(2012) 07 GUJ CK 0003

In the Gujarat High Court

Case No : Co. Application No. 507 of 2011 and Official Liquidator Report No. 137 of 2010

Indian Oil People''s Cooperative Group Housing Ltd. APPELLANT

Vs

Official Liquidator in Charge of Ahmedabad Manufacturing RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Citation : (2012) 116 SCL 102

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Manish R. Bhatt and Mrs. Mauna M. Bhatt, for the Appellant; Amee Yajnik and Rutvij M. Bhatt, for the Respondent

Judgement

Smt. Abhilasha Kumari, J.—The present Judge''s Summons dated 19.10.2011 have been taken out by the applicant - Indian Oil People''s Cooperative Group Housing Limited ("the Society" for short), a registered Society, having been incorporated as a Housing Society by the employees of Indian Oil Corporation. The prayers made by the applicant are as follows:

(A) This Hon''ble Court may be pleased to direct the Official Liquidator and the GIDC to clarity that in respect of lot No. VA, sale whereof has been confirmed in favour of the applicant, the area of land situated at Survey No. 295, Village Undera, GIDC, Nr. P.T. Township, Phase-H, Vadodara, is admeasuring approximately 13759 sq. meters, alongwith construction of ''A'' type and ''C'' type quarters.

(AA) That in view of the act that land admeasuring 13759 sq. mtr. of Survey No. 295, for which bid of the applicant was accepted, is not available for sale, this Hon''ble Court may be pleased to set aside the sale as confirmed under order dtd. 18/7/ II and be further pleased to direct the Official Liquidator to refund the amount paid by the applicant along with interest at the appropriate rate as deemed fit by the Hon''ble Court.

(B) That this Hon''ble Court may be pleased to direct the Respondent No. 2 GIDC to clarify and state that the aforesaid Lot No. VA admeasuring approx 13759 sq. mt. Of land is unencumbered, and that the company in liquidation is the lessee with regard to the said land admeasuring approx 13759 sq. mt.

(BB) That this Hon''ble Court may be pleased to initiate proper inquiry into the manner in which the office of the Official Liquidator auctioned the property in question, without ascertaining the correct status of the land in question.

(BBB) That this Hon''ble Court may be pleased to direct the Official Liquidator to formulate proper procedure to ensure that in future, before the property is to be auctioned, proper inquiry/ investigation is carried out with regard to auctioned property, so that the bidders and the ultimate purchasers are not put to hardship and inconvenience, as in the present case.

(c) That this Hon''ble Court may be pleased to direct the respondents to provide the copy of the lease deed executed by the GIDC in favour of the company in liquidation as also full set of title deeds/ documents relatable to Lot No. VA.

(D) That pending the aforesaid clarification by the respondents, time to deposit the balance consideration of 75 per cent, may kindly be extended.

(E) Any other and further relief which is just and proper may kindly be granted by this Hon''ble Court.

An Affidavit in support of the Judge''s Summons has been filed by the applicant, dated 19.10.2011. It is stated therein that Ahmedabad Manufacturing and Calico Printing Mills Limited (in Liquidation) [hereinafter referred to as "the Company in liquidation"], was ordered to be wound-up by order dated 20.04.1998 passed in Company Petition No. 157 of 1995. The Official Liquidator attached to this Court was appointed as Liquidator of the Company in liquidation. Pursuant thereto, the Official Liquidator initiated steps to publish an advertisement in prominent daily newspapers in Gujarati and English.

2. It is the case of the applicant that the advertisement published by the Official Liquidator describes the property in question as Lot No. VA, admeasuring approximately 13759 square metres along with construction of ''A'' type and ''C'' type quarters at Survey No. 295 of Village Undera, GIDC, Near P.T. Township, Phase II, Vadodara. Various offers from bidders were received. The applicant-Society, whose members are employees of Indian Oil Corporation, made its bid to purchase Lot No. VA. The offer of the applicant for an amount of Rs. 11.96 crores was accepted by the Court, vide order dated 18.07.2011 made in Official Liquidator''s Report No. 137 of 2010. The applicant-Society was desirous of constructing residential houses on the said parcel of land in the name and style of "Indian Oil People''s Cooperative Housing Society Limited". The applicant being the highest bidder, the sale was confirmed in its favour for an amount of Rs. 11.96 crores. The applicant was called upon to pay 25% of the sale consideration within one month from the date of the order dated 18.07.2011. Pursuant

thereto, the applicant deposited an amount of Rs. 2.99 crores, being 25% of the sale consideration. It is further stated in the affidavit that after making the payment as above, the applicant contacted respondent No. 2-Gujarat Industrial Development Corporation (GIDC) to obtain the relevant documents, namely, the Lease Deed in favour of the Company in liquidation. However, respondent No. 2 did not provide these documents to the applicant. The applicant, therefore, made efforts to gather the relevant revenue record and came into possession of Village Form No. 7/12, wherein the name of IPCL has been bracketed in the Column of second charge, and, the name of Reliance Industries has been inserted. As the applicant was not informed regarding the second charge on the land in question, nor the effect of such an entry, it addressed a letter dated 29.09.2011, to the Official Liquidator, requesting for a copy of the Lease Deed in favour of the Company in liquidation, as well as a copy of the full set of title deeds/documents relating to Lot No. VA. The Official Liquidator did not respond to the request of the applicant and did not forward the title deeds/ documents relating to Lot No. VA. In these circumstances, the applicant has taken out the present Judge''s Summons, making the prayers reproduced hereinabove.

3. In order to appreciate the factual position and the seriousness of the matter, a brief chronology of events and details of various interim orders passed by this Court in the present application, would be necessary :

4. This Court (Coram: K.M. Thaker, J.) issued notice to the respondents on 20.10.2011.

5. Thereafter, this Court (Coram: K.M. Thaker, J.) passed an order dated 02.12.2011, containing specific directions to the Official Liquidator and GIDC, including that of filing a Report/ affidavit, giving relevant details regarding the title, possession and ownership of the land bearing Survey No. 295.

6. On 15.12.2011, Mr. Manish R. Bhatt, learned Senior Advocate for the applicant submitted before the Court that there appear to be serious errors or irregularities on a large scale, inasmuch as, according to the advertisement, about 13759 square metres of land of the ownership of the Company in liquidation was available for disbursement. Even according to the Sale Confirmation Order, land admeasuring 13759 square metres has been sold and 25% of the total sale consideration has been recovered from the applicant towards sale of the land in question. It has now come to the notice of the applicant that land to the extent of 13759 square metres is not available at all, as it was not under the ownership of the Company in liquidation. What is available are only two small parcels of land. These submissions have been recorded in order dated 15.12.2011 of this Court (Coram: K.M. Thaker, J.). It has further been recorded in the said order, as below:

.... In the present case, though notice was ordered to be issued on 20/10/2011, OL has, though almost two months have passed, not filed any report and placing on record that what steps and precautions have been taken by office of OL before the advertisement for sale of land in question and before issuing tendered as well as before holding an auction process. In light of which, the Court was led to believe that measurement of the land is about 13,759/- sq. mt and accordingly sale confirmation order was passed.

It is unfortunate that despite the fact that two months'' time is passed, OL has still not filed the report. The OL has taken the matter very lightly and no steps, which require urgency, have been taken.

As a last chance, time until 19/1/2012 is granted.

In the meantime, OL shall, without any default place on record entire details of the steps and precautions taken before disposing the land in question by way of auction sale by virtue of sale confirmation order dated 18/7/2011.

The respondent GIDC also shall take steps to place on record entire history from the Revenue record as well as its record, so far as land in question are concerned and clarified the details regarding title of ownership of land bearing survey No. 295, out of which, the land in question has been sold to the applicant.

Having regard to the facts and circumstances of the case, request made by learned advocate for the applicant that OL may be directed to EMR the amount received from applicant society and maintain it separately. Under this circumstances, OL is directed to EMR the said amount separately and if find necessary to deposit such amount in short term fixed deposit of period of forty five days or sixty days as may be considered appropriately in Nationalized Bank.

S.O. to 19/12/2011.

7. Pursuant thereto, GIDC filed its reply dated 19.12.2011. It is, inter alia, stated as below:

3.1 submit that in light of the said prayers as prayed in the application the Hon''ble Court was pleased to issue direction to GIDC to file reply. It is submitted that on going through the records available with GIDC for the land bearing Survey No. 295, necessary request was made by Calico Chemicals & Plastic division for housing quarters and forms were submitted to GIDC on 10.02.1972. That in light of the applications GIDC was pleased to allot 6-A, 10-B (Block-1) and 16-C (Block No. 6) type housing quarters at southern township on the basis of certain conditions on 29.03.1972. A copy of the possession receipt is duly annexed with reply and marked as Annexure-R1.

4. It is submitted that in light of the said allotment of the housing quarters it was agreed between GIDC and the concerned unit to enter in hire purchase agreement and accordingly several inter se correspondence were made regarding the terms and condition of the offer and agreement and as per the noting of GIDC hire purchase agreement came to be executed on 29.09.1972. A copy of the proforma of the said agreement is duly annexed herewith this reply and marked as Annexure-R2.

5. It is further submitted that in light of the said agreements made since the concerned unit wanted to give common amenities to the occupants of the said unit since IPCL was also allotted the certain blocks and inter se exchange agreement of the possession of 16 tenements of Block C-3, type tenements with 16 tenements of Block-B came to be executed with consent of GIDC. A copy of the supplementary agreement executed between GIDC and unit is duly annexed herewith this application.

6. It is submitted that in light of the said exchange plot Nos. 10 and 11 at southern Township of Petrochemicals complex was allotted to IPCL vide communication letter dated 20.06.1988. It is submitted that land comprising survey No. 295/p admeasuring 8000 sq. mtr at village Undera, Baroda was allotted to IPCL. A copy of the said letter dated 20.06.1988 is duly annexed herewith this application and marked as Annexure-R3.

8. Thereafter, the Official Liquidator filed Report dated 19.12.2011. The said Report was not found to be satisfactory by the Court, therefore, the Official Liquidator was directed to file another Report on, or before, 26.12.2011, giving all the details required by the order dated 20.12.2011.

9. The Official Liquidator filed another Report dated 28.12.2011. In the said Report, it is stated thus:

2. That, consequent upon the winding up order, the Official Liquidator deputed his representative to the Office of the Registrar of Companies, Gujarat Ahmedabad for taking inspection of records of the subject company to find out assets and properties, liabilities, addresses of Registered office of the company and Secured Creditors. That, the Official Liquidator most respectfully submits that dates on which possession of the Assets and Properties were taken over by the Official Liquidator are as under:--

In this connection, the Official Liquidator most respectfully submits that at the time of taking over possession of the land of the company (In Liqn.) measurement of the land in question was not carried out. Copy of the minutes recorded on 20.05.1998 at the time of taking over possession is annexed herewith and marked as Annexure "A"."

10. It has further been stated in the Report dated 28.12.2011 that by letter dated 28.06.2007, the Official Liquidator appointed Shri Vinod R. Trivedi, Government Approved Valuer, to investigate the title of the assets of the Company in liquidation and to submit his Report, which was received on 10.03.2010. Thereafter, the Sale Proclamation was published on 24.03.2010. The Court did not accept any of the offers received by the Office of the Official Liquidator and directed him to get a fresh valuation done by another Valuer and restart the process. It is further stated that the Official Liquidator then appointed GITCO and one Mr. Bakul Desai, as a Valuer to carry out the valuation process of the assets of the Company in Liquidation, to submit the Report along with details regarding the measurement of the land in question and to prepare sketch/ map

showing the location and status of the land. The Report from GICTO and Mr. Bakul Desai was received by the Official Liquidator was placed on record under Official Liquidator''s Report No. 115 of 2010. On the basis of the said Report, the upset price was fixed under order dated 09.10.2010. Thereafter, the Court, vide order dated 18.07.2011, confirmed the sale of assets in favour of the applicant. The Official Liquidator has further mentioned in his Report dated 28.12.2011 that the measurement of the land in question was mentioned in the advertisement and in all other relevant documents. The measurement has been shown as approximately 13759 square metres, which is the extent of the land offered for sale to the intending purchasers by the Official Liquidator. It has further been stated that in, or around, 26.12.2011, the office of the Official Liquidator received a communication from Reliance Industries Limited that land admeasuring 8000 square metres of Survey No. 295 at Village Undera, District: Vadodara, being a substantial part of the property in question, actually belonged to, and has been in the possession of, Reliance Industries Limited, subsequent to the merger of IPCL with Reliance Industries Limited. The Official Liquidator has also claimed that in the said communication, it was informed that IPCL had acquired the said land from GIDC.

11. Paragraph-14 of the Report of the Official Liquidator dated 28.12.2011, is relevant and is reproduced hereinbelow:

(14) That, the copy of draft amendment prepared by the applicant has been served to the Official liquidator, who has purchased the property in question. In this connection, the Official Liquidator most respectfully submits that at the time of auctioning the property the Official Liquidator has solely relied upon the valuation reports submitted by the GITCO and Mr. Bakul Desai, Valuer and on the Title Search Report given by Advocate Shri Nilesh Trivedi. The Official Liquidator submits that at no point of time there was any doubt about the measurement or title of the property in question as nothing was on record regarding acquisition of admeasuring 8,000 Sq. Mtrs. Of land by Reliance Industries Ltd. from IPCL, who had acquired the land from GIDC. The Official Liquidator humbly submits that the purchaser had surveyed the land in question and also inspected the same physically before bidding for the same. In this connection, it is further respectfully submits that as per ratio decided by the Hon''ble Supreme Court of India in Civil Appeal No. 405 of 1986 in United Bank of India v. Official Liquidator[1994] 1 Supreme Court Cases 575, when sale of the assets and properties of the company (In Liqn.) is made by the Official Liquidator under orders of the Hon''ble High Court, the purchaser has to satisfy himself about title, encumbrances etc. of the properties and the Official Liquidator does not hold any guarantee in this regard. The Hon''ble Supreme Court of India has further held in case cited above that the purchaser cannot demand diminution in price on ground of defect in title or discrepancies of the property. A copy of the Hon''ble Supreme Court of India judgment and order dated 06.01.1993 is annexed herewith and marked as Annexure "J". Therefore, in view of the aforesaid decision of the Hon''ble Supreme Court of India the applicant has no case and

the application deserves to be rejected.

12. After the aforesaid Report dated 28.12.2011, the Official Liquidator filed another Report dated 16.01.2012, wherein startling revelations to the following effect have been made:

(2) That, after taking possession of the property in question, the Official Liquidator has carried out valuation of the said property from three valuer i.e. Mr. Vinod R. Trivedi, GITCO and Mr. Bakul Desai, all the reports are on record of the matter. The Official Liquidator submits that these reports were taken into consideration when the properties were put to sale and they were also before the sale committee and the same were also placed before the Hon''ble Court while fixing the upset price and EMD of the properties in question. The Official Liquidator submits that the work of title search was assigned to the concerned advocate for investigation of title of the assets of the properties in question. Therefore, the Official Liquidator submits that all throughout the Official Liquidator has implicitly and bonafidely relied on contents of the Valuation Report while deciding sale of the property in question. The Official Liquidator further submits that it is due to inadvertence and oversight that the Official Liquidator has not conducted an in depth and detailed search of the property in question regarding ownership of the company regarding the assets, detailed measurement of the property and complete history from the date of taking over the possession of the property till date.

(3) The Official Liquidator further submits that at the time of sale of property before this Hon''ble Court i.e. during auction proceedings the Official Liquidator was under bona fide impression that the measurement as mentioned in the valuation report were that of the property of the company and so the same were mentioned in the advertisement of sale pursuant to the order of the Hon''ble High Court.

(4) The Official Liquidator therefore submits that it was only after the sale was confirmed and the auction purchasers went for measurement and found out that there was discrepancy in the measurement of the property and that almost 8000 Sq. Mtrs. Out of admeasuring 13,759 Sq. Mtrs. Did not belong to the company (In Liqn.) and only when the facts was brought to the notice of the Hon''ble High Court by way of the present application that the Official Liquidator realized that there was some kind of mistake or inadvertent in carrying out proper measurement of the company''s property which was put to sale.

(5) The Official Liquidator very humbly submits that in view of the discrepancy in actual measurement of the properly in question, the auction purchaser has certainly not got what the advertisement mentioned. The Official Liquidator submits that it is true that the auction purchaser bid for the property described in the advertisement and the sale was confirmed in his favour. However, in view of the property not being what it is described as, the Official Liquidator looking to the peculiar facts of the case submits that the sale required to be cancelled in the

interest of justice. The Official Liquidator sincerely apologies to this Hon''ble Court for the serious inadvertence on the part of the Official Liquidator office and humbly requests to this Hon''ble Court to cancel the sale and permit the Official Liquidator to refund the amount paid by the auction purchaser for the property.

13. The above state of affairs led the Court (Coram: K.M. Thaker, J.) to pass a detailed order on 30.01.2012. In addition to other directions, by this order, the Collector, Vadodara, was directed to examine the entire record, including the revenue record of the lands in question and to submit a Report, stating the present status of the land in question as well as its title and ownership as per the relevant revenue record, and to explain how and when the land changed hands.

14. Consequently, the Collector, Vadodara, filed an affidavit dated 07.05.2012. The relevant paragraph of the affidavit is reproduced hereinbelow:

4.1 say and submit that after the merger order passed by this Hon''ble High Court said land dated 16.08.2007 was by the land allotted to the Reliance Industries. GIDC allotted & given possession of ''A'', ''B'', & ''C'' type of quarters admeasuring 1668.90 sq.mts. of construction area to Calico Industries for a residential Zone, to Calico Polyester Fiber Division vide order dated 10.03.1972. It is further required to be taken into consideration by this Hon''ble High Court that in the letter of GIDC dated 27.01.2012. It is specifically mentioned in the said parcel of land the Survey No. 295 constructed admeasuring the 1686.90 sq. mts. has been made by the Calico Industries for Residential purpose as mentioned above. Therefore, the remaining parcel of the said land from 5759 sq.mts. after joint measurement by GIDC & DILR may be auction by the Official Liquidator it is not worthy that the said parcel land is allotted to Reliance 8000 sq.mts. cannot be taken by the Official Liquidator in auction. It is due possession of Reliance Industries....

15. Respondent No. 2 - GIDC has also filed an additional affidavit-in-reply dated 14.06.2012. The stand taken by the GIDC is stated thus:

9. It is submitted that as per the records of GIDC the land admeasuring 8000 sq mtr was allotted to IPCL way back in 1988 so far as land bearing survey No. 295p is concerned. Over and above IPCL was allotted in all 52108 sq mtr for various survey numbers including the land in question in block nos: 10 and 11. Accordingly the said land in question does not fall in ambit of Calico Mills Ltd (in liquidation).

Thus GIDC has also taken a categorical stand that the land in question does not fall in the ambit of the Company in liquidation.

16. The Official Liquidator has, thereafter, filed one more Report dated 15.06.2012. Nothing of substance regarding the issue in question has been stated in the said Report.

17. Lastly, the Official Liquidator has filed a Report dated 09.07.2012. Along with the Report, the Official Liquidator has annexed a copy of the order "dated

18.01.2012 of this Court (Coram: K.M. Thaker, J.) in Official Liquidator''s Report No. 124 of 2011 in the matter of "OL of Borneo Mining & Smelting Ltd. (In Liquidation) v. Canara Bank", wherein the Court has issued certain directions. The relevant extract of the order reads thus:

4. The Court is at pains to mention that this is not the first case in which such defects are noticed.

In cases more than one such defects are noticed and have been informed to the OL, however any improvement is not reflected in the report which are being placed in most of the matters. Therefore, it appears that it is necessary that certain directions, as general / broad parameter / guidelines giving at least bear minimum requirements need to be given to OL who should ensure that at least such bear minimum requirements observed and complied while taking possession, inviting bids for sale and inviting claims and they should be placed on record before the Court with reference to the properties in question i.e. properties which are claimed to be of the company in liquidation and at the time of awarding task of valuation to any valuer, specific instructions to provide at least those details may be issued by the OL. Hence, below mentioned directions are passed:-

(1) In the first instance the OL shall collect the details of all the properties of the company in liquidation from the record of the Registrar of Companies.

(2) Thereafter, further details can be collected from the record of the company which is usually taken in possession by the liquidator when appointment of liquidator is made as provisional liquidator or the record which subsequently becomes available.

(3) Further necessary details can be gathered from the statement of affairs filed by the directors and from the statement recorded under Rule 130 of the Act.

(4) The details can be gathered from workers / union and / or creditors.

(5) After the details regarding all properties and assets of the company are collected the OL must recognize or cross check the said details with the revenue record or municipal record and collect the copy of the relevant Forms of the revenue record e.g. form No. 6, 8, 7X12 etc. or municipal property card or municipal tax bill etc.

(6) At the time of taking possession of any property / asset of the company particularly land, building or any other immovable or constructed properties / assets, panchnama must be drawn and the OL must get exact measurement taken by expert body like DILR at the time of taking possession of the property and the panchnama as well as report of the OL regarding the possession must reflect measurement of the property in question as well as its description, location etc.

(7) When the valuer is assigned the task to carry out the work of valuation of the

property, he should be asked to independently take measurement of the property in question and also independently examine the title and ownership and also mention description / status of the property in question e.g. whether it is encumbered or whether there are encroachment or whether it is completely vacant or not or whether there is any attachment Notice and such other aspects. The details regarding property in the municipal / revenue record should be examined by the valuer and while suggesting the valuation, the valuer also should take into account jantri value as well as the sale instances for at least 5 year and those details must be reflected in the report.

(8) Detailed and exact inventory of the properties / assets (movable / immovable) and the record which are taken in possession and which are found to be in the premises of the company, should be drawn.

(9) If any statutory authority or any tribunal or Court has attached the property then the said details also must be reflected in the report of possession and the formalities in such cases should be complied so as to protect the interests of workers and creditors.

(10) Immediately after possession is taken, intimation to statutory authority like income tax department. Provident Fund Organization etc., should be send and if there are any claims, they may be called for.

(11) After the possession is taken the claims from the workman also should be immediately invited instead of waiting until the properties are sold.

(12) When the advertisement for sale of any property is issued, said advertisement should contain exact description including measurement, location, situation etc. of the property in question and the details as to whether there are any encumbrance, encroachment, attachment order etc., also should be mentioned clearly in the advertisement so as to avoid any subsequent dispute with regard to the possession, and / or measurement and title - ownership of the property in question.

(13) Periodical report from the security agency should be called for and the said report must contain detailed description of the properties under their supervision and the inventory.

The following documents are also required to be placed on record of the Court.

(1) Chronology of the dates from the time of presentation of winding up petition until the completion of sale of all assets and details of all orders and interim / ad-hoc disbursements;

(2) Date on which OL took possession of the properties, the Minutes and the panchnama of the possession, type written copy of the Minutes (as most minutes are illegible) and the inventory and list of all items, record and assets / property taken in possession and also those of which possession is not taken and reasons for not taking the possession.

(3) The documents on the basis of which list of assets and properties of the company were prepared, List of Ex-directors of the company;

(4) List of secured creditors of the company;

(5) List of workers of the company and unions of workers and the last pay register / attendance register;

(6) Report of physical verification of the properties and details showing occupants, encroachers or any other persons (if there are any) on the properties of the company;

(7) Valuation Reports of each asset and property at the time of taking possession;

(8) Statement of Affairs.

(9) copy of the record of ROC and a summary of all entries;

(10) Details of the documents submitted by secured creditors of the company such as proof of debt / statement of charge etc;

(11) Details of security agency employed by the OL to safeguard the properties, the rates at which work is awarded and payment made, if any;

(12) The contract with security agency must contain a clause imposing liability to pay damages in case of theft and to supply the list of persons employed from time to time;

(13) Number of petitions, company applications, OLRs filed by the office of OL, secured creditors or workers along with orders passed thereon;

(14) Any correspondence / complaints received from any party including workers and secured creditors regarding the company in liquidation;

(15) Details of any property sold, proceeds realized, how invested by the OL and details of disbursement with corresponding orders of the Hon''ble High Court;

(16) Details of litigation by workers either in Civil Courts or labour Courts and whether the OL has appeared in any matters and also the matters pending in DRT and whether appearance caused or not,

18. In the above background and context, this Court has heard Mr. Manish R. Bhatt, learned Senior Counsel for the applicant, Dr. Amee Yajnik, learned advocate for respondent No. 1 - Official Liquidator and Mr. Rutvij M. Bhatt, learned advocate for respondent No. 2 - GIDC.

19. It is submitted by the learned Senior Advocate for the applicant that the land that has been advertised under orders of this Court, based on which the offer of the applicant was accepted, is not available on the spot. This fact is accepted by the Official Liquidator and the GIDC. The Collector, Vadodara, has also stated that land admeasuring 8000 square meters is in the possession of Reliance Industries Limited and could not have been put to auction by the Official

Liquidator.

20. It is further submitted that the applicant is a Society consisting of employees of the Indian Oil Corporation who have pooled-in their meagre resources and even taken loans, for purchasing this property, in the hope that they would be able to construct their residences thereupon. It is now found that a substantial portion of the land that they have purchased pursuant to the advertisement and auction, is not available at the site, therefore, the members of the applicant-Society should not be made to suffer for the lapses committed by the office of the Official Liquidator. The amount paid by the applicant, which has been ordered to be invested in a Fixed Deposit, may be directed to be returned to them.

21. The learned Senior Advocate has further contended that the matter is a serious one, therefore, an inquiry may be directed to be conducted. Further, some guidelines may be laid down by this Court, to ensure that such lapses do not recur.

22. Dr. Amee Yajnik, learned advocate for the Official Liquidator has submitted that the lapses that have occurred at the office of the Official Liquidator are due to inadvertence. A mistake has recurred in not taking the exact measurement of the land and due to reliance being placed upon the measurements given in the Report of the Valuer. It is further submitted that this Court, in order dated 18.01.2012, passed in Official Liquidator''s Report No. 124 of 2011, in the matter of Official Liquidator of Hamco Mining& Smelting Ltd. (In Liquidation) (supra), has laid down exhaustive guidelines that shall be followed by the office of the Official Liquidator.

23. Mr. Rutvij M. Bhatt, learned advocate for respondent No. 2 - GIDC, submits that the mistakes have occurred due to lack of coordination between the office of the Official Liquidator and the GIDC. Had the Official Liquidator coordinated with the GIDC, it would have come to light that land comprising Survey No. 295/ P admeasuring 8000 square metres has been allotted to IPCL (now Reliance Industries Limited) vide communication dated 20.06.1988.

24. Having heard the learned counsel for the respective parties and upon perusal of the material on record, what emerges is a dismal and shocking picture of the careless and casual approach on the part of the office of the Official Liquidator in a serious matter of auction of the land of the Company in liquidation, pursuant to orders of this Court. What is stated to be "inadvertence", "mistake", "oversight" by the Official Liquidator can more appropriately be described as a dereliction of the fiduciary duty that the Official Liquidator is bound to perform, under the directions of this Court. The fact of the matter is that the land that was advertised, auctioned and purchased by the applicant -Society under orders of this Court is not available on the spot, to the extent of the measurement advertised as a substantial part of it had been allotted to IPCL (now Reliance Industries Limited) as far back as in 1988. The applicant has been given to believe that 13759 square metres of land was available whereas it now transpires

from the Report of the Official Liquidator, and affidavits of the GIDC and the Collector, Vadodara, that 8000 square metres of the said land is in possession of Reliance Industries Limited, and was never a part of the parcel of land belonging to the Company in liquidation. No attempt whatsoever, leave alone a serious attempt, appears to have been made by the office of the Official Liquidator to ascertain the factual position, make proper inspection and inquiry or measurements of the land in question. Further, no inventory of the movable and immovable assets and properties of the Company in liquidation appears to have been made. The explanation given by the Official Liquidator is that he was under a bona fide impression that measurements, as mentioned in the Valuation Report, were correct and he placed reliance upon the same. This explanation is totally unconvincing, as the Official Liquidator is required to have the properties measured through his own office or office of the District Inspector, Land Records, or any other recognized agency, and cannot depend on the Report of the Valuer for the purposes of measurement of the land.

25. In Report dated 28.12.2011, the Official Liquidator has stated that he has relied solely upon the Valuation Report submitted by GITCO and on the Title Search Report, given by the advocate, at the time of auction of the property. This clearly shows that the Official Liquidator has failed to carry out due procedure as required, and has failed to perform the duties that are enjoined upon him with regard to the status and measurement of the property in question. It appears that no physical verification of the property has been carried out at all and the entire exercise has been undertaken while sitting in the office,

26. From the documents on record, it is clear that while taking possession of the property in question, the Official Liquidator has not bothered to verify the physical status and description of the movable and immovable properties, the measurement of the land and other such properties, the location of the immovable properties, Survey Numbers/Final Plot Numbers of the immovable properties, etc. There is no clear, accurate or complete record available in the office of the Official Liquidator, in respect of the property in question. In Paragraph-2 of the Report dated 16.01.2012, it has been stated that due to "inadvertence" and "oversight", the Official Liquidator has not conducted an in-depth and detailed search of the property in question with regard to the ownership of the Company and its assets, nor had the land measured. In paragraph-3 thereof, it has been stated that the Official Liquidator was "under bona fide impression" that the measurements as mentioned in the Valuation Report were that of the property of the Company in liquidation and same as mentioned in the advertisement of sale.

27. It cannot be understood by this Court how such glaring lapses can be casually explained away as "inadvertence" and "oversight". It is the bounden duty of the Official Liquidator to ensure and carry out a proper, detailed investigation regarding the properties in question, especially pertaining to the location of the immovable properties, survey numbers and the accurate

measurements. It also appears from the material on record that no detailed inventory of the properties of the Company in liquidation, of which possession was taken over, was drawn at the relevant point of time and procedure that should ordinarily have been followed, was not followed.

28. There is no reason why the applicant, whose members have put in their hard-earned money in order to purchase the land in question, should be made to suffer on account of lapses committed by the office of the Official Liquidator. It is probably due to the fact that the Official Liquidator has no plausible explanation to offer and to cover up the lapses of his own office, that a stand has been taken that the sale is required to be cancelled, "in the interest of justice".

29. Insofar as the first substantive prayer made by the applicant regarding setting aside of the sale is concerned, in view of the facts and circumstances as discussed hereinabove, and as the applicant cannot be made to suffer for lapses committed by the office of the Official Liquidator, the interest of justice would demand that the sale be set aside, and the amount that has been deposited by the applicant which has been invested in a Fixed Deposit, be refunded, with interest.

30. Consequently, the sale, confirmed under order dated 18.07.2011, is set aside. The Registry is directed to refund the amount deposited by the applicant, that has been invested in a Fixed Deposit, along with interest, upon the applicant making an application for this purpose. The Official Liquidator shall render all possible assistance to the applicant in this regard and do all that is required, or necessary, in order to ensure that the amount is refunded at the earliest. The needful be done within a period of fifteen days from today.

31. The second prayer made by the applicant is for initiation of an inquiry into the manner in which the office of the Official Liquidator has conducted itself by auctioning of the property in question without ascertaining the correct status of the land in question. Insofar as this prayer is concerned, the following order would suffice:

A copy of this order be handed over to Mr. P.S. Champaneri, learned Assistant Solicitor General of India, for communication to the Secretary, Ministry of Corporate Affairs, Government of India, for information and further necessary action, as considered appropriate.

32. The last prayer of the applicant is for directions to the Official Liquidator to formulate a proper procedure to ensure that in future, before a property is put to auction, proper inquiry/ investigation is carried out with regard to the auctioned property, so that the bidders and ultimate purchasers are not put to hardship and inconvenience, as in the present case.

33. Insofar as this prayer is concerned, this Court (Coram: K.M. Thaker, J.), by order dated 18.01.2012, passed in the matter of Official Liquidator of Hamco Mining & Smelting Ltd. (In Liquidation) (supra) has laid down exhaustive and

detailed directions, reproduced hereinabove, that are sufficient and ought to be followed by the Official Liquidator in letter and spirit. These would suffice to ensure that lapses such as those committed in the present case are not repeated.

34. It deserves to be noted that Dr. Amee Yajnik, learned advocate for the Official Liquidator has rendered valuable assistance to this Court. She has taken an extremely fair stand, in the face of difficult odds. The Court would be failing in its duty if an expression of gratitude is not made for the assistance rendered by Dr. Yajnik, as an Officer of the Court. The application stands disposed of, as above.