(1989) 04 GUJ CK 0007

In the Gujarat High Court

Divya Vasundhara Financiers Ltd. APPELLANT

Vs

K.N. Samant and Others RESPONDENT

Date of Decision : 25-04-1989

Acts Referred:
Companies Act, 1956 — Section 391, 391(1), 391(2), 392, 392(1)
Specific Relief Act, 1963 — Section 6

Citation : (1990) 69 CompCas 646

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Advocate : Roshan Desai, for the Appellant; Bachani, for the Respondent

Judgement

Majmudar, J.—These two company applications have been moved by the Court Committee for Divya Vasundhara Financiers P. Ltd. for

getting suitable directions from this court for removal of alleged encroachment made on the company''s properties by the concerned opponents.

2. In Company Application No. 25 of 1988, 24 such opponents are listed at list ""A"" while, in Company Application No. 43 of 1988, 19

opponents are listed at list ""A"". Thus, these directions are sought against, in all, 43 opponents in both these applications. During the pendency of

hearing of these applications, some of the opponents in Company Application No. 25 of 1988 have been made allottees of the concerned portions

of land occupied by them and, therefore, Company Application No. 25 of 1988 will not survive against these opponents. They are at Sl. Nos. 1,

2, 3, 4, 5, 21, 22, 23, and 24 at list ""A"" to Company Application No. 25 of 1988. Consequently, Company Application No. 25 of 1988 now

survives against opponents Nos. 6 to 20 as listed at annexure ""A"" to that company application. So far as Company Application No. 43 of 1988 is concerned, as none of the opponents is regularised, it survives against all the 10 of them as mentioned in annexure ""A"" to

that application.

3. Now, it will be profitable to have a look at a few relevant facts leading to the present applications. By an order of this court (Coram : B.K.

Mehta J.) dated December 27, 1978, January 16/22, 1979, in Company Petition No. 18 of 1978 with other congnate matters, the applicant Court

Committee was constituted for administering the assets of the company pursuant to a scheme of compromise arrangement between the said

company on the one hand and its creditors and members on the other. The said scheme was made u/s 391 of the Companies Act, 1956. The

original chairman of the Court Committee was shri N.M. Maibhoy, a retired Chief Justice of this court and at present , the committee is presided

over by another retired judge of this court, Shri N.H. Bhatt. As per the said scheme, all the movable and immovable properties of the company are

vested in the Court committee and they were taken into custody by this court through the Court Committee as custodia legis. The Court

Committee had taken steps to take possession of various properties. It was found that certain persons had encroached upon some of the

properties which had vested in the Court Committee. In view of the said facts, the court Committee earlier preferred Company Application No.

161 of 1985 with a prayer that the court may be pleased to appoint an officer of the court to take an inventory of the immovable properties of

Divya Vasundhara Financiers P. Ltd. and to ascertain whether any encroachment on the immovable properties had been effected by any person or

parties. It is also prayed that if the court, on the report of the officer, was satisfied that there was any encroachment on the immovable properties of

DVF, the court may direct the officer to remove such encroachment. This court (Coram : B.K.Mehta J.) by an order dated September 19, 1985,

in Company Application No. 161 of 1985, was pleased to appoint Mr. D.H Desai as special officer to make an inventory to this court. As per the

said report, it was found that so far as the immovable properties in question in the present case are concerned, viz, lands situated at village Kansad

(Sachin) bearing Nos. 183 (paiki) and 184 known as Rang Avadhut Colony were concerned, some encroachers were found squatting on the land

and had put up huts thereon.

4. In the light of the pleadings of the parties, some common issues have been framed for my determination at exhibit 1. They are as under :

(1) Whether these applications, in the present form, are maintainable ?

(2) Whether the applicants have an alternative remedy u/s 6 of the Specific Relief Act and hence, these applications are not maintainable ?

(3) Whether this court has jurisdiction to order summary eviction of the concerned opponents ?

(4) Whether the opponents have any legal right to remain in possession of the property occupied by them ?

(5) Whether the opponents prove that they have become owners of the respective portions of the land occupied by them by the doctrine of

adverse possession ?

(6) What order ?

My answers to these issues are as follows :

(1) In the affirmative

(2) The first part in the affirmative, the second part in the negative.

(3) In the affirmative

(4) In the negative.

(5) In the negative.

(6) As per final order.

7. Issue No. 1. - So far as this issue is concerned, sections 391 and 392 of the Companies Act are relevant. As per section 391 of the said Act,

where a compromise or arrangement is proposed between a company and its creditors or any class of them or between a company and its

members or the creditor or member of the company or in the case of a company which is being wound up, of the liquidator, order a meeting of the

creditors or class of creditors, or of the members or class of members, as the case may be, and if, in such meetings, the majority in number

representing three fourths in value of the creditors, or class of creditors, or members, or class of members or as the case may be, present and

voting, approve such scheme of compromise or arrangement, the same should be sanctioned by the court. As per section 392 of the Act, for making an order u/s 391 sanctioning a compromise or an arrangement in respect of the company, the High Court shall have power to supervise the

carrying out of the compromise or arrangement and the High Court may, at the time of making such order or at any time thereafter, give such

directions in regard to any matter or make such modifications in the compromise or arrangements as it may consider necessary for the proper

working of the compromise or arrangement. It is not in dispute that the scheme of compromise or arrangement was sanctioned by this court so far

as the present company is concerned as per section 391(2) of the Act. While sanctioning the said scheme, the applicant-Court Committee was

appointed as managing committee, to do all that is necessary for working out the scheme. The basis of the scheme u/s 391 was to ensure payment

to all the creditors within a reasonable time, to complete and/or dispose of the outstanding incomplete projects and realise the dues, to sell the

properties and liquidate the investment and to disburse the amounts recovered from outright sale of certain properties as well as from various

projects and from amounts due to the company. Thus, the applicant-Court Committee is charged with the duty to realise the value of the properties

and to disburse the amount realised amongst the creditors. So far as the present land is concerned, Part III of the scheme covers the same. At item

No. 5 is found Rang Avadhut Colony at Sachin which is disputed property. So far as this project is concerned, the sanctioned scheme provides

that this project should be disposed of by the company with the existing incomplete construction with the balance floor space index instead of

making attempts at completing this project and thereby delaying the repayment of money to the depositors. The amount so realised on ""as is where

is"" basis worked out and provided so as to enable incorporation of the same in the repayment schedule to depositors. It, therefore, cannot be

gainsaid that the Court Committee is charged with the obligation to realise full market value of the incomplete and to make money available for

disbursement to the depositors.It is for that very purpose that the applicant Court Committee has got accepted by the court the offer of Unique

Builders to purchase this property on ""as is where is"" basis and has to hand over vacant and peaceful possession thereof to Unique Builders and to

complete their title on receipt of the balance of purchase price. It cannot also be disputed that this cannot be done unless those who are squatting on the land are cleared off the land and possession is handed over to Unique Builders. As these opponents are alleged to be squatting on the land

without any right, title or interest therein, handing over of possession of the said colony to Unique Builders is held up and the balance of the

purchase price is not paid by Unique Builders and the full amount of the said proceeds is uptil now not realised by the Court Committee for being

disbursed to depositors. Thus, so far as the property in question is concerned, there is an impediment in the implementation of the scheme on

account of the presence of the apponents on the spot. It is this impediment which is sought to be removed by way of the present company

applications. The question is whether section 391 read with section 392(2)(a) and (b) can permit such exercise and whether such an application is

maintainable under the aforesaid provisions. Mr.Desai for the applicant, invited my attention to the relevant companies (Court) Rules under which

such summons are contemplated and he submitted that the court can certainly direct clearance of the encroachment on the spot so that the purpose

of the scheme may be fructified and such directions can be issued under the aforesaid provisions.

8. Mr. Bachani for the opponents, on the other hand, contends that such applications are not maintainable because the opponents are third parties

and the direction can be issued by the court only against parties to the scheme of arrangement or compromise, viz, creditors and members of the

company. On mere look at the relevant provisions of sections 391 and 392, it is not possible to agree with this proposition canvassed by Mr.

Bachani. It is no doubt true that the company and its creditors or any class of them and between the company and its members or any class of

them and they can be said to be parties to the scheme and the scheme is binding on them. But so far as section 392 is concerned, the powers of

the High Court for enforcing the compromise or arrangement extend to the general supervision for carrying out the compromise or arrangement

and the court can, at the time of making the order or even subsequently, give the directions in regard to the matters which are necessary for proper

working of compromise or arrangement. It cannot be gainsaid that, for realising the full market value of the property of the company managed by

the Court Committee with a view of disbursing the amount amongst the depositors as part would be required to be removed for the proper working of the compromise or arrangement. Section 391(a)(b) nowhere provides that the direction can be given by the company court only against

parties to the scheme and against no one else. Therefore, on a conjoint reading of section 391(1) (1) and section 392(1) (a) and (b), it is not

possible to accept the submission of Mr, Bachani that the court in no case can issue any directions against the persons other than creditors and

members who are parties to the sanctions scheme. The only requirement of a direction u/s 392(1)(b) is that such direction must be necessary for

the proper working on the decision of the court in Court Committee, Divya Vasundhara Financiers Pvt. Ltd. Vs. Kamlakar Narayan Samant and

Another, . It is true that, in that case, B.K.Mehta J., while considering the powers of the court for issuing suitable directions in the case of this

company and in connection with this very court committee, laid down scope and ambit of sections 391 and 392 of the Act in the following terms

(headnote of GLR) :

By section 392 of the Companies Act, the high courts have been empowered to enforce compromises and arrangements sanctioned in respect of

company u/s 391. The nature of the power is, therefore, a power of superintendence so that the object of the compromise or arrangement is not

allowed to be frustrated by any of its parties in implementation thereof. In course of that power of supervision, the court may either at the time of

making such order according sanction, or at any time thereafter, issue such directions in regard to any matter or make such modifications in the

compromise or arrangement, as it may consider necessary, for the proper working of the compromise or arrangement. If the court is satisfied that a

sanctioned compromise or arrangement is not satisfactorily workable, even with modifications, it may, suo motu, or on an application of any

interested person in the affairs of the company, make an order of winding up of such company, and on such and order being made, it is deemed to

be one made u/s 433 of the Companies Act. The legislative guideline for exercise of the power u/s 392(1)(b) is only consideration for the proper

working of compromise or arrangement. No doubt, the power contained in section 392(1)(b) of the Companies Act, is of wide amplitude, but it

cannot be said that it is power within the section itself. The inbuilt limitation is that it can be invoked only for puporses of proper working of a compromise or arrangement.

9. The power cannot be invoked for purposes of determination or adjudication of any right or interest claimed by a company against persons who

are not parties to the scheme of compromise or arrangement, and who dispute such rights or interest in fact or in law.

10. Therefore, the company court had no power or authority u/s 392 of the Companies Act in exercise of its jurisdiction of supervision over the

scheme or arrangement between the company and its creditors and/or members approved by it, to adjudicate upon the rights and interest claimed

by such company against third parties.

11. At first blush, the aforesaid decision appears to support the contention of Mr.Bachani, but a closer scrutiny, it is not found to do so. In that

case, the Court Committed of this company had sought for a direction from the company court against the owner of the property who had agreed

to sell the same to the company. The Court Committee instead of filing a suit for specific performance, had sought a direction from the learned

company judge praying for such relief. The third party who was admittedly the owner of his property covered by the agreement of sale with the

company had opposed the claim of the Court Committee to purchase this property and objected to any direction for specific performance. It is in

the background of these peculiar facts that B.K.Mehta J. made the aforesaid observations and held that such question cannot be decided in

company applications under sections 391 and 392 and the Court Committee should file a substantive suit for specific performance. B.K.Mehta J.

in para 11 of the report, while considering the amplitude of power u/s 392(1)(b) of the Act, in terms, observed as under (at page 495 of 59 Comp

Cas) :

No doubt, the power contained in section 392(1)(b) of the Companies Act, 1956, is of wide amplitude, but it cannot be said that it is a power

without any limitation. There is an inbuilt limitation of the power of the court in the section itself. The inbuilt limitation is that it can be invoked only

for purposes of proper working of a compromise or arrangement. In exercise of that power, it cannot be doubted that the company court can issue

necessary directions with a view to remove any impediment, difficulty or obstruction which may arise in the working of such scheme of compromise or arrangement. No staritjacket formula can be laid down so as to provide for all situations as to when that power can be invoked, or

when the court can refuse to exercise such power. It is to be judged in the context of a given situation arising from time to time. The crux of the

problem, whenever such power is invoked, is for the court to ask itself whether a proper working of arrangement or compromise is obstructed by

any contingency or a situation which was not envisaged nor could have been anticipated at the time of framing or sanctioning the scheme, and if the

court finds, on consideration of the relevant material placed before it on affidavit or otherwise, that the proper functioning of scheme of

compromise or arrangement is jeopardized, the court may give such directions or make such modifications in the scheme itself as it may consider

necessary in order to ensure a proper and efficient working thereof.

12. Placing reliance on the decision of the Supreme Court in S.K.Gupta v. K.P.Jain [1979] 49 Comp Cas 342 ; AIR 1979 SC 734, B.K.Mehta

J. observed :

Power is a power of superintendence which is to be exercised by issuing appropriate directions or effecting necessary modifications as to ensure

the proper working of such compromise or arrangement. But this power cannot be invoked for the purpose of determination or adjudication of any

right or interest claimed by a company against persons who are not parties to the scheme of compromise or arrangement and who dispute such

rights or interest in fact or in law.

13. So far as reference to third parties is concerned, in the fact- situation of the case before B.K.Mehta J., it is obvious that the rights of any third

party who is, in the real sinse, a third party and who claims independent right, title or interest of his own, in any property cannot be affected by

seeking mere directions u/s 392(1)(b) and that the proper procedure against such third party would be to file a substantive suit. The observations

of B.K.Mehta J., in the aforesaid case, will have to be read in the light of the peculiar facts before B.K.Mehta J. In that case, it was not in dispute

that the third party was an admitted owner of the immovable property which was sought, to be purchased by the Court Committee under an

agreement. It is this agreement which was sought to be specifically performed by the Court Committee through the intervention of the company court by seeking a direction u/s 392(1)(b). Such type of relief obviously could not have been given under that provision for the simple reason that

the property did not belong to the company nor could it be managed by the Court Committee under the scheme. There was no impediment in the

working of the scheme qua that property of purchase price could be disbursed amongst the creditors. The Court Committee was put in

management of the admitted properties of the company. The property in question before B.K.Mehta J., was still to be acquired after the contract

of purchase was specifically performed. Consequently, the third party was a genuine third party against whom no direction could be issued u/s

392(1)(b). Such is not the situation in the present case. In the present case, Rang Avadhut Colony at Sachin admittedly belonged to Divya

Vasundhara Financiers P.Ltd. As seen above, the scheme of compromise and arrangement does cover this property and enjoins on the Court

Committee to sell out the same on ""as is where is"" basis and realise the sale price for disbursing the amount amongst the depositors of the

company. It is this admitted property of the company which is allegedly encroached upon the opponents whose presence has created an obstacle

in the smooth functioning of the scheme qua that property and this impediment is sought to be removed by the present proceedings. Such a factual

situation is squarely covered by section 392(1)(b). It falls within the supervisory jurisdiction of the court through its Court Committee and it calls

for a direction for proper working of the scheme of compromise or arrangement. It is easy to visualise that, if this impediment is not removed ,

years will roll by. The property cannot be sold to Unique Builders, the purchase price cannot be obtained and funds cannot be made available for

disbursing to the creditors. Consequently, on an entirely different nature of facts in the present case, the ratio of decision of B.K.Mehta J. in Court

Committee, Divya Vasundhara Financiers Pvt. Ltd. Vs. Kamlakar Narayan Samant and Another, cannot be pressed into service by Mr. Bachani

for the opponents. It may be that, if it is found that the opponents have some right, title or interest in the property which they can effectively put

forward against the Court Committee and the company, then the Court Committee may have to take steps by filing proper suits for getting the

opponents cleared from the site. If, on the other hand, they are shown not to have any right, title or interest in the property and they are found to be rank encroachers, then necessarily, the impediment caused by them in the smooth working of the scheme qua Rang Avadhut Colony at Sachin can

legitimately be got removed by the Court Committee by filing the present applications. It is, therefore, not possible to accept the objections of Mr.

Bachani that the present applications are not maintainable against the opponents under the provisions of sections 391 and 392 of the Companies

Act. The first issue, therefore, is answered in the affirmative.

14. Issue No. 2. - So far as the question of an alternative remedy is concerned, it is no doubt true that section 6 of the Specific Relief Act does

give an alternative remedy to the Court Committee to file a suit for possession without reference to title. But, if the present application is

maintainable, it cannot be held to be barred u/s 6 of the said Act. All that section 6 of the Act provides is that, if any person is despossessed,

without his consent, of immovable property, otherwise than in due course of law, he or any person claiming through him may, by suit, recover

possession thereof, notwithstanding any other title that may be set up in the suit. I fail to appreciate how the said provision can be said to be cutting

across the powers conferred on the company court u/s 392(1)(b) of the Act if occasion demands such exercise of powers. If a person is

dispossessed of his immovable property, he, of course has to follow the procedure of section 6 of the said Act or if he relies on his title, he may file

a substantive suit on the strength of his title. But so far as the Court Committee is concerned , it is functioning on behalf of the court and is

implementing the scheme sanctioned by the court. The court, in its supervisory capacity, has to see to it that any impediment in the smooth running

of the scheme is removed. So far as the power of the court is concerned, it flows from the scheme of sections 391 and 392 of the Act. This is in no

way whittled down by the provisions of section 6 of the Specified Relief Act. Even assuming that the Court Committee could have filed such suits,

it cannot be urged with any emphasis that, instead of taking that course, the Court Committee has illegally followed the procedure as contemplated

by section 392(1)(b). Mr. Bachani would have been right if the powers u/s 392(1)(b) would have been subject to the provisions of section 6 of the

Specified Relief Act, but that is not so far obvious reasons. So far as the Scheme of compromise and arrangement is concerned, it is to be supervised by the court with a view to seeing that the scheme of compromise and arrangements does not meet with rough weather or get impeded

and that it is fully implemented. In that process, if there are any obstructions by persons who have prima facie no right, title or interest in the

company''s property, such obstructions can be eradicated by issuing suitable directions. So far as that power is concerned, it is and independent

power available to the court in connection with the scheme of compromise and arrangement and such power cannot be obviously be fettered by

the provisions contained in general law like section 6 of the Specific Relief Act. Of course, if such an application was not maintainable, then a suit

would have been required to be filed u/s 6 or for the matter, even on the strength of title for possession against trespassers. But, as it is found on

issue No.1 that such applications are maintainable, it cannot be effectively urged that the applications should be held to be barred by section 6 of

the Specific Relief Act. Issue No. 2 is, therefore answered in the affirmative, meaning thereby, that despite the remedy u/s 6 being available to the

Court Committee, the present applications are maintainable.

15. Before parting with the discussion on issue No. 2, I may briefly refer to the decision of M.B. Shah J. in the case of Mohammad Hussain

Suleman Shaikh and Another Vs. Batukbhai Vaijibhai and Others, , on which reliance was placed by Mr. Desai for the Court Committee. In that

case, the situation after decree u/s 6 of the Specific Relief Act was considered and to what extent the defendant in such suit can, by filing a

substantive suit on title, get injunction, was the question that was looked into. In my view, the said decision is of no avail to the applicant -Court

Committee on the facts of the present case, and hence, it need not detain me any further.

16. The written submissions made by Mr. Bachani on this issue invoking article 21 of the Constitution are also totally misplaced. It is difficult to

appreciate how deprivation of personal liberty is involved in the present case. It cannot be gainsaid that the procedure established by section

392(1)(b) of the Companies Act is a procedure established by law and if that procedure is available, article 21 would not get violated. Similarly,

reliance placed on the decision in the case of Ramshree Mahavir v. Girdharilal Bholanath Agarwal [1970] 11 GLR 971 cannot be of any avail to the opponents, as the opponents are not sought to be thrown out by muscle power or by taking law into their hands. On the contrary, the present

proceedings which are judicial proceedings are being resorted to by the court Committee. Reliance placed on the decision in the case of Yeshwant

Singh v. Rao Jagdish Singh, AIR 1968 SC 620, also cannot be of any avail to the opponents. The proceedings u/s 392(2)(b) are sought to be

invoked uniformly against all the opponents by the Court Committee and no one from the same class is sought to be given a more favourable

treatment. Reliance placed by Mr. Bachani on the decisions in T. Cajee Vs. U. Jormanik Siem and Another, , Bishan Das and Others Vs. The

State of Punjab and Others, , State of Patiala v. Mohinder Singh Natha Singh AIR 1958 Pumj 325 and Yar Muhammad and Another Vs.

Lakshmi Das and Others, , taking a similar view also can be of no avail to Mr. Bachani for the opponents, as the Court Committee is not forcibly

evicting the opponents from the premises in their occupation but is resorting to court proceedings by way of the present company applications.

17. Issues Nos. 3 and 4 - This leaves issues Nos. 4 and 5 which are the main issues on merits. From the evidence on record, both oral as well as

documentary, it is to be found whether the concerned opponents have any right, title or interest in the property in the question. If they have such

rights, then of course, they cannot be summarily evicted in the present proceedings. If they have no such right, then proper directions can be issued

or getting the land cleared of the encroachments made by them on the spot so that the scheme in question qua that property can be properly

implemented. So far as the alleged right, title and interest of the opponents are concerned, it must be stated that Mr. Bachani submitted two

aspects of the matter for my consideration. He firstly, submitted that most of the opponents are residing in the land in their huts for years and he

further submitted that they become owners by adverse possession. So far as possession of the opponents are staying on land by putting up their

huts. As I have noted earlier, in the light of the report of the Court Officer, Mr. D.H. Desai, given in 1985, opponent NO. 8 in Company

Application No. 25 of the 1988 were staying there for 7 to 8 years prior to 1985. Similarly, the opponents Nos. 17, 18, 19 and 20 in Company

Application No. 25 of 1988 were staying there for 8 years prior to the date of which the said officer visited the site in 1985. Thus, so far as these opponents are concerned, it can be said that even according to the Court Officer''s report, they were in possession of the disputed portion of the

land since 1977 or so. So far as the opponents are concerned, the Court Officer found in his report that the opponents Nos. 14, 15, and 16 in

Company Application means, their possession was since 1985. So far as the rest of the opponents were concerned, they were not to be found on

the spot, meaning thereby, they seem to have entered the land after 1985. So far as the aforesaid opponents who were found to be in possession

since 1977 are concerned they also do not claim any title to the land in their own right by any legal document but they claim only adverse

possession. In my view, on the evidence on the record, there is nothing to indicate that these opponents have perfected their ownership of the land

by adverse possession, and that though they appear to be rank trespassers, having no right to remain in the land on account of the fact they they

have no title to the land, they have not completed their title by adverse possession.

18. It is now well-settled that a very heavy burden lies on the person putting forward plea of adverse possession. Even in the case of a suit for

possession of immovable property based on title, as per article 65 of the Limitation Act, such claim would be defeated after 12 years when

possession of the defendant becomes adverse to the plaintiff. In such a case, the defendant has to show how he has become owner by adverse

possession, before he can successfully get the plaintiff non-suited. In order to constitute adverse possession, the possession required must be

adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. The principle is derived from the classical

requirement that in order to give title by adverse possession, the possession must be nec vi nec clam nec precaria, that is peaceful, open and

continuous P. Lakshmi Reddy Vs. L. Lakshmi Reddy, . In the light of the aforesaid settled legal position, let us see whether the opponents have

been able to show that they have become owners of the land under their huts by the doctrine of adverse possession. So far as Company

Applications No. 25 of 1988 is concerned, the opponents have filed their own affidavits showing that they are residing in Divya Vasundhara

Financiers Tenements/huts in Sl. Nos. 183 and 184 of Village Kansad, Sachin. There is no dispute on this aspect. They have also produced at annexure ""A"" to the written statement, true copies of the village Form No. 7-12. They show that originally one Nanubhai Chhimanbhai Desai was

the occupant of this land Sl. No. 184, Hissa No. 859 and by entry No. 889, Divya Vasundhara Financiers Pvt Ltd. became the occupant. So far

as the actual cultivation column is concerned Divya Vasundhara Financiers Pvt. Ltd. is shown to be the cultivator from 1978-79 to 1980-81. Even

earlier, the occupant was shown to be cultivator. Nowhere is the name of any of the opponents found therein. It is true that, in the extract showing

assessment of land for the purpose of G.P. taxation, names of various opponents are mentioned on column No. 6. Some of them are the present

opponents. As it is not in dispute that concerned opponents are in possession of the land below their huts, tax might have been recovered by the

village panchayat, but that does not establish their hostile title. It is, therefore, not necessary to delate on this aspect any more. At annexure ""D"" is

produced one certificate issued by Balubhai L. Patel, sales Tax Inspector, showing that in the land in question belonging to Divya Vasundhara

Financiers Private Limited, six persons are staying whose names are mentioned in the certificate and they are staying in huts constructed on this

land and they are homeless people. This certificate is not examined value, firstly because the person who has given this certificate is not examined

by the opponents and strictly speaking the certificate remains unproved. But this part, even assuming that it can be looked into, all that it states is

that some of the opponents are staying in huts on the land of Divya Vasundhara Financiers Private Limited. There is no dispute about it between

the parties. Similar is the position with respect to the affidavits filed by Balubhai Sukhabhai Patel, Ishwarlal Ramanlal Tailor, Dhirubhai Dahyabhai

Desai, Husainben Majibhai Shaikh, Dahiben Chhaganhai Dhamar, Amirbhai Kumjibhai and Bhanumatiben Datatraiyao. All these deponents have

stated that some of the opponents are staying in huts in the land in question for a number of years. To the extent that these deponents have stated

that these deponents are staying there, their version is not disputed by the Court Committee. But so far as the averment that these pooinents are

staying for more than 12 years in concerned, it does not appear to be fully borne out. As I have already shown earlier, only some of the opponents

whose names are mentioned in the report given by the Court Officer in 1985 are shown to be staying since 1977. Rest of the opponents are staying only for a shorter period. Therefore, it is not possible to agree with the submission of learned advocate for the opponents that the court

Officer''s report should not be accepted and that the Court Officer should have been examined in this case. The report is part and parcel of the

proceedings in the main company petition. It was given by the Court Officer in the usual course of business pursuant to the order passes by the

court in exercise of its supervisory jurisdiction in the present scheme proceedings. That report has remained well established on the court record

and there is no reason why it should not be relied upon. As seen above, the certificate given by Balubhai L. Patel and other copies of records of

rights also cannot be of any help to the opponents. All that these documents reveal is that some of the opponents are staying in the premises for

years. Reliance is also placed by Mr. Bachani on certified copies of the plaints filed by the applicant Court Committee against the Gujarat

Investment Corporation and others in Surat courts. This was done with a view to showing that the court committee, in appropriate cases, has filed

several suits against the concerned defendants. This is neither here nor there. The question is whether it is incumbent upon the court committee to

file suits for possession against the the present opponents in the peculiar facts of this case. This question cannot but be answered in the negative.

19. So far as Company Application No. 43 of 1988 is concerned, similar type of affidavits are filed and documents are produced to show that

some of the opponents were staying on the premises of Divya Vasundhara Financiers Private Limited for years. The document at annexure ""B"" is a

copy of the bill issued by Sheth Dalichand Virchand Shroff Ashaktashram Hospital, Surat to one Kurshedbanu Amidmiya Shaikh. This bill shows

that Kurshedbanu had got herself admitted as an indoor patient in the said hospital and delivered at that hospital and the bill shows that she had

given address as Divya Vasundhara Financiers Private Limited., Sachin. As in possession on the spot, of the concerned opponents is not disputed,

all these documents produced in Company Application No. 43 of 1988 will also fall in the same lime as the documents produced by the opponents

in the companion matter, viz., Company Application No. 25 of 1988. Therefore, I need not dilate on them any more. The entire bunch of

documentary evidence as aforesaid only indicates that the opponents are staying in the premises in question for some years and some of them, as per the report of Mr. D.H.Desai, the Court Officer, ar there since 1977. But the most important question is under what right they are staying there

? It is not in dispute that none of them claims any independent title to the land under the concerned hut. All of them admit that the land belongs to

Divya Vasundhara Financiers Private Limited. but their contention is that they have become owners by adverse possession. So far as this plea is

concerned, as a heavy burden lies on the opponents, they should have entered the witness box to show how they claim a hostile title to this land

and what was the extent of their hostile acts which they had exercised openly and for how many years ? So far as this aspect is concerned, there is

a total blank so far as the evidence led by the opponents is concerned. As stated earlier, none of the opponents has come to the witness box. They

have examined only one witness Dhirubhai Dahyabhai Desai at exhibit 2 in Company Application No. 25 of 1988 to prove the plea of adverse

possession. All that this witness stated was that he was a neighbor and that he had seen hutments belonging to persons on Divya Vasundhara

Financiers Private Limited. land. That he knew some of the opponents. According to this witness, these persons were staying in the land sold by

Nanubhai Ginwala to Divya Vasundhara Financiers Private Ltd. and they were staying there for 13 to 14 years. They constructed kutcha huts

there. According to him since 14 to 15 years this land was sold by Nambhai to Divya Vasundhara Financiers Private Ltd. When pointedly asked a

question whether there are only six huts on the land in 1984, the witness answered as under ""you know it better"" The oral evidence of this witness

is not at all helpful to the opponents. It is obvious that it is for the opponents to plead and prove how they had become owners by adverse

possession, of the concerned plots of land over which they had put up their huts. When the opponents have not come to the witness box, the

witness who is neither a power of attorney holder nor one who deposed to any hostile acts of the opponents cannot improve the case of the

opponents so far as the plea of adverse possession is concerned. So far as their possession is concerned, it is not dispute. It is interesting to note

that the witness has nowhere stated that the concerned opponents were staying in the huts as owners or in their own right or that they had

exercised in the past, acts of hostile title or ownership or ever acted as owners of this land over which they were staying as occupiers of hutments.

Consequently the oral evidence of this witness cannot advance the case of the opponents. As a result of the aforesaid discussion, it becomes

obvious that the opponents have failed to establish the plea of adverse possession of the land in question. They, therefore, remain rank trespassers

who have no right, title or interest in this land and who are shown not to have completed their ownership by adverse possession. Once this plea is

rejected, the result is obvious. The opponents have no right, title or interest to remain in possession of the property in question and to put any

impediment in the smooth working of the scheme. Their obstruction has to be removed as they are found to have no legal interest whatsoever in the

land. (Rest of the judgment is not material for the reports)

