(2011) 03 DEL CK 0204

In the Delhi High Court

Case No : CO. A (SB) 2 of 2010

Ram Janam Sharma APPELLANT

Vs

JVG Finance Ltd. RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:
Companies Act, 1956 — Section 536(2), 537(1)

Citation : (2011) 3 AD 280 : (2011) 163 CompCas 92 : (2011) 122 DRJ 601

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Mohit Kr. Shah, for the Appellant; Rajiv Bahl, for Official Liquidator, S.B. Gautam, Official Liquidator, Manisha Singh and Swati Setia for RBI, for the Respondent

Judgement

Manmohan, J.—The present appeals have been filed essentially challenging the orders dated 17th October, 2008 passed by the Official Liquidator and the orders dated 12th April, 2005 passed by Mr. G.P. Thareja, who was appointed on 22nd July, 2004 by this Court to examine and process the claims of alleged plot holders.

2. The Thareja Committee has found while Mr. Ram Janam Sharma has paid to Respondent-company a sum of Rs. 1,21,990/-, Mr. Ram Kripal Sharma has paid a sum of Rs. 1,24,424/- to Respondent-company. The Thareja Committee has concluded that the plots should be released in favour of the said Appellants after they make payments of balance amount of Rs. 77,810/- and Rs. 79,376/- respectively along with interest at the rate of 12% per annum.

3. Mr. Mohit Kumar Shah, learned Counsel for Appellants submits that the Thareja Committee has failed to appreciate that both the Appellants had made full payments and only thereafter the sale deeds had been executed by the Respondent-company. He further submits that the Thareja Committee has failed to take into account the payments made by the Appellants to the group companies of Respondent.

4. On the other hand, Mr. Rajiv Bahl, learned Counsel for Official Liquidator submits that the sale deeds relied upon by the Appellants and by Thareja Committee are null and void as said sale deeds had been executed after this Court had appointed a Provisional Liquidator. He further points out that both the Appellants claim to be allottee of plots in Lok Nayak Jai Prakash Narain Awas Yojna, Patna (for short ''Yojna''), which lands are incapable of either demarcation or handing over to the Appellants. In this connection, Mr. Bahl has relied upon the report furnished by the Committee headed by Mr. B.N. Singh, former Chief Regional Planner, NCR Planning Board, New Delhi. The extract of the said report reads as under:

PART II

LOK NAYAK JAI PRAKASH NARAIN AWAS YOJANA, PATNA

The Committee visited Patna on 25 and 26 August, 2009 to look into the development works of Lok Nayak Jai Prakash Narain Awas Yojana, undertaken by the Company in Liquidation. The details of the said yojana are as below:

1. Nature & Extent of Land owned by Company in Liquidation The land of the yojana falls in two villages - Manpur Bairiya and Pahari measuring 5,50,000 sq. ft. (5.110 hectare), as advertised by the company in liquidation.

Nature of Land of both the villages i.e., village Manpur Bairiya and village Pahari is agricultural which is low lying and gets flooded during heavy rains. As such the site would require earth filling for any development/construction works.

Extent of Land As per the publicity brochure advertised by the company (Annex. I), Lok Nayak Jai Prakash Narain Awas Yojna has an area of 5,50,000 sq. ft. (5.110 hectare).

The Committee looked into the relevant records made available by the Official Liquidator office. Only two sketchy layout plans of the Yojana without details were made available from records submitted by the individual claimant(s) of the plot. The relevant lay out plans of the two sites are at Annex VIII & IX.

It cannot be ascertained by the two plans made available whether the site is contiguous or in two separate pockets. No area details have been mentioned in any of the lay out plans. During inspection of the site by the Committee on 25 August, 2009, no clear cut demarcation of the land by way of pillars or boundary wall was found. However, some boundary wall and pillars in part of the area was found existing at the site in village Pahari which is not adequate to define the extent of land belonging to the company in liquidation. In absence of dimensioned lay out plans and clear cut demarcation of site, the Committee members looked into the title records and village maps made available by Official Liquidator office and local revenue authorities. The extent of land acquired on the basis of power of Attorney in favour of Mr. V. K. Sharma & Mr. Lallan Kumar Singh in village Manpur Bairiya based on the documents produced by Official Liquidator is 2.376 hectare (5.87 acre) and the land in village Pahari, as informed by the local revenue official, proposed to be acquired by the company but still in the name of the villagers is 2.521 hectare (6.23 acre). Thus the total land in the two villages works out to 4.897 hectare (12.10 acre).

2. Site Plan setting out the boundary of the property and developmental works undertaken. The site plans based on the revenue records showing the extent of land in the above two villages are enclosed as Annex X & XI. For looking into the developmental works, the Committee depended upon the two layout plans produced by Official Liquidator office. Only in village Pahari, certain development works like boundary wall, roads and paths (at present in poor condition), water tank etc., were seen. The area at present is fully covered with paddy, grass and weeds. The above mentioned development works are in poor condition and for all practical purposes, they may be treated as non-functional. Although the overhead tank is standing at the site but being a water retaining structure and having remained empty for a long time cannot be taken as stable and functional unless put to test.

No development works is existing in the land in village Manpur Bairiya.

3. Photography & Videography As per directions of Hon''ble High Court, the Photography and Videography of the site has been carried out which is enclosed as Annex XIV.

4. Nature & extent of work towards execution of the projects which has been undertaken including requirement of obtaining permission status thereof.

a) The nature and extent of works undertaken has been mentioned in para 2 above. No development works of any significance exists at the site which could be fruitfully utilized in new development as and when undertaken.

b) The site of village Manpur Bairiya falls in rural area (Gram Panchayat) and no development work has been done in the area. However, the site of village Pahari falls within the limits of Patna Municipal Corporation. The Official Liquidator office approached Patna Municipal Corporation to inquire the status of approval of lay out plan by them. The Municipal Commissioner, Patna Municipal Corporation has informed vide his letter dated 27.08.09 that no approval of the plan for the yojana has been accorded (Annex XII). No copies of sanctioned plans have been made available to the Committee and the Committee relied on the layout plans made available by the office of Official Liquidator for site inspection. No services Plans (road networks with cross sections, water and sewer lines, storm water drainage systems, electric lines etc.) were made available to the committee.

5. Nature & extent of work which is required to be undertaken in order to complete the project.

The following works related to development of site are necessary:

a) Clearing of site, leveling and dressing.

b) Internal roads and paths.

c) Sewerage system.

d) Treated water supply line including peripheral grid and distribution lines e) Storm Water Drains.

f) Street Lights.

g) Horticulture works.

6. Tentative cost involved if development work is to be completed.

The tentative cost of the above development works based on CPWD rates of 2007 enhanced by latest approved cost index for Patna (Rs. 54.50 lac/hectare) works out to Rs. 2.70 crore approximately for 4,897 hectare of land. The above cost does not include the cost of earth filing for which detailed engineering estimation will be required to be done to work out the quantity of earth etc.

Report is submitted accordingly.

Sd/- Sd/- Sd/- B.N. SINGH L.P. Srivastava B.P. Singh Former Chief Regional Retd. Additional Director Vice President Planner NCR Planning, General, CPWD, New Delhi ITCOT Member of the Board, New Delhi. Member of the Committee Committee Member of the Committee Consultancy and Services Ltd. New Delhi #09818484012 #09717340006 #09811035491

5. Having heard the parties, I am of the opinion that the approach of Thareja Committee is untenable in law. Admittedly, the Appellants have based their rights to the respective plots of land under the Sale Deeds dated 16th July, 1998. Since in the present cases the alleged sale deeds are subsequent to the date of filing of the winding up petition, i.e., 4th June, 1998 and appointment of Provisional Liquidator, i.e., 5th June, 1998, the Sale Deeds are void by virtue of Sections 536(2) and 537(1)(b) of the Companies Act, 1956. The said provisions are reproduced herein below:

536. Avoidance of transfers, etc., after commencement of winding up.

xxx xxx xxx (2) In the case of a winding up by or subject to the supervision of the Court, any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

537. Avoidance of certain attachments, executions, etc., in winding up by or subject to supervision of Court.

(1) Where any company is being wound up by or subject to the supervision of the Court-

xxx xxx xxx (b) any sale held, without leave of the Court, of any of the properties or effects of the company after such commencement; shall be void.

6. Consequently, as the winding up proceedings had commenced prior to the execution of the Sale Deeds in the present case, same are void. Moreover, from the report of B.N. Singh Committee appointed by this Court, it is apparent that the plots of land claimed by the Appellants cannot be handed over to them.

7. Accordingly, keeping in view the aforesaid, the communication dated 17th October, 2008 issued by the Official Liquidator and the orders dated 12th April, 2005 passed by the Thareja Committee are set aside with a direction to the Official Liquidator to once again determine as to what amount has been deposited/paid by the Appellants to the Respondent-company and after determining the said amount, pass an order directing refund of the same along with simple interest @ 4% per annum from the date of deposit. Needless to say, the Official Liquidator shall determine the said amount after giving an opportunity of hearing to Appellants. The Official Liquidator is also directed to pass a reasoned order within a period of four months from today.

8. At this stage, Mr. Mohit Kr. Shah as well as Mr. Rajiv Bahl pray that a date of hearing before the Official Liquidator be fixed by this Court. Consequently, with the consent of parties, Appellants are directed to appear before Md. Shakeel, Assistant Official Liquidator on 25th April, 2011 at 2.30 p.m.

9. With the aforesaid observations, the two appeals stand disposed of.