposits of investors. In order to safeguard the interest of such investors, CBI had seized/secured title deeds/documents relating to such properties acquired by M/s PACL Ltd and its associates.

(d) It was also claimed inter-alia therein before me that since the properties in question seem to have been acquired from funds belonging to the general public under various schemes of M/s PACL Ltd, in order to verify the genuineness of these property details,

CBI, letters under the signature of Joint Director, BS&FZ were sent to the Revenue Heads (Secretary – Revenue) of 6 states namely Delhi, Haryana, Punjab, MP, Rajasthan & Maharashtra, along with the details of property documents seized by CBI, with a request for the issuance of necessary directions to the Land Revenue Offices and Sub-Registrar Offices under them that a prior NOC from competent Court/CBI may kindly be obtained before allowing any further alienation/transfer of said land in future.

11. Reference may in the context of foregoing discussion be made here to 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 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.”

12. On the same analogy, purchase of property from ill-gotten money by GAD Decent City Developers Pvt. Ltd and further transfer by it through registered deed of transfer of title in favour of the objectors above named as detailed in para 3 of this order above cannot be treated as genuine transfer because the money involved in purchase of the land in question by GAD Decent City Developers Pvt. Ltd is to be deemed to be of the investors of PACL Ltd for which reason the transfer of the land in question in favour of the objectors herein cannot be considered to be sacrosanct and beyond scrutiny in appropriate proceedings initiated in accordance with law.
13. At this stage, it is considered appropriate to reproduce the directions given in para 38 (d) of the order dated 22/08/2014 passed by Mr. Prashant Saran, Whole Time Member, Securities and Exchange Board of India which reads as under :-
- d. “PACL Limited, its promoters and directors including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya, shall not alienate or dispose off or sell any of the assets of PACL Limited except for the purpose of making refunds to its investors as directed above.”

14. (a) Learned counsel for the objector with reference to para 38 (d) reproduced above has argued that the restraint order was not absolute in as much as it permitted PACL to alienate or disposed off or sell any of its assets for the purpose of making refunds to its investors. He has added that the payments totalling Rs.15,00,000/- as detailed in para 4 of this order above GAD Decent City Developers Pvt. Ltd, which is an associates/subsidiary of PACL, were all made through bank transactions which were obviously for making refunds by PACL to its investors but I find no merit in this contention because there is no material whatsoever available to indicate even remotely that the aforesaid amount of Rs.15,00,000/- was accepted as the sale consideration by the above named seller for payment to investors of PACL. Resultantly the objectors herein cannot be treated to be bonafide purchasers of the land in question because the purchase of land involved herein is of the year 2014, prior to which year SEBI had issued notices from the year 1998 onwards to PACL and the matter had ultimately reached the Hon'ble Supreme Court as detailed in para 11 of this order above which further reinforces my conclusion that the sale by GAD Decent City Developers Pvt. Ltd of the land in question and purchase thereof from it by the objectors herein is not a bonafide transaction. Consequently, further purchase of said land by the objectors herein through registered sale deeds detailed in para 3 of this order above from GAD Decent City Developers Pvt. Ltd cannot place it on a higher pedestal than GAD Decent City Developers Pvt. Ltd under whom they claim title thereto.

(b) It is argued inter-alia that the entire sale consideration having been paid through bank transactions establishes that the objectors are bonafide purchasers but this contention is being mentioned to be rejected outright because sale of the property in question by PACL through its associates/subsidiary GAD Decent City Developers Pvt. Ltd in favour of the objectors herein was in clear violation of the above referred order dated 22/08/2014 passed by Mr. Prashant Saran, Whole Time Member, Securities and Exchange Board of India in exercise of the powers conferred upon him under Section 19 of the Securities and Exchange Board of India Act, 1992, more so when all the six bank transactions in question as relied upon by the objectors herein are subsequent to the restraint order which was effective from 22/08/2014 onwards.

(c) It is also argued that the sale deed qua the land in question was executed by GAD Decent City Developers Pvt. Ltd on the basis of certified copies of sale deeds of the same land earlier executed by the previous owners in favour of GAD Decent City Developers Pvt. Ltd and therefore it is evident that the objectors have been cheated by GAD Decent City Developers Pvt. Ltd but I am unable to accept this contention also because it was for the objector to insist for delivery of the original sale deeds instead of accepting certified copies instead of original sale deeds. In fact, the vendor viz., GAD

Decent City Developers Pvt. Ltd could not have delivered the original sale deeds because the same were in the possession of CBI pursuant to seizure thereof during raids at the premises of PACL Ltd in February 2014.

(d) It is vehemently argued on behalf of the objector the purchase of land in question was duly registered by the Tehsildar concerned meaning thereby that there was no cloud on the title of the vendor viz., GAD Decent City Developers Pvt. Ltd. I am unable to accept this contention because subsequent to the order dated 22/08/2014 passed by Mr. Prashant Saran, Whole Time Member, Securities and Exchange Board of India in exercise of the powers conferred upon him under Section 19 of the Securities and Exchange Board of India Act, 1992, the Hon'ble Supreme Court of India also vide order dated 25/07/2016 had restrained PACL Ltd, including its associates companies, from alienating/transferring any of its properties which order was specifically brought to the notice of the registration authorities all over India by the Recovery Officer, SEBI vide his order dated 07/09/2016 and therefore the objector cannot be heard to contend that the registration of the sale deed pertaining to the land in question having been affected by the Tehsildar concerned, there was no cloud on the title of the vendor above named.

(e) Lastly, it was argued that the purchase in question was prior to the order dated 16/02/2016 of Hon'ble Supreme Court (passed in civil appeal no. 13301/2015) in the matter of Subarata Bhattacharya Versus SEBI for which reason the purchase of the land in question by the objectors herein cannot be invalidated but this contention is being mentioned only to be rejected outright because the order of the Hon'ble Supreme Court (which is infact dated 02/02/2016) pertains to constitution of Justice (Retd.) R.M. Lodha Committee in the matter of PACL Ltd authorising it to sell the lands purchased by PACL whereas the stay order passed by the Hon'ble Supreme Court therein is dated 25/07/2016 (which as mentioned above was preceded by a valid stay order dated 22/08/2014 passed by Mr. Prashant Saran, Whole Time Member, Securities and Exchange Board of India in exercise of the powers conferred upon him under Section 19 of the Securities and Exchange Board of India Act, 1992).

15. In view of the foregoing discussion, the objection petition in hand is liable to be and is hereby dismissed as having no merit. File be consigned to records.

Date : 22/04/2019


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 : 22/04/2019



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