(2015) 07 MAD CK 0266

In the Madras High Court

Case No : O.S.A. Nos. 88 & 89 of 2015

Mettur Textiles Mills Quarters Residents Welfare Society APPELLANT

Vs

The Official Liquidator and Others RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Citation : (2015) 3 LW 936

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : P. Wilson, Senior Counsel for R. Thamaraiselvan, for the Appellant; B. Dhanaraj, Advocates for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.

1. These Appeals at the instance of a society under the name and style "Mettur Textile Mills Quarters Residents Welfare Society" are directed against the common order, dated 28.02.2013 in Company Application Nos. 242 & 243 of 2012 in Company Application No. 3013 of 2007 in Company Petition No. 125 of 1998.

2. The petitioner society would state that they are registered under the provisions of the Tamil Nadu Societies Registration Act, 1976, (Act) said to be espousing the cause of the former workmen of Mettur Textile Industries Limited, which company has since been liquidated.

3. In Company Application No. 242 of 2012, the appellants sought for setting aside the auction held on 08.03.2012 in respect of item No. 7 in the auction notice, dated 13.02.2012. In Company Application No. 243 of 2012, the appellant prayed for a direction upon the Official Liquidator from further bringing the property for sale in future to an extent of 33 acres of land situated at Mettur Dam, Salem District.

4. Before we proceed to take note of the case of the appellant, a brief prelude is essential. Mettur Textile Industries Limited (hereinafter referred to as the ''company'') was directed to be wound up by order dated 02.07.1998 in C.P. No. 125 of 1988. Consequent thereof all the assets of the company stood vested with the Official Liquidator. After the company was wound up, the Government under the premise that the land in question in which the Mill was situated, was a land assigned by the Government took a decision to resume the land. However, this attempt made by the Government did not fructify in the light of the orders passed by the Company Court in Company Application No. 3013 of 2007 in C.P. No. 125 of 1988, dated 12.11.2000, which order was affirmed by the Hon''ble Supreme Court. Thus, the land in question on which the Textile Mill was established stood vested with the Official Liquidator for being sold. By Order dated 02.02.2012, in Company Application No. 3013 of 2007, the Company Court after hearing the Official Liquidator, the counsel for the Mettur Textile Trade Unions Joint Auction Committee, Counsel for Mettur Beardsell CITU Thohilalar Sangam and the counsel for the Bank, directed the Official Liquidator to call for tenders for sale of the assets of the company. The Official Liquidator had filed the valuation reports, which were opened in Court and the Court fixed the upset price in the said order. One of the items of property bearing serial No. 7 in Lot-G was the Salem Camp land measuring an extent of 33.03 acres together with building. In the auction held in the open Court on 08.03.2012 and the said property was sold the highest bidder being the second respondent herein at Rs.12.3 crores. The said amount was remitted and possession was handed over by the Official Liquidator. Pursuant to the directions issued in Company Application No. 473 of 2012, dated 28.09.2012, sale deed was executed on 04.01.2013, in favour of the fifth respondent, the nominee of the highest bidder for conveying an extent of 30.70 acres together with the building standing thereon. The appellant society who is said to have registered themselves under the provisions of the Act on 29.02.2012, about a week prior to the date of auction namely, 08.03.2012, approached the Company Court and filed Company Application Nos. 242 & 243 of 2012 for stay of the auction and to direct the Official Liquidator not to bring the subject property for sale in future. These applications were heard and were dismissed by common order dated 28.02.2013. Challenging the same, these Appeals have been preferred.

5. Heard Mr.P.Wilson learned Senior counsel for Mr.R.Thamaraiselvan, learned counsel appearing for the Appellant, Mr.B.Dhanaraj learned counsel appearing for the first respondent, Mr.R.Abdul Mubeen learned counsel appearing for the second respondent, Mr.M.R. Jothimanian learned counsel appearing for the third respondent and Mr.P.S. Raman learned Senior counsel for Mr.P.R. Thiruneelakandan, learned counsel appearing for the fourth and fifth respondents and perused the materials placed on record.

6. The short issue which falls for consideration is as to whether the auction of the property as conducted by this Court on 08.03.2012 and confirmed in favour of the second respondent and sale deed having been executed in favour of the fifth

respondent being their nominee as directed by this Court by order dated 28.09.2012, in Company Application No. 473 of 2012, calls for interference at the instance of the Appellant Society which came into existence about one week prior to the date of auction.

7. The learned Senior counsel appearing for the appellant would state that the upset price fixed by the Company Court in its order dated 02.02.2012 does not assign any reasons as to how the upset price is fair and reasonable. It is further submitted that there are more than 900 tenements in the property, which was sold and the workers'' families are residing in the said area and the Official Liquidator has brought the property for sale without notice to the persons, who are residing in the property. Further, it is submitted that erstwhile employees of the Company have sought for allotment of the property in their favour and in this regard proceedings have also been initiated before the Revenue Officials so as to enable them to obtain patta. It is further submitted that the Company Court ought not to have blindly accepted the report submitted by ITCOT and should have examined as to whether the valuation done was the fair value of the property, when it is not in dispute that the guideline value of the property at the relevant point of time was three times more than the amount shown as the value of the property in the report, which has been accepted as the upset price. The learned counsel made elaborate reference to the order passed by the Hon''ble Division Bench in Review Application Nos. 164 and 165 of 2012 and submitted that the observations contained therein have not been taken into consideration while passing the impugned order. Further, it is submitted that the observations made in paragraph 18 of the impugned order is contrary to the order passed by the Hon''ble Division Bench, dated 19.11.2012. Further, it is submitted that the observations made by the learned Single Judge with regard to the task of vacating the occupants in the land its effect on the upset price is an observations which is solely based on the personal view of the learned Single Judge and there is no basis for recording such a finding. Further, it is reiterated that it is not in dispute that the guideline value of the property at the relevant time was three times more than the upset price and the Court did not make any endeavour to ascertain and decide the fair price of the property and mechanically accepted the valuation report, copies of which have not been furnished. It is submitted that it is the duty of the Court to apply its mind to the valuation report and to verify as to whether the report indicates a reasonable value of the property to be auctioned, even if objection is not raised. In support of such contention reliance was placed on the Hon''ble Supreme Court in the case of Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others, AIR 2000 SC 2346 : (2006) 1 BC 428 : (2000) 102 CompCas 66 : (2000) 7 JT 524 : (2000) 126 PLR 369 : (2000) 5 SCALE 138 : (2000) 6 SCC 69 : (2000) 1 SCR 474 Supp .

8. Further, it is submitted that in the said property there were trees and these have not been disclosed in the report and the non- disclosure is fatal. In support of such contention, reliance was placed on the Hon''ble Supreme Court in the case of FCS Software Solutions Ltd. Vs. LA Medical Devices Ltd. and Others, AIR

2008 SC 3137 : (2008) 144 CompCas 391 : (2008) 3 CompLJ 209 : (2008) 7 JT 499 : (2008) 10 SCALE 7 : (2008) 10 SCC 440 : (2008) 85 SCL 401 : (2008) AIRSCW 5284 : (2008) 5 Supreme 109 . Further, it is submitted that there is a duty on the Company Court to consider the claims of the workers and such claims cannot be ignored as the Pari passu charge of the workmen dues cannot be defeated or obliterated. In support of such contention reliance has been placed on the decision of the Hon''ble Supreme Court in the case of Bakemans Industries Pvt. Ltd. Vs. New Cawnpore Flour Mills and Others, AIR 2008 SC 2699 : (2008) 144 CompCas 71 : (2008) 3 CompLJ 1 : (2008) 151 PLR 670 : (2008) 9 SCALE 566 : (2008) 15 SCC 1 : (2008) 84 SCL 489 : (2008) AIRSCW 4507 : (2008) 4 Supreme 581 . Further by referring to the decision of the Hon''ble Supreme Court in the case of Manoj I Naik & Associates Vs. Official Liquidator, (2015) 188 CompCas 329 , it is submitted that when the properties of the Company under liquidation are sold, there has to be a proper auction and it must be a fair one and it should fetch the maximum price. Further, it is submitted that the property would have fetched about Rs.15/- crores at the relevant point of time and this was not considered by the Company Court, while passing the order dated 02.02.2012 and these aspects were not considered by the learned Single Judge while passing the impugned order, dated 28.02.2013. On the above submissions, the learned Senior counsel prayed for setting aside the impugned order.

9. The learned counsel appearing for the respondents 2, 4 & 5 while seeking to sustain the impugned order submitted that the attempt of the appellant is to reopen a settled matter and the learned Single Judge has recorded a finding that the Appellant Society was registered just 8 days before the auction held on 08.03.2012 and the claim as projected by the Appellant lacks bonafide. Further, it is submitted that the respondents have been declared as the highest bidders and sale deed has been executed pursuant to the orders passed by the Company Court and they are in possession of the property.

10. The learned Official Liquidator submitted a report inter alia stating that the property was sold pursuant to the orders dated 23.04.2003 in C.A. No. 926 of 2002 for a sum of Rs.3,77,00,000/- to Maruthi Textiles, Dharapuram and the building was sold in public auction and a sum of Rs.76,95,00,000/- was realized. Further, it is submitted that pursuant to the orders in Company Application No. 809 of 2004, dated 05.07.2004, paper publication was issued calling for claims from creditors including workmen creditors under Rule 147 of the Companies (Court) Rules, 1959 and the last date for submitting claims was fixed as 30.09.2004 and 3086 claims were received. Out of total claims received 2670 claims pertaining to workmen has been settled, 395 claims also pertaining to workmen are to be adjudicated for want of proof and the same is in progress. The EPF dues have been fully paid, the secure creditors have been fully paid except for a sum of Rs.7,11,12,398/- to be adjudicated for want of proof and the Government claims are also to be adjudicated as well as the claims of unsecured creditors.

11. The learned Senior counsel appearing for the Appellant placed reliance on the decision of the Hon''ble Supreme Court referred to supra to emphasis that there is a duty on the Court to apply its mind to the valuation report, verify whether the report indicates reasonable market value of the property to be auctioned, even if objections are not raised. The Hon''ble Supreme Court further pointed out that the properties of a company under liquidation when sold, there has to be a proper auction, a fair one and must fetch the maximum price. It is the endeavour of the learned Senior counsel to state that the price at which the property was sold by the Official Liquidator is not a fair value and therefore, the same has to be set aside. There can be no quarrel about legal principle that the properties of a company under liquidation when sold has to be by a proper auction, a fair one to fetch the maximum revenue. However, in the instant case, it has to be seen on facts whether this issue requires to be adjudicated in the matter on account of the conduct of the appellant themselves, whether the plea is sustainable. Only after we are satisfied that such adjudication is required then alone there would be a necessity to test whether auction was a proper auction, a fair one and whether the price realized is the maximum price that could have been achieved.

12. After going through the factual scenario in the instant case, we find that the attempt of the appellant is to reopen a settled matter. It is not in dispute that the second respondent became the highest bidder paid the entire sale consideration to the Official Liquidator and took possession on 18.06.2012 and after orders passed by the Company Court on 28.09.2012, sale deed was executed in favour of the nominee of the second respondent, namely, the fifth respondent. This sale which took place was pursuant to an order dated 02.02.2012, in Company Application No. 3013 of 2007 and advertisement were issued in the dailies on 13.02.2012. The Appellant society itself was registered about 8 days prior to the issuance of the paper publication. The appellant would state that the workmen were not put to notice, the valuation report submitted was not examined and scrutinised by the Court and mechanically the value was accepted.

13. Perusal of the order dated 02.02.2012 in C.A. No. 3013 of 2007, shows that the workmen were heard. The Mettur Textiles Trade Joint Auction Committee and the Mettur Beardsell CITU Thohilalar Sangam, who were the respondents 3 and 4 in the said application were represented by their counsel and from the record of the proceedings, it is seen that the matter was heard on several dates and orders were passed from time to time and ultimately, the order dated 02.02.2012 was passed fixing the upset price for the various properties considering the valuation report filed by the Official Liquidator. Further direction was issued to the Official Liquidator to cause publication in respect of the said properties by calling for tenders pursuant to which auction was conducted. Therefore, the contention raised by the appellant that the workmen were not heard has to be rejected. Further with regard to the nature of properties and the existing superstructure, it is to be pointed out that the sale notice published in the Tamil and English dailies called for tenders for the purchase of the land building with trees belonging to M/s. Mettur Textile Industries Limited (in liquidation) on "as is where is and

whatever there is condition". Thus the intending bidder was well aware of the fact that the land building and standing trees in the properties are being brought for sale in as is where is condition and whatever there is in the said properties. Therefore, the submission made by the learned Senior counsel for the appellant with regard to the description of the properties, the standing trees etc., also does not merits acceptance.

14. With regard to the contention that the order dated 02.02.2012 in C.A. No. 3013 of 2007, does not assign any reasons for accepting the valuation report, as pointed earlier prior to the passing of the order dated 02.02.2012, the Company Court had passed series of orders from time to time namely, i.e., on 31.03.2008, 12.06.2008, 12.11.2008, 15.12.2008, 23.01.2009, 13.03.2009 and 22.02.2011. Further from the impugned order it is seen that the evaluation report was submitted by a Government of Tamil Nadu undertaking and the report indicated that there are more than 900 tenements in the property in question and considering these factors a realistic upset price was fixed. It is settled legal position that the guideline value of a property as fixed by the Government is only an indicator of the market value of the property and as the terminology suggest, it can be only a guideline and not a binding value. Therefore, we reject the submission made by the learned Senior counsel appearing for the appellant with regard to the fixation of the upset price.

15. The submission made on behalf of the appellant stating that the learned Single Judge in the impugned order has substituted his own views is also a submission, which deserves to be rejected for the simple reason that the learned Single Judge had referred to the reports which indicated that there are 900 tenements in the property in question and therefore, it is not an individual view of the learned Single Judge, but a fact borne out by records.

16. The learned Senior counsel for the appearing appellant further submitted that the Tahsildar, Mettur vide proceedings dated 24.11.2006, has recommended for grant of patta in favour of the workmen who were residing in the said property and therefore, the workmen should have been heard prior to bringing the property for sale. It is no doubt true at the first instance the Government opined that the property was assigned to the company and therefore, proceedings were initiated in that direction to resume the property to the Government. This move of the Government was resisted by the Official Liquidator and ultimately, the Company Court by order dated 12.11.2008 in C.A. No. 3013 of 2007, rejected the contention of the Government and held that the property on which the Textile Mill was constructed still stands as the security to the creditors and the Official Liquidator was permitted to bring the property for sale. The order dated 12.11.2008 having become final, the question of grant of patta in respect of the said property does not arise. The contention of the learned Senior counsel appearing for the appellant that the learned Single Judge has failed to take note of the observations made by the Division Bench in Review Application Nos. 164 and 165 of 2012, dated 19.11.2012, by referring to

paragraphs 16 and 18 of the order also does not merit acceptance, since the findings recorded in paragraphs 16 and 18 of the order are contentions which have been raised by the petitioner. Therefore, this submission does not in any manner advance the case of the appellant.

For all the above reasons, the Appellants have miserably failed to make out any ground for interference with the impugned order. Accordingly, the Appeals fail and they are dismissed. No costs.