
(2010) 03 CAL CK 0088

In the Calcutta High Court

Case No : CA No's. 231 and 232 of 2007, 146 and 627 of 2009 and CP No. 66 of 1971

Gajraj Pannalal Limited (in Liquidation)

APPELLANT

Vs

The Official Liquidator and Others

RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Companies Act, 1956 — Section 466
Industries (Development and Regulation) Act, 1951 — Section 18FG
Sick Textile Undertakings (Nationalisation) Act, 1974 — Section 2, 3

Citation : (2010) 03 CAL CK 0088

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Anindya Kumar Mitra, Joy Saha and Arindam Moitra, Dhruva Ghosh, Sutapa Sanyal and S.N. Dutta, Hirak Kumar Mitter and Raja Basu Chowdhury, for the Appellant; Debojyoti Dutta and Mithua Sen, for the Respondent

Judgement

Sanjib Banerjee, J.—A dispute has been sought to be raised as to the extent of the land enjoyed by a cotton mill that was set up in the pre-Independence days and has only recently stopped functioning altogether. Mahalaxmi Cotton Mills near Palta Railway Station in North 24-Parganas was owned by a company of substantially the same name. That company, Mahalaxmi Cotton Mills Ltd, was wound up in 1955 and its assets were put up for sale. In March, 1960 Gajraj Pannalal Ltd purchased the assets and properties of Mahalaxmi Cotton Mills Ltd (in liquidation). In 1972, the Central Government took over the cotton mill under the Industries (Development and Regulation) Act, 1951. In 1974 the Sick Textile Undertakings (Nationalisation) Act came into force and it was under such Act that the said cotton mill and assets in relation thereto were taken over by the Central Government and vested in the National Textile Corporation (NTC). Gajraj Pannalal Ltd went into liquidation in 1972 within a few months of the cotton mill and the assets in relation thereto having been taken over.

2. The applicant in three of the four applications is a contributory of Gajraj

Pannalal Ltd (in liquidation) and the principal issue raised in these proceedings is that a piece of land measuring slightly over 4.25 acre that lay across a narrow road from the mill compound was not, and could not have been, taken over by the Central Government or NTC under either the 1951 Act or the 1974 Act and the official liquidator should have taken possession thereof while presiding over the liquidation of Gajraj Pannalal Ltd (in liquidation). Thirty-five years after all assets in relation to the mill had been taken over by the Central Government and it vested in the NTC, CA No. 232 of 2007 has been carried by the contributory claiming that NTC had no authority to sell such land bearing original CS Dag Nos. 1101-1108, 1133, 1134, 1137, 1138, 1140, 1143-1147 and 1152 at mouza Palta in district North 24-Parganas. At the hearing, the applicant has relied on a map that appears at page 173 of the affidavit in support of the summons and the applicant has asserted the rights of the company (in liquidation) in respect of the land covered by original CS Dag Nos. 1101-1105 and 1145-1147. The so-called disputed land has been shaded and bordered in red at page 173 of the Court's papers.

3. CA No. 231 of 2007 is an application seeking permanent stay of winding-up of Gajraj Pannalal Ltd (in liquidation) u/s 466 of the Companies Act. CA No. 146 of 2009 is the third application by the contributory seeking the appointment of a special officer to submit a report on the state of the land that the applicant claims belongs to Gajraj Pannalal Ltd (in liquidation) and sought to be wrongfully sold by NTC. Upon CA No. 232 of 2007 being received, an order was made on March 30, 2007 permitting the sale of the entirety of the assets of the cotton mill to be conducted by NTC on the reasoning that if the application succeeded the sale proceeds of the relevant property could be directed to be made over by NTC to the official liquidator who is the custodian of the properties and credits of Gajraj Pannalal Ltd (in liquidation). The applicant says that an appeal carried from such order was dismissed. The land in question has been purchased by Paharpur Cooling Towers Ltd. CA No. 627 of 2009 is an application by the successful purchaser seeking leave to intervene in these proceedings.

4. CA No. 232 of 2007 is the principal matter. The applicant says that the Act of 1974 permitted the Central Government to take over only the assets in relation to the sick textile undertaking and not other assets of the owner unconnected to the sick textile undertaking. The applicant says that the expression "in relation to" used in Section 3 of the 1974 Act has been interpreted by a Division Bench in construing similar provisions in the Textile Undertakings (Nationalisation) Act, 1995 where it was held that the assets that were intended to be taken over were such assets that had a direct connection with the sick textile undertaking. In the Division Bench judgment reported at Custodian of Textile Undertaking Vs. Hall and Anderson Ltd. and Another, the textile mill of the concerned company was in Bombay and it owned another building, which is a prominent landmark in central Calcutta, which was let out and was unconnected to the textile business. The Division Bench found that the Calcutta building could not have been taken over as it did not form part of the textile mill business of the concerned company.

5. The applicant asserts that the land that it claims on behalf of the company (in liquidation) has always been vacant save a temple in one corner thereof. The applicant has relied on a couple of photographs appended to the petition and several more filed along with a supplementary affidavit to demonstrate that the said land continues to be vacant and is situate outside the mill compound and across a public road. The mill compound has a boundary wall and it is apparent and remains undisputed that the said land is outside the mill compound. The applicant suggests that the official liquidator ought to have taken possession of such land and the fact that the official liquidator failed to discharge an obligation would not create any right in respect of such land in favour of NTC. The applicant says that the land, or the proceeds from the sale thereof, should be used to meet the debts of the company (in liquidation). The immediate interest of the applicant appears to be that the applicant or others formerly in control of the company (in liquidation) may be facing proceedings instituted by banks or financial institutions in their capacity as guarantors in respect of credit facilities obtained by the company (in liquidation).

6. The applicant says that there is no basis to the NTC assertion that labour barracks existed on the disputed land or that the labour quarters were demolished in the year 2005 as claimed by the NTC. The applicant insists that in the absence of NTC producing the inventory report which the Central Government was obliged to prepare u/s 18FG of the 1951 Act at the time of taking over the sick textile undertaking, it cannot be said that NTC acquired any rights in respect of the disputed land.

7. The applicant relies on an appellate court order of November 3, 2006 where the applicant herein was given leave to furnish particulars together with available documents to the official liquidator in respect of the properties which, according to the applicant herein, belonged to the company (in liquidation) and did not concern the sick textile undertaking. The applicant says that pursuant to such leave he wrote to the official liquidator on December 18, 2006. Apart from the assertion in the said letter the applicant enclosed a copy of the appellate court order of November 3, 2006, a copy of the deed by which the assets and properties of Mahalaxmi Cotton Mills (in liquidation) were sold to Gajraj Pannalal Ltd in 1960, a memo issued on September 4, 1969 by a revenue officer, the reply dated September 20, 1969 by Gajraj Pannalal Ltd to such memo, a map and eight photographs. The applicant has not referred to the memo of September 4, 1969 or the reply thereto at the hearing. The official liquidator sought the title deeds from the applicant but it does not appear that the title deeds were forwarded. No title deeds have been relied upon by the applicant at the hearing.

8. The applicant refers to the affidavit filed by NTC where it has been averred at paragraph 3(b) that the labourers' quarters or barracks were situated on land measuring 4.25 acre and 0.31 acre and that the factory area and the labourers' quarters were separated by a road locally referred to as the Station Road. The

applicant says that despite the assertion in paragraph 3(b) that there was another piece of land measuring 6.45 acre that had been requisitioned by the Defence Ministry, NTC had merely said that the compensation in respect of such land, after it was acquired in the mid-1970s, was paid to Gajraj Pannalal Ltd. The applicant argues that if such other land appurtenant to the factory premises could have been treated as land not connected with the sick textile undertaking, there was no reason for NTC to claim the land across the Station Road to the north of the mill compound. The applicant also refers to paragraph 10 of the affidavit filed by the NTC and suggests that notwithstanding the assertion therein that the labourers' quarters existed on the disputed land, there is no evidence thereof that has been produced.

9. NTC retorts that the land taken over by the Defence Ministry and the piece of land now sought to be claimed on behalf of the company cannot be compared. The Defence Ministry had taken over the land in the 1940s and it was only the compensation that was paid in the 1970s. NTC refers to the minutes of the meeting held between the official liquidator's representative and an erstwhile director of the company (in liquidation) on March 10, 1977, shortly after Gajraj Pannalal Ltd went into liquidation. It was the applicant herein, as a former director of the company (in liquidation), who handed over the keys to the registered office of the company and informed the official liquidator's representative "that the company (had) no branch office but the company had a Textile Mill at Palta which had been taken over by the National Textile Corporation in 1972 ..." NTC says that if the present effort of the applicant were genuine, the applicant would have made a statement to the official liquidator's representative in March, 1977 that the company (in liquidation) had other land in Palta that was not attached to the sick textile undertaking and would have called upon the official liquidator to take possession thereof.

10. NTC has made out a chart at page 34 of its affidavit that is worth looking at. The corporation says that the original CS Dag numbers were subsequently converted to RS Dag numbers in the revenue records and after the Estates Acquisition Act, 1955 the record of rights have been revised and LR Dag numbers have now been issued. According to such chart, CS Dag Nos. 1101, 1102, 1103, 1104, 1105, 1145 and 1146 were converted to RS Dag No. 1145 and subsequently converted to LR Dag No. 1715. The land covered is of area of 4.25 acre. The chart also reveals that original CS Dag Nos. 1147 and 1314 measuring 0.31 acre together were converted to RS Dag No. 1329 and subsequently converted to LR Dag Nos. 1708 and 1714.

11. The corporation relies on an extract from the assessment register of the North Barrackpore Municipality for the year 1989-90. The extract relates to the land covered by Dag Nos. 1101-04, 1145-47 and 1350 and measuring 4.25 acre. In the remarks column the structures on the land are described and there are several units which are mentioned along with room, bath, lavatory, kitchen, pump room and the like. Twenty-one items of construction have been detailed.

Even though Dag No. 1350 referred to in the extract strikes a discordant note as such original CS Dag number is not mentioned in the NTC chart at page 34 of its affidavit, there is, at least, some evidence that there was substantial construction on the land bearing original CS Dag Nos. 1101-1104 and 1145-1147.

12. The official liquidator submits that not only did the applicant not direct the official liquidator to any land of the company (in liquidation) that had been allegedly wrongfully possessed by NTC or that lay beyond the mill compound in Palta, but the applicant had not referred to the disputed land in the statement of affairs filed following the company going into liquidation. The official liquidator relies on the statement of affairs filed by the applicant and shows that there is no description of any land therein. The official liquidator explains that he had proceeded all along that the entirety of the property of the company (in liquidation) in Palta had been duly taken over by the Central Government and vested in NTC as no indication to the contrary was given by the erstwhile officers of the company (in liquidation). The Official Liquidator contends that the same person whose statement is recorded in the minutes of the meeting held by the official liquidator's representative on March 10, 1977 cannot be heard to claim that there was other land in Palta that belonged to the company (in liquidation) and had not, or could not have been, taken over by the Central Government.

13. The principal plank on which the applicant has founded the claim of the company (in liquidation) to the disputed land is that such land was not an asset in relation to the sick textile undertaking. u/s 2(j) of the 1974 Act, the definition of "sick textile undertaking" implied a textile undertaking specified in the First Schedule to the Act the management whereof had been taken over by the Central Government under the 1951 Act or had vested in the Central Government under the Sick Textile Undertakings (Taking-over of Management) Act, 1972. The applicant has needlessly laboured over the obvious in seeking to demonstrate the amplitude of the expression "in relation to" in Section 3 of the 1974 Act. The intent and purpose of the 1974 Act was to take over the sick textile undertakings and their management. It did not intend to take over the entirety of the business and assets of any person who owned a sick textile undertaking. But as to whether a particular property was part of the sick textile undertaking or was used in connection therewith is essentially a question of fact.

14. On the applicant's avowed case, if NTC could demonstrate that there were labour quarters on the disputed land, the company (in liquidation) would have no claim thereto. Since it is evident from the relevant extract of the municipality records that there existed rooms and other construction resembling labour quarters on the disputed land in the year 1989-90, the issue raised by the applicant is immediately answered against him. Despite a bald denial of the veracity of the document in the applicant's reply, the applicant has brought nothing to detract from the apparent authenticity of the extract; nor has the applicant questioned the contents thereof.

15. In any event, there is nothing that the applicant has been able to show that

the applicant had contemporaneously informed the official liquidator or had otherwise complained that NTC had taken over possession of the disputed land despite such land allegedly not being "in relation to" the sick textile undertaking. A period of 35 years elapsed between the Central Government taking over the assets of the sick textile undertaking and the first assertion by a contributory of the company (in liquidation) that the Central Government or NTC had taken over properties allegedly in excess of what the 1974 Act permitted either. The applicant did not refer to the disputed land when the official liquidator's representative went to take possession of the assets and properties of the company (in liquidation) in 1977. The applicant did not refer to the disputed land in the statement of affairs that he filed. There is nothing of merit that the applicant has brought on behalf of the company (in liquidation) to sustain his prayer that the official liquidator was entitled to the disputed land or the consideration in respect thereof. There is, really, no dispute as to the disputed land and it appears that labour quarters existed thereat and as such the land had a close nexus with the sick textile undertaking which the Central Government was entitled to take over under the 1974 Act.

16. CA No. 232 of 2007 fails. NTC will be entitled to the entire consideration obtained from the sale of the properties of the sick textile undertaking. The applicant will pay costs assessed at 500 GM to NTC and 300 GM to the official liquidator.

17. CA No. 231 of 2007 is the application seeking permanent stay of the order of winding up. The applicant says that since the official liquidator has not produced any records relating to the unsecured creditors of the company (in liquidation) and since the secured creditors stand outside the winding up, the order of winding up should be permanently stayed. The applicant has claimed that the company (in liquidation) has two secured creditors: Industrial Finance Corporation of India (IFCI) and United Bank of India. IFCI obtained a decree on July 5, 1976 in the sum of Rs. 20,52,493.62 against the persons who had guaranteed the repayment of the credit facilities granted to the company; no decree was passed against the company (in liquidation). The applicant says that such decree has not been put into execution and can no longer be pursued. The applicant says that UBI has filed a suit against the company (in liquidation) and the guarantors which is now pending before the appropriate Debts Recovery Tribunal. It has been averred in the affidavit in support of the summons that the applicant is desirous of reviving the company.

18. The applicant has claimed that out of the 25,000 equity shares of and in the company prior to its liquidation about 15,000 equity shares were owned by the applicant, his friends and family members. The applicant says, at paragraph 5 of the affidavit in support of the summons, that as "one of the erstwhile Directors of the said company and a substantial shareholder of the group holding approximately 60% of the total paid up share capital of the company, I am vitally interested in the affairs of the said company."

19. The applicant does not, on his own showing, hold the entirety of the paid up capital of the company as it stood prior to its liquidation. The applicant does not even own 60 per cent of the paid up capital. The applicant does not have the support of the other erstwhile contributories of the company (in liquidation) nor has the applicant attempted to demonstrate such support. Though it is perplexing as to how the liquidation proceedings have dragged on for more than 30 years, the applicant does not show that the erstwhile contributories of the company (in liquidation) would be benefit from an order staying the winding up or that the company (in liquidation) has any assets that could be used for the purpose of its revival. The application u/s 466 of the Companies Act is vague, devoid of particulars and short on substance. It also appears to have been made simultaneously with the application relating to the so-called disputed land in the hope that if the land claimed could be taken out of NTC's control, it could thereafter be obtained cheap by the applicant and other contributories by seeking a permanent stay of the winding-up of the company (in liquidation).

20. CA No. 231 of 2007 is dismissed. There will be no order as to costs.

21. In the light of the view taken on CA No. 232 of 2007, that the company (in liquidation) was not entitled to the land claimed in such application, no inspection of the land is called for and no special officer need be appointed for the purpose. CA No. 146 of 2009 is dismissed but without any order as to costs.

22. The application by the purchaser, CA No. 627 of 2009, is disposed of without any order since the principal matter in issue has been decided without any assistance of the would-be intervenor. There will be no order as to costs.

23. The official liquidator should take expeditious steps for completing the liquidation of Gajraj Pannalal Ltd (in liquidation) and file a report as to the status within a period of eight weeks from date.

24. Urgent certified photocopies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.