

(2023) 06 KAR CK 0025
In the Karnataka High Court
Case No : Original Side Appeal No. 16 Of 2022

M.J. Mehta And Co.

APPELLANT

Vs

Official Liquidator & Others

RESPONDENT

Date of Decision : 20-06-2023

Acts Referred:

Companies Act, 1956 — Section 482
Company (Court) Rules, 1959 — Rule 9

Citation : (2023) 06 KAR CK 0025

Hon'ble Judges : Alok Aradhe, J; Anant Ramanath Hegde, J

Bench : Division Bench

Advocate : Joshua Hudson Samuel, K.S. Mahadevan, Dhyan Chinappa, P.V. Chandrashekar, Mrinal Shankar, Dharma Tej Koneru

Final Decision : Dismissed

Judgement

Anant Ramanath Hegde, J

1. This appeal under Section 482 of the Companies Act, 1956 has been filed against an order dated 21.10.2022 passed by Learned Single Judge by which application preferred by M/s M.J.Mehta and Company(hereinafter referred to as 'the Appellant' for short) under Rule 9 of the Company (Court) Rules, 1959 (hereinafter referred to as 'the Rules' for short) has been dismissed. In order to appreciate the grievance of the appellant, relevant facts need mention, which are stated hereinafter.

2. The Appellant had made an application to Karnataka Industrial Areas Development Board (hereinafter referred to as 'the board' for short) for allotment of land on 21.01.1981, to set up manufacturing and other commercial enterprises and ventures. The appellant was allotted around 150 acres of land of various survey numbers vide 2 registered lease cum sale agreement dated 07.12.1983 in Kalaveri Village, Dharwad, for a period of 10 years. Under the aforesaid lease cum sale agreement, the appellant was permitted to sub let / sub-lease the land. The appellant therefore executed a sub lease on 12.04.1985 for a

period of 10 years in respect of land measuring 28 acres in favour of company in liquidation viz., M/s Star Volkmann Ltd. (hereinafter referred to as 'the company in liquidation' for short).

3. Thereafter, supplementary lease agreements dated 06.04.1981 and 22.11.1993 were executed between the board and the appellant extending the lease for a further period of 11 years. The appellant thereupon executed a supplementary agreement dated 02.12.1993 in favour of appellant in liquidation for a further period of 11 years in respect of land measuring 28 acres.

4. The appellant noticed an advertisement in daily Economic Times dated 31.12.2005, wherein official liquidator has invited tenders for sale of 28 acres of land. The appellant thereupon filed objections. The appellant learnt that the company in liquidation was directed to be wound up by an order dated 10.12.1998 passed in Co.P.No.111/1998. The official liquidator had initiated a proceeding viz., OLR No.44 /2006 seeking permission to sell the assets of the appellant, which was allowed by the company court by an order dated 10.04.2006. By the aforesaid order, only sale of plant and machinery was permitted. Thereafter, on 20.07.2006 learned Company Judge confirmed the sale of plant and machinery subject to condition that same shall be removed ensuring that no damage is caused to the building. The official liquidator also filed OLR No.401/2015 seeking sale of buildings, building sheds and structures on the land, which was withdrawn on 01.04.2016 with the liberty to file a fresh OLR. Thereafter, a OLR No.61/2016 was filed seeking sanction for sale of buildings, industrial sheds and other temporary structures by demolishing the same and by removing the debris after valuing the same after appointing an approved valuer. The learned Company Judge by an order dated 03.04.2019 dispensed of the said OLR directing valuation to be obtained from approved valuer in respect of building / temporary structures and industrial sheds.

5. The appellant learnt that on 05.04.2019 the Board executed a lease cum sale agreement on 12.04.2019 in favour of another company viz., M/s Suri Auto Products Limited. The appellant thereupon filed an application under Rule 9 of the Appellant (Court) Rules, 1959 invoking the powers of the Court and sought initiation of an enquiry with regard to malfeasance and misfeasance committed by respondents in respect of the property bearing plot No.116(T) of Kelavalli Village, Dharwad Taluk measuring 28,321 square meters and to declare lease cum sale agreement dated 12.04.2019 as void ab initio. The appellant also sought a direction to preserve the status quo with regard to aforesaid property.

7. the learned Company Judge by an order dated 21.10.2022 has dismissed the aforesaid application. Hence, this appeal.

8. Learned counsel for the appellant submitted that learned Company judge erred in holding that appellant is not an aggrieved person and does not have locus standi. It is further submitted that the appellant was the initial allottee in respect of land in question and the lease in respect of land measuring 28 acres

was not terminated. It is further submitted that the land in question measuring 28 acres was in possession of Official Liquidator and therefore, without seeking the permission of the Company court, the land could not have been resumed by the Board. It is further submitted that prior permission of the Company court is a condition precedent for resumption of the land and therefore, the sale cum lease deed dated 12.04.2019 is ab initio void. In support of aforesaid submissions, reliance has been placed on decision of Hon'ble Supreme Court in 'PHATU ROCHIRAM MULCHANDANI VS. KARNATAKA INDUSTRIAL AREAS DEVELOPMENT BOARD AND OTHERS', (2015) 5 SCC 244 and 'TALUKDAR AND APPELLANT (FERTILIZER) PRIVATE LIMITED VS. OFFICIAL LIQUIDATOR, HIGH COURT OF CALCUTTA AND OTHERS', (2016) 14 SCC 289.

9. On the other hand, Learned Senior Counsel for the Board has submitted that the appellant has no locus and it has been held in previous rounds of litigations, to which appellant was a party that the appellant had no title in respect of the property in question. It is further submitted that the aforesaid finding which binds the appellant has attained finality. It is also pointed out that the appellant in OLR No.61/2016 had taken a stand that the appellant under liquidation has no title in respect of land in question. It is argued that the order passed by learned Company Judge does not call for any interference in this appeal.

10. Learned counsel for respondent No.3 viz., M/s Suri Auto Products Limited submitted that a lease cum sale agreement has been executed on 12.04.2019 by the Board for a period of 99 years and it has incurred an expenditure of approximately 2.24 Crores. Learned counsel for Official Liquidator submitted that it has filed OLR No.61/2016 seeking sale of the building / super structure.

11. We have considered the rival submissions and have perused the record. It is pertinent to note that auction purchaser had filed an application seeking acceptance and approval of his bid for subject land and building, and for confirmation of sale, which was rejected by learned Company Judge by an order dated 06.07.2007 passed in C.A.No.808/2006. In the aforesaid proceeding, the Appellant was also a party and had taken a stand that company in liquidation was not the owner of the property in question. Learned Company Judge in the order dated 06.07.2007 held that the company in liquidation is not the owner of the property in question. The aforesaid order to which the appellant is a party, which has even otherwise attained finality binds the appellant and the s in this proceeding cannot be permitted to contend that the appellant in liquidation is the owner of the property.

12. Admittedly, Official Liquidator has filed C.A.No.1458/2007 seeking sale of the property in question. The appellant was a party to the said proceeding and had opposed the prayer. After hearing the parties, learned Judge by an order dated 10.12.2013 inter alia held that lease hold rights in respect of the appellant had been terminated and consequently the sub lease rights in favour of company in liquidation had also been terminated. It was further held that the Official Liquidator had stepped into the shoes of company in liquidation and was not

entitled to take steps to sell the property in question, which could not be construed or treated as asset of the appellant. The aforesaid order to which appellant is a party has attained finality, wherein it has conclusively been held that the appellant has no right in respect of the property in question.

13. Admittedly, the period of lease deeds in supplementary lease deeds, which were executed in the year 1993 and 1991 has expired. There is no document of title in favour of the company under liquidation. Therefore, the company under liquidation or the Official Liquidator do not have any subsisting right, title or interest over the land in question. The Appellant also is not in possession of the property in question and it has no semblance of a right, title or interest in respect of property in question.

14. It is also pertinent to note that the appellant only seeks a right in respect of the buildings, structures etc. and has no claim in respect of the land in question. From perusal of statement of objection filed by the appellant in OLR No.61/2016, it is evident that the appellant has contested the petition filed by the Official Liquidator on the ground that earlier orders passed by learned Company Judge dated 06.07.2007 and 20.12.2013 passed in C.A.No.808/2006 and in C.A.No.1458/2007 have attained finality. The appellant therefore, cannot be permitted to take a contrary stand in this proceeding and to assert that property in question is an asset of the appellant.

15. The board by an order dated 07.4.2014 terminated the sub lease and thereafter published an notice on 29.04.2014 seeking possession of the land, which was taken on 07.09.2014 by drawing a mahazar. Thereafter, the Board has executed a sale cum lease deed dated 12.04.2019 in favour of another company viz., respondent No.3. The action of resumption of land has not been assailed by the appellant.

16. The learned Company Judge for the detailed reasons assigned in para 9 of the order has rightly concluded that the appellant is not an aggrieved person and has no locus to seek the reliefs in a proceeding under Rule 9 of the Rules, inasmuch as the appellant is neither a shareholder / creditor / Director / Manager /Liquidator / Promoter/ Member or any other officer of the company in liquidation. We are in agreement with the conclusions arrived at by the learned Company Judge.

For the aforementioned reasons, we do not find any merit in this appeal, same fails and is hereby dismissed.