(2006) 09 GUJ CK 0054

In the Gujarat High Court

Case No : Company Application No. 125 of 2005 in Official Liqudator Report No. 58 of 2003

Aakar Developers APPELLANT

Vs

O.L of Yamuna Mills Ltd. and Others RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 126
Constitution of India, 1950 — Article 226

Citation : (2006) 09 GUJ CK 0054

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : Swati Soparkar, for the Appellant; Official Liquidator for Respondent 1, H.M. Bhagat, for Respondent 3 and D.S. Vasavada, for Respondent 4, for the Respondent

Judgement

C.K. Buch, J.—The applicant-M/s. Aakar Developers has taken out Judges'' Summons on number reliefs as prayed for in it saying that the order dated 02nd September, 2003 passed by the Company Court (Coram : C.K. Buch, J) in O.L. Report No. 58 of 2003 may be reviewed and other appropriate reliefs as prayed for in the Judges'' Summons may be granted. The Court would like to reproduce the reliefs as prayed for in the Judges'' Summons taken out by the applicant, which are as under:

(a) To review the order dated 2.9.2003 passed by the Hon''ble Company Court (Coram : C.K. Buch, J) in OLR 58 of 2003 and to permit extension of time to the Applicant for the payment of the last two instalments, being the amount remaining outstanding after deducting the reliefs asked for in prayers(e) and (f) from the remaining sale consideration of Rs. 1,25,50,000/-.

(b) To quash and set aside notice issued by the Official Liquidator, dated 23.3.2005.

(c) To direct the Official Liquidator to clarify and give the exact area, length, depth, nature, title and tenure of the Land purchased by the Applicant.

(d) To direct the Official Liquidator to get the requisite permissions from the concerned authorities for the zone conversion of the land sought by the Applicant, from "non obnoxious non hazardous zone" to "residential zone", and also to get the said area converted from "Others" to "Gamtal/Nucleous" u/s 126 of the Bombay Land Revenue Code.

(e) To direct the Official Liquidator to refund to the applicant, or deduct from the remaining sale consideration, the proportionate amount of money, equivalent to the difference in the area mentioned in Clause 4 of the Terms and Conditions given by the O.L. Being 4,84,634 sq.ft. (i.e.45023.973 sq.mt.) and that which it actually got possession of, being 4,42,413.80 sq.ft. (i.e.41101.5888 sq.mt.).

(f) To direct the Official Liquidator to refund to the Applicant, or deduct from the remaining sale consideration, the loss caused to the Applicant due to the change in area location, an amount equal to the difference in the value of land, as per the land position provided in the map supplied with the OLR 58/2003 and the actual land position made available to the Applicant after excluding the extra land taken by the ULC, on the basis of Theory of Valuation.

2. The submissions of the applicant-Company is that they have purchased a parcel of land described in the advertisement published in proceedings of O.L. Report No. 58 of 2003 i.e. Company''s immovable properties such as land and building structure situated at Survey No. 116 to 118, 131, 935, 958, 962 to 964 admeasuring approximately 4,84,634 sq.ft. as a bidder of Yamuna Mills Ltd. (company in liquidation) and the same is given along with the terms and conditions attached with the tender advertisement. Along with the said terms and conditions, the Official Liquidator also had attached a map of the land to be sold under O.L. Report. A copy of the tender condition Annexure-A and a copy of the map Annexure-B are considered by him.

3. The applicant was declared the highest bidder and vide order dated 02nd September, 2003, the Company Court confirmed the sale in favour of the applicant on the terms and conditions decided by the sale deed. These conditions are at Annexure-C. After considering the say of Mr. D.H. Vasavada, learned Counsel appearing for the opponent-Majoor Mahajan Sangh, and his accent qua the price offered by the applicant, the applicant was declared successful bidder against consideration of Rs. 4.51 crores. The sale was confirmed on conditions of sale mentioned in the Schedule attached with the order of the Court. The say of the applicant is as per Clause 4 of the terms and conditions, the area of the land and building was 4,84,634 sq.ft. approximately, if mentioned in sq.mtr. it would come to about 45023.973 sq.mtr. The applicant on confirmation of sale when tried to get the land measured and ascertained about the land available of Yamuna mills in the background of the map Annexure-B, the area sold to the applicant was found to be of 4,42,431.80 sq.ft. and the land actually vested and transferred to the State of Gujarat under the provisions of Urban Land Ceiling

Act, if considered, the land available to the applicant was less by 3922.385 sq.mtr. It is true that the property sold is strictly on "as is, where is an whatever is there" basis. But it was neither possible for the applicant to get the land measured physically nor the Revenue Authorities were cooperating with the applicant even after confirmation of sale under the pretext that titles were not with the applicant. The applicant approached the Official Liquidator time and again for the grievances addressing letters to the Official Liquidator on various occasions. The Official Liquidator otherwise was under obligation to give all necessary guidance and help to the successful bidder in getting necessary permission from the concerned revenue and local authorities because it was necessary for the applicant to approach these authorities to get permission for conversion of these lands from industrial to residential and/or commercial zone. The applicant was entitled to remove the superstructure after paying 200 lakhs and the Official Liquidator was supposed to give necessary permission to approach the authorities to confer the land from one zone to other. Undisputedly, the applicant has paid Rs. 3.26 crores uptill now.

4. Though there was no help or guidance fro the Official Liquidator, it is stated in the affidavit filed in support of the Judges'' Summons, the applicant has said that on the basis of the map of the land, the applicant itself got the plan of the land approved by Vadodara Municipal Corporation vide permission dated 21st May, 2004. But the applicant could not start construction as per the said plan because it was informed that the part of the said land had vested as excess vacant land in the State of Gujarat. The applicant, therefore, has applied for copy of the map of the land as per its record. The say of the applicant is that the area of the purchased land as originally shown in the map supplied with the O.L. Report No. 58 of 2003 had a larger breadth parallel to the right and narrow length parallel to the inner land; but later as per the map supplied by the authorities, the applicant found that the area of the land available to the applicant had lesser breadth parallel to the road and more land parallel to the inner land and it touched the original track from behind. It is contended that not only the area of the land is much lesser in terms of size but even in terms of value. The applicant had approached thereafter to Official Liquidator informing him about grievance vide letter dated 04th October, 2004 and thereafter, the applicant got a new plan sanctioned from the Vadodara Municipal Corporation on 13th January, 2005. The Official Liquidator was under obligation to cooperative with the applicant so that the issues with the Revenue Authorities including Collector can be resolved amicably and the applicant may not have to suffer at every stage of revenue proceedings. As the Official Liquidator was not cooperative, the applicant addressed a letter to the City Survey Superintendent asking for actual measurement of the land of the area of various Survey Numbers mentioned in the advertisement. But the City Survey Superintendent refused to give measurement on the ground that the name of the applicant is not reflected in the property card. When the applicant started expressing grievance and so pointed out difficulties, had received a notice from the Official Liquidator dated 21st

March, 2005 asking the applicant to pay up the remaining instalments. The applicant was asked to pay the balance amount. The applicant requested to consider the legitimate demands. It is averred in the affidavit that but for the grievances, "on 06th April, 2005, the representatives of Official Liquidator visited the site for taking back possession of the land in question. However, at the written request of the applicant vide its letter dated 06th April, 2005, the representatives of the Official Liquidator have not taken possession. The applicant had therefore prayed for interim relief. Till date the possession of the land is with the applicant under the ad-interim relief. There is no dispute interse between the parties on this aspect.

5. The Official Liquidator has resisted the Judges'' Summons by way of filing affidavit dated 01st August, 2005. It is the say of the opponent No. 1 that the allegations made in the affidavit filed in respect of the Judges'' Summons are false. The applicant being the bidder was under obligation to inquire and satisfy himself about exact area of land portion of the above mentioned Survey Numbers. It is argued by Mr. Soparkar that the description of the land under auction is misleading and the Survey Number actually not owned and occupied by the Yamuna Mills Ltd. is shown as property of Yamuna Mills Ltd. and the area which had gone to the Government or taken by the Vadodara Municipal Corporation much prior to the date of auction, is shown as if this parcel of land that had not remained with Official Liquidator of Shri Yamuna Mills Ltd. are shown in the tender notice and in Clause 4 of the said notice while describing the land and property under auction. However, the Official Liquidator has said in paragraph No. 11 of his affidavit that the applicant has no case. It suffers from bona fide and it is based on false and misleading facts without any substance. In fact, the dispute is raised time and again when the applicant was asked to pay the balance sale consideration and he has defaulted in making payment. It is submitted by the Official Liquidator in his report at page No. 90 of the application that:

A. That pending hearing and final disposal of the Company Application No. 125 of 2005, this Hon''ble Court may be pleased to direct the applicant EITHER to hand over possession of the Land back to the Official Liquidator forthwith, in terms of Clause 9 of the terms and conditions of the sale forming part of the orders dated 02.09.2003.

OR

In terms of Clause 3 of the Terms and Conditions of the Sale forming part of the order dated 02.09.2003, to pay to the Official Liquidator forthwith, the balance sale consideration of Rs. 1,25,50,000/- together with interest @ 18% thereon with effect from 01.10.2004 being the date from where the default in payment started.

6. The applicant thereafter has filed rejoinder affidavit in reply to the said O.L. Report and the applicant has clarified that the main purpose of filing of present

application is to rectify the record as per the location and to remove variation in the title and to get the actual area and measurement as per the exact site situation of the land in question and to get clear title of the said property along with other prayers as prayed for in the application. The Official Liquidator made a grave mistake in giving Revenue Survey Number and the area, measurement and the location of the said land and because of the same, he had to ratify the public advertisement given in the newspaper. The first advertisement was published on 27.3.2000 for consolidated sale of land and building as well as plants and machineries, which could not be materialised. The second advertisement dated 01st February, 2002 was published by the Official Liquidator for auction of only land in question. The proposed area of the land under auction was 838350 sq.ft. In the Official Liquidator''s file the said land was bearing Survey Nos. 116, 118, 131, 935, 958, 962 and 964. In response to the said advertisement, the applicant deposited Rs. 50 lakhs and participated in the auction. It was discovered that the area and measurement of the land in the first and second auction were incorrect. The State had acquired land admeasuring 31189 sq.mtrs. under the Urban Land Ceiling Act and that area was required to be deducted from the total area of the land. The Sale Committee, therefore, decided to give new advertisement and thereafter only, the land was to be auctioned after deducting the area that had vested with the State under the Urban Land Ceiling Act. Therefore, the third advertisements came to published on 24th June, 2003. Again wrong Revenue Survey Numbers were mentioned and the area shown in the advertisement was again found incorrect at the time of taking actual measurement. It is very clear from the record that the applicant has attempted to get exact Revenue Survey Numbers of the land purchased by him in the bid and to ascertain the measurement of the land. But he could not succeeded for want of co-operation from the concerned authorities. After paying an amount of Rs. 200 lakhs, the applicant issued notices to the Official Liquidator stating that the discrepancies in the areas, measurements, location and variation in the title, etc. should be corrected and therefore, the applicant has expressed its inability to pay any further amount. However, the applicant has initially paid an amount of Rs. 3.26 crores to the Official Liquidator. The applicant was constrained to file a writ petition being Special Civil Application No. 11934 of 2004 before this Court and the applicant was asked to approach the Official Liquidator for necessary permission. According to the applicant, this is a case of material suppression facts by the Official Liquidator not only about the actual area available for sale described in Clause-4 of the tender advertisement and the map attached to it, but also about one litigation i.e. Civil Suit filed by the Vadodara Municipal Corporation for recovery of an amount of Rs. 1.88 crores against the erstwhile company. If a litigation is pending for recovery of amount, that could have been mentioned in the third advertisement. The applicant has denied the other allegations made in the report filed by the Official Liquidator.

7. Only with a view to resolve the basic dispute and other relevant issues raised by the Official Liquidator, the Court passed an order on 12th December, 2005

because the Court was intimated that on the day of auction, the land was nowhere known or otherwise identifiable on the strength of the Revenue Survey Number and the land owned by Shri Yamuna Mills Ltd. (in liquidation) has been given City Survey Numbers. Before fixing the upset price of the land required to be auctioned, an approved valuer obviously was consulted and in that background, the order dated 12th December, 2005 has been passed. I would like to reproduce the said order for the sake of brevity and convenience as under:

1. The Official Liquidator is directed to remind the valuer about the request extended by him to ascertain the correct City Survey Number of the property in question at the earliest and he shall also be asked to accede to the request at the earliest, preferably within a period of one week.

2. Meanwhile, the Official Liquidator shall also see that the City Survey Superintendent of Vadodara City is contacted and he shall also be asked to furnish the details of the City Survey Numbers of the property. The City Survey Superintendent being a Revenue Officer, shall be provided with the details of the property sold and the location. The Member of the Sale Committee, Majoor Mahajan Mandal may also simultaneously pursue the Superintendent on the strength of the letter to be addressed by the Official Liquidator.

The matter is adjourned to 26th December, 2005.

8. On 26th December, 2005, the details as to various Survey Numbers referred to in the present matter were tendered before the Court for perusal and after going through the documents, the Court found that Mr. Vasavada appearing for the respondent-Majoor Mahajan Sangh, Vadodara requires to be heard along with the learned Counsel appearing for the applicant. I have considered one letter tendered by Mr. Vasavada on 30th January, 2006 received by him from the member of the Sale Committee (page No. 142). A copy of the said letter was given to the Official Liquidator and also to the counsel appearing for the applicant. In the background of relief ''C'' prayed for in the Judges'' Summons, the applicant as well as the opponent No. 4-Secretary, Majoor Mahajan Sangh, Vadodara produced one map and both of them have admitted to one aspect before the Court that on amalgamation of certain Survey Numbers one number was cared out and the same was given Survey No. 114. The Official Liquidator, therefore, was directed to clarify the details about the amalgamation of the Survey Numbers and the exact area showing the length and width of the land bearing Survey No. 114 and he was asked to bring details before this Court including the details of the title and the tenure of the land sold to the applicant. Unless the correct description is not made in the sale deed, the title of the purchaser would remain confused and the same cannot get clarity and the parties were asked to take further steps vide order dated 22nd February, 2006. The Official Liquidator thereafter submitted a detailed report which throws sufficient light at least on the Survey Numbers and measurement part of the land of erstwhile Shri Yamuna Mills Ltd. I would like to reproduce the relevant part of the said report whereby it is submitted that:

... As per Valuation Report dated August, 1998 submitted by R.N. Consultancy Services, A Govt. Approved Valuer, the total area of the Land belonging to the Company is 8,38,530 Sq.Feet comprising Survey No. 114, 116, 117, 118, 129, 131, 935, 958, 962, 963, 964 and 966. That, out of the aforesaid area of 8,38,530 Sq.Feet of Land 32,890 Sq.Metre of the Land (32,890 x 10.76 = 3,53,896 Sq.Feet) was acquired by Government of Gujarat under ULC Act, vide Gazette Notification dated 15.10.1987. That, the description of Land acquired by the Government of Gujarat as appearing in the Gujarat Government Gazette dated 15.10.1987 is as under:

Sr. No. Survey Nos. Area Sq. Metres 01 142 & 145 between compound wall. 284.00 02 114 paiki 31,189.05 03 129 Railway siding 405.00 04 Bin Number siding 405.00 05 966 siding 202.00 06 Bin Number siding 405.00 --------- Total 32,890.05 --------- That, therefore as per decision taken by the Sale Committee in its meeting held on 21.03.2003 4,84,634 Sq.Feet of Land and Building Superstructure situated at Survey No. 116, 117, 118, 131, 935, 958, 962, 963 and 964 were put to sale ....

xxx xxx xxx 3. That, therefore since 3,53,896 Sq.Feet of Land is acquired by the Government of Gujarat under ULC Act, out of total area of 8,38,530 Sq.Feet of Land, the remaining area being 4,84,634 Sq.Feet (838,530-353,896 = 4,84,634) with aforesaid description of Land i.e. Survey No. etc., has been sold to the applicant.

4. That, however it reveals that certain survey nos., are amalgamated into Revenue Survey No. 114. That, the Official Liquidator further most respectfully submits that the letter of response submitted by the Learned Advocate Shri D.S. Vasavada on the records on 26.12.2005 reveal that as per Revenue/Land Records an area of 3,35,718 Sq.Feet was acquired by Government of Gujarat under ULC Act, out of 8,23,288 Sq.Feet of Land belonging to the Company in Liquidation leaving the area of 4,87,570 Sq.Feet with the Company. But this position does not seem to be correct. The Total area of Land belonging to the Company was 8,38,530 Sq.Feet out of which 3,53,896 Sq.Feet is acquired by the Government of Gujarat under ULC Act, as aforesaid and therefore the correct area left out with the company is 4,84,634 Sq.Feet. That, in this connection it is further observed that 1,039 Sq.Metres of Land i.e. 11,180 Sq.Feet also appears of have been acquired by the Baroda Municipal Corporation for Road Widening. That, therefore the net area of Land available to the purchaser would be 4,84,634-11,180= 4,73,454 Sq.Feet.

That so far as details furnished by Asstt.,/Junior Town Planner Vadodara Urban Development Authority vide his letters Nos. 6116 and 6117 both dated 17.01.2006 and the Map attached therewith are concerned, it is revealed from the aforesaid documents that as per revised development plan effective from 26.11.1996 the Land at Revenue Survey No. 114 + (117/1 + 117/2 + 118 + 132 + 958 + 959 + 961 + 963 + 964 + 106) and Revenue Survey No. 962 are in the non obnoxious and non hazardous industrial zone as per revised development plan in force as sanctioned by the Government of Gujarat under Gujarat Town Planning and Urban Development Act. That, however the claim of the applicant that he has got possession of Land of only 4,42,413.80 Sq.Feet i.e. less by 42,221 Sq.Feet is not correct. That, the exact correct net area of Land available to the applicant as per details furnished in Para 3 and 4 of this Report is 4,73,454 Sq.Feet, which is falling short by 11,180 sq.ft. only due to acquisition of 11,180 Sq.Feet of Land by Baroda Municipal Corporation for Road Widening.

9. In response of the report submitted by the Official Liquidator and other facts placed by the applicant before the Court, the respondent No. 4-Majoor Mahajan Sangh tendered one reply affidavit through Mr. D.H. Vasavada. After hearing the learned senior counsel Mr. Soparkar on 17th March, 2006, the Court found that even after filing affidavit by the respondent No. 4, there is still confusion and the actual City Survey Numbers covered under the Area available for executing actual Conveyance Deed by the Official Liquidator of Shri Yamuna Mills. As the parties had agreed that some exercise if not be made carried out. So on the basis of the suggestion made by the learned senior counsel appearing for the applicant Mr. Soparkar, the Court passed further order on 17th March, 2006 and directed the Official Liquidator that:

3. The Officer Liquidator, therefore, is now directed to approach the City Survey Superintendent of Vadodara District with a copy of this order. The City Survey Superintendent be apprised of the nature of controversy between the parties by the Official Liquidator and if need be, a formal application may also be made to the concerned officer to carry out joint measurement of the land of Yamuna Mill situated at Vadodara. The City Survey Superintendent shall carry out the measurement either himself or through any competent subordinate officer, who is enough experienced in measuring the land having complex shape. This measurement shall be carried out by the said officer in presence of the Official Liquidator or the officer authorized by him, and also in presence of the representatives of the respondent No. 4-Majoor Mahajan Sangh as well as applicant-M/s. Aakar Developers. The applicant and respondent No. 4 are entitled to take help of any person who is conversant with measurement and his assistance can be taken by the City Survey Superintendent, Vadodara City. A detailed Rojnama be prepared on the spot in presence of the parties and original Rojnama be kept by the City Survey Superintendent himself and in turn, the same shall be submitted before this Court through the Official Liquidator and a map also be prepared in the office of the City Survey Superintendent. This Court be provided with the original documents along with four copies so that the parties after referring to the copy of Rojnama as well as map can make further submissions on the issue which has been brought before this Court taking out Judge''s Summons by the applicant.

4. It is necessary to clarify that the said report shall mention the correct City Survey Numbers of the land of Yamuna Mill in relation of the land for which the Conveyance Deed is required to be executed.

10. The Official Liquidator was permitted to spend reasonable amount for the work entrusted. In compliance of the order passed by the Court, a joint measurement is carried out. The map along with the remarks made by the City Survey Superintendent is available on record. I have considered the same. After the measurement exercise undertaken through the Official Liquidator, one affidavit has been submitted by the application on 07th April, 2006 of Shri Ashokbhai Ramchandra Srivastava and one by Bachubhai Patel on behalf of the respondent no. 4. Two other affidavits on behalf the applicant are also there on 01st May, 2006. Out of these two affidavits, one is in the nature of rejoinder in reply tot he reply of respondent No. 4 to the additional affidavit.

11. It is very clear from the entire bunch of papers that there was nothing even indirectly possible to say that actually what area and which exact parcel of land bearing which Revenue Survey Number was to be auctioned. It is true that on the date of publication of advertisement, the land of Shri Yamuna Mills Ltd. (in liquidation) had taken a different shape and was identifiable by Survey Number No. 114 or by City Survey Numbers, areas and shape of the land had also changed. After deduction and reduction of the area on account of implication of the Urban Land Ceiling Act and road widening exercise undertaken by the Vadodara Municipal Corporation under a Town Planning Scheme, the Official Liquidator and the Sale Committee ought to have got the land measured with the help of expert in the field or by Revenue City Survey Superintendent so that the legal and valid title can be conferred to the purchaser.

12. In the background of the stand taken by the respondent No. 4-Mandal in the affidavit, the Court had raised a pointed query as to whether the parties are in agreement to carry out a joint survey and to draw a panchnama through the City Survey Superintendent of Vadodara in respect of the property of the erstwhile Yamuna Mills Ltd. (in liquidation) and thereafter, the Court passed one order on 17th March, 2006. The Court is aware that the basic dispute raised by the respondent No. 4-Mandal is that this Court cannot exercise jurisdiction of review because the order passed by the Court earlier is clear and there is no either ambiguity or any error which is apparent on the face of it and the applicant cannot insist that its Judge''s Summons has been taken out to get a substantive relief beyond the scope of mere review. Undisputedly, one of the revenue Survey Numbers has been erroneously shown in the tender notice as well as in the relief granted. It is also not a matter of dispute that the land put under sale was shown to be approximately 4,84,634 sq.ft. i.e. about 45,023.973 sq.mtrs. So the difference of 1000 metres here or there can be ignored and the applicant can be said that there is no strength in is submission and he ought to have at least assessed the area approximately put under auction prior to obtaining the final orders from the Court. When the Official Liquidator is supposed to confer a valid title of the land admeasuring approximately 45,023.973 sq.mtrs. of land of Survey Numbers shown in the notice and the orders passed by the Court, then at least he should be able to specify the area along with the boundary marks to the applicant, otherwise the purchaser would not be able to develop the land

purchased. Each authority including the Local Self Government would ask for valid title and perfection of title unless the same is conferred every inch as shown in the order of the Court and handed over to the purchaser, he shall have to face number of legal as well as practical hurdles. So because of any error either committed in public notice or pointing out Survey Numbers, if the area put under auction is found erroneous qua actual parcel of land available for which a valid deed can be executed, obviously, shall have to be resolved and that can be done by this Court only.

13. The Bench dealing with Company matter decided that the Judge''s Summons taken out by the applicant be placed before the Bench that has passed the final order by carving out conditions which are reflected in the order. Ultimately, the matter was placed before the Hon''ble the Chief Justice and now the Hon''ble the Chief Justice has ordered that the present matter be placed before this Bench. So irrespective of the nature of relief prayed for in the Judge''s Summons, the Court shall have to resolve the dispute which has been brought before this Court by the parties. When this Court is asked to resolve the dispute by reviewing the earlier order, the Court at least can examine whether it is legally possible for this Court to redress the intrinsic dispute between the parties by exercising powers vested with the Court under review jurisdiction. The power to review is not an inherent power and it is conferred by law either specifically or by necessary implications. In the present case, the review is sought for by the applicant by necessary implications. There is no element of negligence or indifferent attitude on the part of the applicant found on facts of the present case. The proceedings before the Company Court are summary proceedings and the Company Court can exercise such power of review in order to prevent miscarriage of justice or to correct grave or palpable error. I agree that such power looks ex-facie plenary but should not be exercised as unlimited and the present applicant has not prayed anything which can be granted only in exercise of inherent plenary power. Here I would like to quote the observations made by the Apex Court in the case of Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, whereby the Apex Court has observed that:

23. It may therefore be taken as settled that a writ of ''certiorari'' could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to the matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record ? Learned Counsel on either side were enable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.

Mr. Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. In Batuk K. Vyas Vs. Surat Borough Municipality and Others, that no error could be said to be apparent on the face of the record if it was not self-evident, and it if required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.

14. It is true that in the above cited decision, the Apex Court was dealing with a case arising out of a petition filed under Article 226 of the Constitution of India but the ratio is that when the Court finds that there is a scope of miscarriage of justice but on account of the tenure of the order, or language of the order or the figures shown in the order, or the error can be termed as a grave or palpable error, then the same can be corrected and should be corrected. A party should not be compelled to go to higher forum and to obtain an order of remand so that the very Court can pass the correct order, practically of same or similar nature with necessary clarification. I am not in agreement with the say of Mr. Vasavada that the said decision cited by him would be applicable in the present proceedings in stricto senso.

15. Undisputedly, the applicant can be said to be a person aggrieved by the confusion that has cropped up. Actually the area and the Survey Numbers were not within the knowledge either of the Official Liquidator or the respondent No. 4-Mandal when the property was put under auction, otherwise they could have drawn the attention of the Court. Normally, the person who is participating in the auction proceedings to purchase a property of a Company under liquidation is a third party and in most of the cases would be a stranger to the title and local geography, etc. The resistance placed by the Official Liquidator and the respondent No. 4-Mandal gives one impression that even under error also, the advantageous situation created in their favour or disadvantageous situation for the applicant should be permitted to continue and the applicant should be penalised so that the respondent No. 4-Mandal and the beneficiaries can get advantage beyond legitimacy. It is true that non-payment of some amount by the auction purchaser if is found default, then it should be penalised and appropriate orders even of great dissatisfaction of the purchaser can be passed. But here it is possible to observe that it is not the case with the applicant. To find out whether the Court also committed error in ascertaining the revenue Survey Numbers or the exact area under the sale, accepted the submission of the Official Liquidator and sold the property as suggested in tender notice and had directed the applicant to pay certain amount in compliance of the condition and indirectly the Official Liquidator was put under obligation to transfer the possession and transfer the title of the said property. If the exact word to word order is not found implementable or executable, the reason of obstruction has to be evaluated and if it is found that some error has been committed in mentioning the Survey Numbers or area while putting the property under auction, that error

shall have to be corrected by any subsequent order. We may address that subsequent order as the order of review or order of any other nature, but the substantial spirit of the order would of review.

16. Now as per the direction of the Court, the City Survey Superintendent has taken out the measurement. I am surprised as to why the Official Liquidator had not got surveyed the land and obtained the exact revenue Survey Numbers or City Survey Numbers by showing the land which had gone to the other authorities much prior to the date of sale or auction. I am inclined to observe that before putting the property of a Company under liquidation under sale; especially when the property is a chunk of land or a huge construction, then the Company Court should be intimated with the exact map with measurement of such property and by pointing out such property, if need be, showing the boundary marks with the relevant revenue Survey Numbers or the City Survey Numbers or property numbers given by the Local Self Government like the Municipality or Municipal Corporation. When we are potential enough to attract the non-Indian investors or the Indians who are not residing in India globally, then such exercise shall have to be carried out so that a person sitting anywhere can visualise the area under the sale before instructing his lawyer appearing in such or similar Company proceedings as to sale of a property under liquidation on their respective computers. At least exact area and location with surroundings should be placed which can be said to be "mostly exact". I am not convinced that the applicant had played some hanky-panky with the City Survey Superintendent so that he had conveniently excluded the constructed chawl portion occupied by the labourers or number of unauthorised persons from the area which was required to be included in the area that has been sold to the applicant because this excluded area does not fall in the area of original Survey Number shown in the tender notice. The City Survey Superintendent has measured the site and has prepared the map. The area of the site is 40,369 sq.mtrs., which comes to 4,34,528.28 sq.ft. approximately but as mentioned earlier, the actual area sold to the applicant is shown to be 4,84,634 sq.ft. approximately. Therefore, there is a difference of about 50,106 sq.ft. amounting to 4654 sq.mtrs. The reduction in the actual area would obviously shall have a direct effect in the purchase price because the amount offered by the applicant is in the background of the area that he was to get under the sale by the Company Court. As per the order of the Court, the revenue Survey Nos. 116, 118, 131, 935, 958 and 962-964 were to be sold to the applicant. If the measurement of these revenue Survey Numbers are considered, it goes to 66,570.39 sq.mtrs., but it is difficult for this Court to accept the say of Mr. Soparkar that the deficit is of 26,201.39 sq.mtrs. and therefore, the consideration amount i.e. purchase price, needs to be reduced in that proportion. In the same way, it would not be either justified or legal for this Court to say that now the entire property should be readvertised and sold; and the applicant should be penalised for non-payment of amount of consideration on demand by the Official Liquidator of Yamuna Mills Ltd.

17. It emerges from record and the contentions which have been raised before

me that the applicant had not given a bid of Rs. 4.51 crores for the land alone and the sale is of composite lot of land and building structure of the mill. It is never mentioned that the area under the sale is about 7,16,557.70 sq.ft. No exact area is mentioned either in the advertisement or in the terms and conditions of sale-tender notice. On the contrary, the area of the land has been shown in the terms and conditions for the sale as 4,84,634 sq.ft. approximately and that was also subject to verification by the bidder. So it was obligatory on the part of the bidders to ascertain the exact area. But when the Court is supposed to accept the say of Mr. Soparkar, in the background of the document, including the disability to get the exact details of the land and in turn, to get area measured, one can take risk to have some lesser area when it is specifically mentioned in the terms and conditions for sale that the area suggested/ mentioned is an approximate area but the reduction if found is of some 1000 sq.mtrs., then it can be argued legitimately that this has happened because of the error committed by the Official Liquidator before the Company Court when the property was put under auction or nobody pointed out the correct position of the spot as to the changes which had taken place much prior to the actual date of sale. This Court cannot ignore the orders passed by the Company Court (Coram : Kshitij R. Vyas, J) in Company Application No. 265 of 2000 dated 27th November, 2000, whereby the Baroda Municipal Corporation, applicant of that application, was held entitled to have possession of the land bearing Tika No. 33-10 Survey No. 958-959 for the purpose of implementing the road lines, etc. The Official Liquidator was directed to surrender and to give possession of the said land to Baroda Municipal Corporation. The Baroda Municipal Corporation was directed that while taking possession of the said land, it shall make a fencing at the boundary to protect the mill compound at its own costs.

18. It is true that the figure of square feet mentioned in the terms and conditions for sale may be a bona fide mistake or error; and for want of availability of City Survey Numbers because much prior to the initiation of the proceedings, the revenue Survey Numbers were abolished and the area was taken under the City Survey Numbers and the respective lands and properties of Yamuna Mills Ltd. in liquidation were given City Survey Numbers. It is also relevant to note that the copy of the survey report and the map submitted by the City Survey Superintendent indicates that 31,189.05 sq.mtrs. of land has been acquired by the Government of Gujarat under the Urban Land Ceiling Act and the area of the land pertaining to new City Survey Nos. 1863, 1864, 1865 and 1866 is 40,369 sq.mtrs. situated within the compound of Yamuna Mills and the area of land of remaining City Survey Numbers i.e. City Survey No. 1867 to 1924 are situated outside the mill compound of the Yamuna Mills and if these endorsements are considered then the difference would to 24,867.27 sq.mtrs. only. Now the say of Official Liquidator is that when the Baroda Municipal Corporation has acquired some parcel of land for road widening purpose,and the same was clarified by the Official Liquidator in his earlier report, then the say of the applicant should not be accepted because the assets put for sale by the Sale Committee were on "as is,

where is and whatever is there, is basis". When it is not possible to aver even by the Official Liquidator that the construction outside the mill compound i.e. Chawl area would fall under any of the Survey Numbers mentioned in Condition No. 4, where the property has been described, then the grievance of the applicant to that extent shall have to be accepted that the error has been cropped up because of the absence of clarity and ambiguity in the facts placed before the Court while putting the terms and conditions for sale of land of the Company situated at Dabhoi Road, Vadodara. The Court is not supposed to consider the reasons as to why the area reduced. The fact remains that much lesser area than suggested in the conditions of sale and described in Condition No. 4 is now available with Official Liquidator for which he can confer the perfect title. The bidder cannot be said to be unaware about the land taken away by the Government under the scheme of Urban Land Ceiling Act. The revenue Survey No. 962 shown in the map is practically on the otherside of the road (see the map attached with the report of the Official Liquidator dated 02nd March, 2006 at page 186). So it is not possible for this Court even to accept that the reference of this Survey Number in Condition No. 4 is a bona fide mistake. As per the scheme of Vadodara Urban Development Authority (VUDA), the Survey No. 962 falls under the area remarked for non-obnoxious and non-hazardous industrial area along with other parcel of land sold to the applicant but it is totally on the opposite side of the road and the construction of a chawl is not on Survey Number No. 962. I have referred the said map for this observation. When it is possible for the Official Liquidator to mention about zoning, if made by a development authority qua the land placed under auction, then he is supposed to do that exercise and the same shall have an important impact while evaluating the potentiality of the land and it can help bidder as well as the Court while dealing with the sale proceedings. This fact situation also takes me to a conclusion that the applicant at least could have ably understood that the land bearing Survey No. 962 does not form a part of properties of Yamuna Mills Ltd. and I have reason to believe that he must have quoted the price of the land accordingly. The area of Survey No. 962 is admeasuring 15,241.70 sq.ft. So at least he cannot get advantage of the reduction in the purchase price qua this much area. So I am of the view that the order requires to be reviewed to put the things in order that the area actually available for sale with the Official Liquidator of Yamuna Mills Ltd. was only 40,369 sq.mtrs., even then the proclamation was made by fixing Condition No. 4 for the area of 45,023 sq.mtrs. The reduction, therefore, would be of 4654 sq.mtrs. Considering Condition No. 1 that the chunk of land is put to sale strictly on "as is, where is and whatever is there, is basis" then the area equal to the area of Survey No. 962 cannot included in the claim that has been placed by the applicant now in the present Judge''s Summons. When it was not impossible for him to get the details as to Survey Numbers of actual ownership of Yamuna Mills Ltd., then he cannot make grievance that inclusion of this Survey Number has misled him in quoting higher amount because since 1962 the land belong to particular Survey Number was running in the name of Yamuna Mills Ltd. A xerox copy of the village Form No. 6 on record could have been obtained by the applicant, just like respondent No. 4-Mandal. So if the area of 15,241.70 sq.ft. of original Survey No. 962 is excluded from the area allegedly found less i.e. 50,105.72 sq.ft., then the area which the applicant would get less would come to 34,864.02 sq.ft. I am not convinced or impressed by the figures shown in the valuation of the land placed to the notice of the Court by the applicant. Merely because the applicant had attempted to show that they are likely to incur loss on account of the mistake committed by the Official Liquidator cannot put him to any better situation factually or legally.

19. It is emerging from record that as per the Condition No. 8, the applicant has deposited an amount of Rs. 3.26 crores uptll now. One of the documents i.e. valuation of land report tendered reveals that an amount of Rs. 3.26 crores has been paid. But it is possible to say that the major amount of consideration has been paid by the applicant and because of infirmity with the title and in absence of formal permission for zone conversion, the applicant could not develop the property though he was put to actual possession. In most of such or similar cases, the Developer on acquiring possession and title of the land starts developing the land and is able to pay the amount of instalments to the Official Liquidator of the Company under liquidation from the consideration which he may receive from the potential buyers. If the Court ignores this aspect, even then the ground reality in the present case is that some error, suppression or improper description of the land till the date of filing of the present Judge''s Summons, the applicant had not acquired perfect title of the land or the purchaser was also not made aware about the actual parcel of land which is sold to him and given to him when the possession was handed over by the Official Liquidator of the Company in liquidation. So it is not possible for this Court, as observed earlier, to impose any penalty for retaining the amount of consideration as agreed. Yes, it is true that the applicant was able to retain the amount with him, on the other hand the amount already paid by the applicant can be said to be remained unproductive. The costs of the land per square foot calculated in the background of the measurement shown in the tender notice, then it would come to Rs. 93-06 ps. per sq.ft. Now the reduction in the area is found to be of 34,864.02 sq.ft. for which the applicant can actually get refund/adjustment. Deduction due to RLA has claimed by Mr. Soparkar, learned senior counsel appearing for the applicant, is not found acceptable. So no reduction of price or refund or adjustment can be ordered on this ground. During the course of oral arguments, a pointed query was raised by the Court as to why the Court should not direct the applicant to pay the interest on the amount that remained unpaid to the Official Liquidator of the Company. The amount could have been parted with subject to the outcome of the present Judge''s Summons taken out by the applicant or the same could have been deposited with the Registry of the Court because the grievance of the respondent No. 4-Mandal is that unnecessarily delay in paying the amount of consideration put the workers/beneficiaries who are potential recipients of the amount in loss. There is some strength in the say of Official Liquidator and Mr. Vasavada, learned Counsel appearing for the

appearing for the respondent No. 4-Mandal, that even if some adjustment is given, ultimately the applicant is found under an obligation to pay the same amount even after reduction in the price or adjustment for the area that he will receive less, then the said remaining amount can be said to be unpaid to the Official Liquidator and retained by the applicant. The Court is not supposed to take any note as to the price rise in the real estate, etc.; but in the larger interest of justice, the Court is of the view that the say of the Official Liquidator and Mr. Vasavada, learned Counsel appearing for the respondent No. 4-Mandal, placed before the Court to award some interest should be accepted. So the amount if is found required to be paid even after adjustment then such amount shall be paid at the flat interest rate of 12% per annum from 01st August, 2004 till realisation because, according to the applicant, the last amount was paid in the month of July, 2004.

20. The Court is also under obligation to see that the purchaser of a property under Court auction is conferred legal, valid and prefect title. In the same way, it is necessary to observe that the applicant cannot be fasten with the liability to pay the entire sum for the property under liquidation, when undisputedly the applicant is getting lesser area for no fault on his part. When an order of the nature that could have been passed at the time of confirmation of sale could not be passed because no exact position on the spot was probably available with the Official Liquidator or was placed to the notice of the Court; especially when it was possible for the respondent No. 4-Mandal to clarify the situation their inaction also would tilt the balance in favour of the applicant. So the required relief from the reliefs prayed for in the Judge''s Summons and vide subsequent affidavit which has been filed, should be granted and, therefore, the following order is passed:

(i) The notice issued by the Official Liquidator of the Yamuna Mills Ltd. (Company in liquidation) dated 23rd March, 2005, is hereby quashed, and the Official Liquidator is directed to recover the amount of consideration calculating the area which the applicant would receive less than actually put to sale or auction admeasuring 34,864.02 sq.ft. pro-rata, i.e. Rs. 4.51 crores against the area quoted in the tender/bid Condition of 4,84,634 sq.ft. (at the rate of Rs. 93-06 ps. per sq.ft.).

(ii) The Official Liquidator is further directed to co-operate with the applicant and if need be, shall approach the Baroda Municipal Corporation/ Local Self Government for zone conversion and conversion of land from non-obnoxious and non-hazardous industrial area to a residential / commercial zone in compliance of Condition No. 7 of the terms and conditions.

(iii) The Official Liquidator is also directed to refund the applicant or deduct from the remaining sale consideration and now he shall adjut the amount equal to the difference in the area mentioned in Clause-4 in the terms and conditions given by the Official Liquidator, as if the applicant is getting lesser area of 34,864.02 sq.ft. The possession of the land if is with the applicant, then it shall remain with the applicant but he possession of any part land sold if is not in actual and peaceful possession and enjoyment of the applicant, then the Official Liquidator shall hand over the possession with the title deed.

(iv) The Official Liquidator is further directed to undergo the other necessary formalities including the execution of the Sale Deed or Transfer Deed of the land sold to the applicant and make him available its actual area i.e.4,34,528.28 sq.ft. (40,369 sq.mtrs.) of land indicating the relevant City Survey Numbers and by putting the tracing of map of the land as part of the Deed.

(v) The applicant is directed to make payment of amount after adjustment at flat interest at the rate of 12% per annum from 01st August, 2004 till realisation to the Official Liquidator of the Yamuna Mills Ltd. (in liquidation) and claim the execution of title deed/deed of conveyance in his favour for the land sold to him admeasuring 40,369 sq.mtrs.

(vi) The other reliefs, prayed for by the applicant than granted as above, be considered as rejected.

Order and directions accordingly.

