(2009) 08 DEL CK 0457

In the Delhi High Court

Case No : I.A. No''s. 11235/06, 11671/06, 7514/07 and 8816/07 in C.S. (OS) No. 1906 of 2006

Capital Land Builders (Pvt.) Ltd. and Others — APPELLANT

Vs

Shaheed Memorial Society and Others — RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4, 151

Companies Act, 1956 — Section 111(4)

Citation : (2009) 4 CompLJ 85

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Rajeev Sawhney and Vineet Jhanji, for the Appellant; Sandeep Sethi Nitin Soni and Anuradha Chaudhary for Defendant Nos. 1 to 6, for the Respondent

Judgement

P.K. Bhasin, J.—In this suit for permanent injunction, mandatory injunction and damages an ex-parte injunction order was passed by this Court on 06-10-2006 on the application of the plaintiffs(being IA No. 11235/06) under Order XXXIX Rules 1 & 2 read with Section 151 of the Code of Civil Procedure,1908(CPC. in short) restraining the defendants from representing themselves as shareholders/ representatives of M/s. Capital Land Builders (Pvt.) Ltd., plaintiff No. 1 in this suit. During the pendency of that application the plaintiffs filed another application under Order XXXIX Rules 1&2 CPC(being IA No. 7514/07) praying for stay of operation of certain Sale Deeds which had allegedly been executed by some defendants in violation of the ex-parte injunction order which had been passed by this Court(for which act some of the defendants have already been held guilty by this Court). By this common order those two applications as well another application(being IA. No. 11671/06) also filed by the plaintiffs for some clarification in the order dated 6th October,2006 and one application under Order XXXIX Rule 4 CPC(being IA No. 8816/07) filed by defendants 2-6 and 8 are being disposed of.

2. Some relevant facts culled out from the pleadings and the documents of the parties available on record may first be noticed. One Company by the name of M/s Capital Land Builders (Pvt.) Ltd. (hereinafter referred to as the Company.) came to be floated in the year 1959. One of the objects of the Company was to acquire, purchase or take on lease lands and to develop the same into sites for residential, industrial and other purposes and to sell or lease out such sites. At the time of incorporation of the Company only two persons had signed its Memorandum of Association and Articles of Association as the original subscribers. One of them was defendant No. 8 Smt. Satya Chaudhary, who was the wife of Ch. Brahm Prakash, the first Chief Minister of Delhi and was once Union Minister for Agriculture also. Smt. Satya Chowdhary held ten shares of Rs. 100/- each. The other subscriber holding five shares was one Mr. Kishor Lal Sachdeva. plaintiff No. 3 Smt. Promila Kishor is the wife of that Kishor Lal Sachdeva, plaintiff No. 4 Om Parkash Sachdeva is his brother and plaintiff No. 2 Ankur Sachdeva is the son of Om Parkash Sachdeva.

3. Ch. Brahm Parkash acquired 500 shares of the Company out of its total share capital of 560 shares in the year 1962 in respect of which he was issued share certificate No. 3 having distinctive numbers 61-560. Then in the year 1963 he formed a Society by the name of Shaheed Memorial Society, defendant No. 1 herein(hereinafter to be referred to as the Society.) and he became its President. In the same year Ch. Brahm Prakash transferred his 500 shares of the Company in favour of the said Society of which he continued to be the President till his death. Ch. Brahm Parkash''s Society thus became the major shareholder in the Company.

4. plaintiffs No. 2 to 4 claim that defendant No. 1 Shaheed Memorial Society had initially acquired 500 shares of the Company, out of the total share capital of 560 shares, by way of transfer from its own President late Ch. Brahm Parkash and then in 1983 the Society was allotted 150 additional shares by the Company but it is also their claim in this suit that all those shares were transferred by the Society in the names of different persons during the period from 1968 to 1989 and it was left with no share of the Company at the end of the year 1989 and consequently the name of the Society was removed from the Register of Shareholders of the Company and the plaintiffs. case appears to be that thereafter the affairs of the Company were being managed by the family members of Kishor Lal Sachdeva (who as per the case of the private defendants had long back resigned from the Company) and their friends(who shall hereinafter be referred to as the Kishor group. on whose behalf plaintiffs 2-4 appear to be fighting).

5. plaintiffs No. 3 and 4 both claim to have bought 20 shares each of the Company from the Society in the year 1974. This fact has been pleaded in para No. 2.1 of the plaint wherein the Society has been shown as the seller. and different persons named in that para as the buyers. of the Society.s shares in the Company.

6. It appears that after the death of Ch. Brahm Parkash his sons got together and formed a separate Group alongwith their friends(hereinafter to be referred to as the Chaudhary Group. for whom defendants 2-8 are fighting this battle) and they started taking interest in the affairs of the Society as well as the Company which their father was looking after during his lifetime. They started representing to the Registrar of Companies that the Society was still the shareholder of the Company and being the major shareholder its office bearers were the persons who only could manage the affairs of the Company. The plaintiffs claim that they had, on the other hand, also represented to the Registrar of Companies that the Society being not the shareholder of the Company could not lodge any complaint regarding the affairs of the Company and so the same should not be entertained and at its instance the Company should not be called upon to answer any queries and further that illegal Returns filed by the Society should be removed from the Company.s records maintained in the office of the Registrar of Companies. Both the Groups also appear to have constituted separate Board of Directors of the Company. In that way fierce battle for the control of the Company started between the Chaudhary Group and Kishor Group.

7. During that battle there have been complaints and counter complaints lodged with the police by the two Groups. Persons belonging to Chaudhary Group started selling properties of the Company in the name of the Company claiming themselves as the persons authorized by the Company to sell the properties on the basis of Society.s original 500 shares in the Company. Similarly the members of Kishor Group Lal also started selling the properties of the Company in the name of the Company claiming that they were authorized by the Company to sell its properties. It appears that both the Groups have been issuing share certificates to different persons purporting to be of the Company. The Board of Directors of Chaudhary Group has been disowning the claim of the persons of the Kishor Group of their being the shareholders/Directors of the Company and vice versa. Both the Groups also started filing separate Returns with the Registrar of Companies who in turn does not appear to have initiated any action despite having continued to receive Returns from both the Groups giving contradictory and conflicting information regarding the shareholders, Directors etc. of the Company. If someone from Chaudhary Group asked someone from the Kishor Group as to how and why he/she was representing the Company the answer got was Who are you to ask such a question?. and if somebody from the Kishor Group asked similar question from some member of the Chaudhary Group same reply was given i.e. Who are you?.. But none of the Groups claims to have acquired any property in the name of the Company after the death of Ch. Brahm Parkash.

8. The Society also initiated proceedings before the Company Law Board by filing a petition u/s 111(4) of the Companies Act,1956. In that petition it was claimed by the Society through Shri Siddharth Chaudhary, defendant No. 7 herein, as its Secretary that the Society had never transferred its shares of the Company to anyone. The prayer made in that petition was for rectification of the Register of

Members of the Company by including therein the name of the Society as the Company.s shareholder.

9. The plaintiffs 2-4 claim that without waiting for the final outcome of its petition before the Company Law Board which the Company was contesting seriously the defendant No. 1 Society started claiming itself as the shareholder of the Company and defendants 3-6 as the Directors of the Company being the office bearers of the Society by representing to everyone that the Society still was the major shareholder of the Company holding original 500 shares. They constituted their own Board of Directors of the Company and defendants 3-6 were shown to have been appointed as its Directors on 10/03/06 and the Registrar of Companies was also informed of that development. Defendant No. 4 Ajay Yadav thereafter claiming himself to be a Director of the Company wrote a letter dated 26/05/06 addressed to defendant No. 2 Ajay Chaudhary as the President of the Society acknowledging that Society continued to be the shareholder of the Company. In view of that admission of the status of the Society the Company Petition before the Company Law Board came to be withdrawn on 29/05/06 by the counsel for the Society.

10. However, Shri Siddharth Chaudhary who had earlier filed that petition moved a fresh application before the Company Law Board for revival of its petition which was withdrawn on 29/05/06 and I was told during the course of arguments that application of Siddhartha Chaudhary was allowed and his original petition which was dismissed as withdrawn on 29/05/06 was revived.

11. When the dispute whether the Society had transferred its entire shareholding in the Company to different persons or not was still being adjudicated by the Company Law Board the plaintiffs No. 2-4 claiming themselves to be the Directors of the Company filed the present suit and they also impleaded the Company as plaintiff No. 1. Registrar of Companies, Asstt. Registrar of Companies and Registrar of Societies were also impleaded in the suit as defendants No. 9,10 and 11 respectively.

12. The prayers made in the plaint are re-produced below:

(a) Issue a Permanent Injunction restraining the Defendants 1-8, their agents and employees from representing and/or holding themselves out to be shareholders of the plaintiff Company; and

(b) Issue a Permanent Injunction restraining the Defendants 1-8, their agents and employees from representing and/or holding themselves out to be Directors, Agents or Authorised Representatives of the plaintiff Company and restrain the said Defendants from in any manner acting for and on behalf of or in the name of the plaintiff Company or from using the letterheads of the plaintiff Company; and

(c) Issue a Mandatory Injunction directing the Defendant No. 1-8, their agents, employees and associates to forthwith handover all letterheads and other documents or instruments, stamps and seals created by them bearing the name of the plaintiff Company or which may otherwise be in their possession and control and direct the destruction of the same; and

(d) Issue a Mandatory Injunction directing the Defendants No. 9 & 10 to forthwith remove from the records maintained with the said Defendant No. 9 in relation to the plaintiff Company all Forms including Form 32 Annexure P17), Form 18(Annexure-P18), Form 2 (Annexure-P19) and Form 5(Annexure-P20) and all such other unauthorized forms filed; and

(e) Issue a Mandatory Injunction directing the Defendant No. 9 & 10 and their successors in office to immediately institute and initiate appropriate proceedings against the Defendants No. 1-8 and against all those who have filed the unauthorized Form 32(Annexure-P17), Form 18(Annexure-P18), Form 2 (Annexure-19) and Form 5(Annexure-P20) and in particular proceedings under the provisions of the Companies Act with respect to the falsification of the plaintiff Company.s records with the Defendant No. 9 by the filing of the various falsified forms as aforesaid or otherwise; and

(f) Issue a Mandatory Injunction directing the Defendants No. 1-8 to disclose (i) all transactions entered into by them in the name of the plaintiff Company and or on its behalf, and (ii) details of all Bank Accounts opened by them in the name of the Company; and

(g) Issue an order of Permanent Prohibitory Injunction restraining the Defendants 1-8, their servants, agents or assigns from appropriating and/or using any funds or dealing with any assets of the Company including funds wrongfully obtained by them in the name of the Company; and

(h) Award Damages to the plaintiff Company against the Defendants No. 1-8 and hold the said Defendants jointly and severally liable to pay the same; and

(i) Award costs of the Suit to the plaintiffs;

(j) Grant all such other reliefs which the Hon.ble Court deems fit and proper in the facts and circumstances of the case be allowed in favour of the plaintiffs and against the Defendants.

13. Alongwith the plaint an application under Order XXXIX Rules 1 and 2 CPC for the following ad-interim directions to all the defendants was also moved:

(a) Pass an order restraining the Defendants No. 1-8, their agents and employees from representing and/or holding themselves o0ut to be Shareholders of the plaintiff Company during the pendency of the present Suit; and

(b) Pass an order restraining the Defendants No. 1-8, their agents and employees from representing and/or holding themselves out to be Directors, Agents or Authorised Representatives of the plaintiff Company and restrain the said Defendants from in any manner acting for and on behalf of or in the name of the plaintiff Company or from using the letterheads, bank accounts of the plaintiff Company during the pendency of the present Suit; and

(c) Pass an order restraining the Defendants 1-8, their servants, gents or assigns from appropriating and/or using any funds or dealing with any assets of the Company including funds wrongfully obtained by them in the name of the Company during the pendency of the present Suit; and

(d) Pass an order directing the Defendant No. 9 to accept the Statutory Forms, Filings and Returns only from the plaintiff Company under the signatures of any one of the plaintiffs 2,3 & 4; and

(e) Pass an order directing the Defendant No. 9 to preserve the entire record relating to the plaintiff Company and to produce the same in Court; and

(f) Permit the plaintiff to advertise and notify the public at large that the Defendants are not authorized to act for and on behalf of the Company in terms of prayers A & B above

(g) Pass ex-parte ad interim orders in terms of the prayers (a) to (e) above; and

(h) Grant all such other reliefs which the Hon.ble Court deems fit and proper in the facts and circumstances of the case be allowed in favour of the plaintiffs and against the Defendants.

14. The stand of the defendants 1-8 in this case is that Society never transferred its shares to anyone as was being claimed by the plaintiffs. In one complaint to the police lodged by the Chaudhary Group it was claimed that Kishor Lal Sachdeva, husband of plaintiff No. 3 and one of the two original promoters of the Company, in fact, used to be the domestic-cum-office help of late Ch. Brahm Parkash and during that employment had won his trust and became his trusted man for which he was rewarded by Ch. Brahm Parkash by making him as one of the two subscribers to the Memorandum of Association of the Company but later on that trust was breached and Ch. Brahm Parkash was back-stabbed and rendered penniless. It was complained that Kishor Lal Sachdeva taking undue advantage of the old age of late Ch. Brahm Parkash and ill health and the trust reposed in him by Ch. Brahm Parkash had after resigning from the Company formed a Group to take over the entire assets of the Company and to fulfill that evil design colluded with the former Secretary of the Society Raghunath Singh and had been preparing false documents after Raghunath Singh had resigned as the Secretary of the Society showing transfer of shares of the Society to different persons.

15. Having noticed the facts giving rise to this suit the question which now arises for this Court to decide is whether the plaintiffs have been able to make out a case for grant of the ad-interim directions sought by them against the defendants. From the fore- going narration, it is evident that this is not a case where some shareholders or Directors of a Company are fighting against some shareholders or Directors alleging mismanagement of the affairs of the Company or oppression. This is a fight between individuals, plaintiffs No. 2-4 on the one side and defendants 2-8 on the other side. As noticed already, both the Groups

have been using the name of the Company to the exclusion of each other. It is being represented in the present suit by one Ankur Sachdeva, plaintiff No. 2, who claims to be holding a power of attorney of the Company executed on behalf of the Company by himself and is witnessed by plaintiffs No. 3 and 4 whose claim of being the shareholders is under serious dispute. These individuals are fighting to get a declaration that they are the persons who only can represent the Company but they have not got that declaration so far. They are yet to establish as to when and how they entered into the Company. So, in my view, in these circumstances impleadment of the Company in the present suit by plaintiffs No. 2-4 as one of the plaintiffs was not justified.

16. As far as plaintiffs No. 2 to 4 are concerned, as noticed already, they claim to be the Shareholders/Directors of the Company and are claiming in this suit that the Society had sold its entire shareholding in the Company by the end of the year 1989 to different persons and so its name had been struck off from the Register of Members of the Company. That allegation is being refuted by the Society in the present suit. However, that controversy is already pending decision before the Company Law Board, which is the authority competent to order rectification of the Members Register of a Company, and plaintiffs No. 2-4 are contesting the Company Petition filed by the Society and so they had no good reason to start an independent fight on the same issue by filing the present suit. In the proceedings before the Company Law Board also they are claiming that the Society had transferred all its shares to different persons and here also same plea is being put forth. The only difference is that in the proceedings before the Company Law Boar they are the respondents while in the present suit they are the plaintiffs. In my view, the plaintiffs 2-4 should have waited for the decision of the Company Law Board before rushing to the Civil Court. It is evident that if it is decided that the Society had not sold its shares of the Company to anyone, as is being claimed by the plaintiffs 2- 4, the empire built by them on the foundation of the original share certificate No. 3 for 500 shares in the name of the Society would fall to the ground since that very certificate has been used as an entry pass by these plaintiffs and their associates for entering into the management of the Company.

17. In any event, plaintiffs 3 and 4 claim to have purchased twenty shares each of the Company from the Society in the year 1974. However, to establish, even prima facie, their claim of having purchased these shares from the Society they have not placed on record any document which could show that the Society.s Governing Body had at any time taken the decision to sell its forty shares to them. They have also not placed on record any resolution of the Company having agreed to accept the transfer of shares from one shareholder to someone who was neither the family member of the transferor nor an existing shareholder of the Company, which is the requirement for a valid transfer of shares of the Company under its Articles of Association. So, the plaintiffs No. 3 and 4 have failed to show any right, even prima facie, to claim various ad-interim reliefs against the defendants.

18. It was, however, seriously contended by Shri Rajeev Sawhney, learned senior counsel for the plaintiffs, that the entire controversy could have been easily set at rest by defendants 1-8 by simply producing before this Court the original share certificate No. 3 in respect of 500 shares of the Company in the name of the Society. However, these defendants despite claiming to be in possession of that certificate in original have avoided to produce the same and so an adverse inference should be drawn against them that they do not have in their possession that share certificate and so it should be accepted, as is being claimed by the plaintiffs, that that share certificate no more exists because of all the shares having been transferred by the Society itself to different persons from 1968 to 1989. On the other hand, Shri Sandeep Sethi, learned senior counsel for defendants 1-6 and 8 argued that since the plaintiffs have come to the Court claiming that the Society had sold its shares to different persons it was its responsibility and burden to show to this Court that there was any such sale transaction between the Society and different persons and that too after passing of necessary resolutions by the governing body of the Society and also by producing on record resolutions, if any, passed by the Company approving of those transfers but no such documents have been produced by the plaintiffs which negatives their entire claim in the suit. It was also contended that before the Company Law Board it had been submitted on behalf of the Company that its old records had been destroyed in a fire way back in the year 1975 while in the present case it was being claimed that necessary documents were in possession of the Company which shows that whatever documents have been placed on record by the plaintiffs cannot be said to be genuine documents.

19. I am in full agreement with the submission of Mr. Sandeep Sethi that it was for the plaintiffs to have established, at least prima facie, that the Society had sold all its shares of the Company to different persons and that those transfers had been recorded in the relevant records of the Company in accordance with law after due compliance of the relevant provisions of the Companies Act dealing with the transfer of shares of a Company and recording of the transfers in the Company.s records. Since it is the case of the plaintiffs themselves that the Society was the major shareholder at one time of the Company after having acquired 500 shares out of total share capital of 560 shares, non- production of the original share certificate in respect of those 500 shares will not, in my view, give any strength to the case of the plaintiffs entitling them to grant of any of the interim directions sought for by them in their injunction application.

20. I am also of the view that even if it is accepted that plaintiffs No. 3 and 4 had purchased 20 shares each of the Company from the Society as is being claimed by them, they would still not be entitled to get any injunction order or any other direction against any of the defendants. The Society is continuing to claim that it is the major shareholder of the Company and even if 40 shares allegedly purchased by the plaintiffs 3 and 4 are excluded from the shareholding of the Society it would still be a shareholder of the Company to the extent of 610 shares since as per the plaintiffs own case the Society initially had 500 shares

and 150 additional shares were also allotted to it in the year 1983. No other person has come forward to refute the claim of the Society that it had not sold its shares to anybody. If actually there were genuine purchasers of the Society.s shares they would have come forward to put forth their claim of being shareholders of the Company. This fight regarding the Society.s shareholding is going on for over a decade and it cannot be accepted that the persons who had actually purchased the Society.s shares, as claimed by the plaintiffs, would not come to join the fight which is going on in their absence in respect of their shares.

21. As far as plaintiff No. 2 Ankur Sachdeva is concerned, he does not even claim to have purchased any share from the Society. So, he has also not been able to make out a prima facie case for grant of any ad-interim relief to him.

22. I am, therefore, of the view that no case has been made out for giving any directions to the defendants as have been sought for by the plaintiffs in IA No. 11235/06. As far as IA No. 7514/07 is concerned the same has already been rendered infructuous since this Court has already held while disposing of various contempt applications moved by the plaintiffs that those sale deeds having been executed in contravention of the ex-parte injunction order passed in this suit on 06-10-2006 were non est. Since it has been held that plaintiffs have failed to establish a prima-facie case for grant of any of the ad interim directions to the defendants, prohibitory as well as mandatory, their application filed for clarification of order dated 06-10-2006(being IA No. 11671/06) has to be dismissed now and it is ordered accordingly. IA No. 8816/07 which was filed by some of the defendants for vacation of the ex-parte injunction order dated 06-10-2006 stands allowed.

23. Although the right of the plaintiffs to get any interim relief has been negatived and the ex-parte injunction order is being vacated but considering the facts and circumstances of the case to the effect that members of the Kishor Group as well as the Chowdhary Group are bent upon squandering away the valuable assets of the Company without waiting for the final adjudication of their respective claims this Court feels that at least during the pendency of this suit neither the plaintiffs nor defendants 1-8 should be permitted to dispose of the assets standing in the name of M/s. Capital Land Builders Pvt. Ltd. in any manner. They would, therefore, stand restrained from disposing of any property of the said Company during the pendency of the suit.

