

**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. 470

MR Nos. 4329/14 and 4295/14

Applicant : Shubham 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. 4329/14 comprised in Khata No. 216, Khasra No. 3192 Min (area 0.1053 Hectares) situated at Mauza Shankarpur Hakumatpur, Pargana Pachwadun, District Dehradun, Uttrakhand statedly purchased vide sale deed no. 1383 dated 07/01/2015 from Rajiv S/o Kashiram for an amount of Rs. 24,22,000/- out of which Rs. 3,00,000/- was paid vide DD No. 096553 dated 05/01/2015 and the balance amount of Rs. 21,22,000/- was paid through Cheque No.022354 dated 10/04/2015, both drawn on Oriental Bank of Commerce, Branch Selaqui, Dehradun.

It is further averred that the objector above named had also purchased property bearing MR No. 4295/14 comprised in Khata No. 216, Khasra No. 3192 Min (area 0.1052 Hectares) situated at Mauza Shankarpur Hakumatpur, Pargana Pachwadun, District Dehradun, Uttrakhand vide sale deed no.1384 dated 07/01/2015 from Shivraj Veerpal S/o Sh. Kishan Lal for an amount of Rs. 24,20,000/- out of which Rs. 3,00,000/- was paid by DD No. 096554 dated 05/01/2015 issued by Oriental Bank of Commerce, Branch Selaqui, Dehradun and the balance amount of Rs. 21,20,000/- was

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sent to the vendor viz Shivraj Veerpal through cheque no. 022353 dated 10/04/2015 from A/c No. 12792191005029 of the objector maintained with the aforesaid bank. Subsequent thereto, mutations of these transfers effected vide sale deed no. 1383 dated 07/01/2015 mutation nos. 5385 and 5386, both dated 15/06/06/2015, were duly recorded by the revenue authorities as detailed in column No. 7 of the chart hereunder:-

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)	Rajiv Kumar s/o Sh. Kashiram	Subham Pundir s/o Karampal Singh Pundir	1383 07/01/2015	0.1053 Hectare	Rs. 24,22,000/-	5385/15/06.06.2015 Khata No. 216	Oriental Bank of Commerce DD. No. 096553 & Cheque No. 022354 dated 10.04.2015
(ii)	Shiv Raj Virpal s/o Sh. Kishan Lal	Subham Pundir s/o Karampal Singh Pundir	1384 07/01/2015	0.1052 Hectare	Rs. 24,20,000/-	5386/15/06.06.2015 Khata No. 216	Oriental Bank of Commerce DD. No. 096554 & Cheque No. 022353 dated 10.04.2015

3. (i) The above named vendor viz Rajiv on his part had, prior to the sale deed in question (No.1383), purchased the land covered by the above sale deed from the previous owner named Krishan Chand vide sale deed no. 5348/12 dated 09/08/2012.

(ii) Similarly, the other vendor Shivraj Veerpal on his part had, prior to the sale deed in question (No.1384), purchased the land covered by the above sale deed from the previous owner named Krishan Chand vide sale deed no. 5347/12 dated 09/08/2012.

4. With reference to the objection petition in hand, details of transfers of amounts of Rs.3,00,000/- each, detailed in para 2 above, from Account number 12792191005029 of the objector Shubham Pundir are reflected in the certificate dated 21/09/2016 issued by Oriental Bank of Commerce, Selaqui Branch, Dehradun. The objector above named has submitted an affidavit dated 25/06/2018, sworn before Kumari

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Urmila Bhatia, Advocate & Notary, Dehradun, to the effect that apart from amounts of Rs. 3,00,000/- to his vendors as detailed above, he has also handed over DDs for the balance amount to his vendors Rajiv s/o Kashiram and Shivraj Veerpal out of whom Rajiv above named had encashed the said DD whereas Shivraj Veerpal had not done so.

5. Learned counsel for the objector contends that he is a bona fide purchaser, for valuable consideration, of above properties already paid for by it in respect of the transactions in question including the sale deed detailed at Sr. No. (ii) of the chart in para 2 of this order above because in the face of registration of the sale deed in respect of the said transactions, the above named Shivraj Veerpal cannot, even if he wanted to avoid the said sale, could not do so and could only claim charge on the said property for the unpaid part of the sale price but the sale transaction cannot be considered to be incomplete in view of observations of the Hon'ble Supreme Court in the case law discussed in para 6 below of this order. I find merit in this argument.
6. 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

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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.”

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.

7. 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.)