
(2012) 05 CAL CK 0041
In the Calcutta High Court

Case No : C.A. No. 766 of 2011, C.A. No. 24 of 2009 and C.P. No. 519 of 1989

Rishra Steel Limited (In Liquidation) and Deccan Traders Private Limited APPELLANT

Vs

The Official Liquidator and Gourinandan Real Estate Private Limited RESPONDENT

Date of Decision : 17-05-2012

Acts Referred:

Companies Act, 1956 — Section 456

West Bengal Estates Acquisition Act, 1953 — Section 57, 6(1), 6(3)

Citation : (2012) 172 CompCas 299 : (2013) 3 CompLJ 591

Hon'ble Judges : Ashoke Kumar Dasadhikari, J

Bench : Single Bench

Advocate : Sakti Nath Mukherjee, Mr. Atanu Roy Chowdhury, Mr. Sanjib Mal, Mr. D.N. Dey, for the Appellant; Pratik Prakash Banerjee, Mr. Mukti Nath Mukherjee, Ms. Mithua Sen, Mr. D.N. Sharma, Mr. Shounak Mitra, Adv, for the Respondent

Judgement

Ashoke Kumar Dasadhikari, J.—This application being C.A. No.765 of 2011 has been filed by the auction purchaser Company viz.Gourinandan Real Estate Private Limited having its registered office at 71, B.R.B.Basu Road, 5th floor, Kolkata - 700001, for the following orders, as mentioned in the Judges Summons taken out on 9th day of August, 2011:-

a) The Official Liquidator, High Court Calcutta be directed to make enquiries/ further enquiries with regard to the proceeding pending before the Sub-Divisional Land and Land Reforms Officer, Srirampur, Hooghly to the land of Rishra Steel Ltd. (In liquidation);

b) The Official Liquidator, High Court Calcutta be directed to file a report before this Hon'ble Court pertaining to the status regarding marketability of the land of Rishra Steel Ltd. (In liquidation).

c) The order dated 15.07.2011 passed by this Hon'ble Court be modified to the extent that the Applicant/Purchaser be granted time to deposit the balance sum

of Rs. 19.48 Crore in terms of the said order within 2(two) weeks from the date the Official Liquidator files status report regarding marketability of the said land to the satisfaction of this Hon"ble Court.

d) Ad-interim order be made in terms of prayers (a) to (c) above.

The relevant material facts of this case are stated hereunder. The Company viz. Rishra Steel Limited (In Liquidation) had gone into liquidation pursuant to the order of this High Court on 4th June, 1990. On 19th December, 1999 Allahabad Bank, a secured creditor filed a suit against the Company represented by the Official Liquidator for a decree for Rs. 4,06,90,548 together with interest on 15th July, 1996 and a decree was passed by this Court for an amount of Rs. 3,47,94,232.85 together with interest. The decree provided payment of decreetal amount in 60 equal monthly installments in default the Bank was entitled sale to suit property by public auction or private contract. However, no appeal was preferred nor any installment was paid by the judgment-debtor. On 26th August, 1997 the Allahabad Bank, applied execution of decree. On 12th December, 1997 the High Court appointed the Official Liquidator in the said execution case to take possession of the assets of the Company and directed to take steps for sale of the assets of the said Company. On 19th December, 1997 the aforesaid order was modified by directing that order of sale must be limited to the security of Allahabad bank which has been plant, machinery and other moveable assets as mentioned in the schedule to the decree. Thereafter this Court by its order dated 23rd February, 1998 directed the Official Liquidator to publish an advertisement inviting offers for sale of the assets of the Company in liquidation as a "going concern". Subsequently another order was passed on 10th July, 1998 by this Court wherein the Official Liquidator was directed to sale all the assets of the Company in liquidation as a "going concern".

2. The Allahabad Bank filed two appeals against two aforesaid orders dated 23rd February, 1998 and 10th July, 1998. The Division bench also directed to sale the factory as a "going concern". The order of the Division Bench was questioned before the Hon"ble Apex Court. The Hon"ble Apex Court in disposal of the three civil appeals being 5411-5413 of 2000 passed the following order :-

When indisputably the order of winding up made on 04.06.1990 had become final and company has become non-functional for long, even BIFR could not come to its rescue and the attempt of the workers union to resuscitate the company by getting a committee constituted for management was repelled by a Division Bench of the High Court and this Court when the SLP filed by the workers Union came to be dismissed on 05.12.1997, it would no doubt be ironical and unjust to get order for the sale of the assets of the company - as a going concern. But, at the same time to give a last try to the fond hopes expressed on behalf of the erstwhile workers, we consider giving one more chance to have it so done within a strict frame of time limit.

After considering submission of the learned counsel for the parties, we are

granting this indulgence, by permitting the sale of the company as a "going concern" with certain conditions only.

The Official Liquidator for this purpose shall advertise the sale of the company in liquidation-judgment debtor as a "going concern" as ordered by the High Court. Such publication shall indicate that the reserve price shall be the amount equal to the total decree including interest has accrued upto 31st December, 1999 in favour of the appellant-bank, and shall also has to pay the balance interest which accrues, till full payment is made. The publication shall also indicate that purchaser has also to pay the liabilities of other claimants in the proceeding for the liquidation of the company. Since all the parties are represented before us including the Official Liquidator, we grant total period of ten weeks from today, for concluding sale, with the aforesaid condition, including the period of advertisement, receiving offers etc. In case, it is not concluded within this period, the order of the High Court directing the sale of the company as a "going concern" shall stand set aside. The Official Liquidator will then proceed to sell the assets of the company first by selling the plant, machinery and other moveable assets and then the other assets in such a manner to fetch the maximum price, keeping the interest of all other creditors. Out of the aforesaid proceed, first the decree in favour of the appellant-bank should be satisfied and then to proceed to distribute the balance to other creditors in accordance with law. Accordingly the aforesaid two orders of the High Court dated 23rd February, 1998 and 10th July, 1998 stand modified to the extent we have passed this order. In these terms these appeals stand disposed of.

3. However, within 10 weeks as fixed by the Hon"ble Apex Court the Company could not be sold as a "going concern". Therefore, the order of High Court for selling the said Company as a "going concern" stood set aside.

4. Thereafter several proceedings were initiated in respect of the Company (in liquidation) for revival for the Company and for the other reliefs. In the year 2009 one Deccan Traders Private Limited made an application being C.A. No. 136 of 2009 before this Hon"ble Court, inter alia, praying for a direction upon the Official Liquidator to forthwith sale the land of the Company (in liquidation) measuring about 37.56 acres and first pay of the entire decretal debts of the Allahabad Bank as assigned to the applicant out of the proceeds of such sale, etc. The other Company Sylvan Commercial Private Limited also made an application before this Hon"ble Court for some direction for assessing the claim of the said applicant and further selling the moveable property of the Company at Rishra and to pay the applicant's dues after assessment of their claim.

5. Ultimately, the aforesaid two applications came for hearing before this Court on 20th April, 2011 and 6th June, 2011. On 20th April, 2011 this Court directed the Official Liquidator to sale all assets of the Company including plant and machinery and other moveable assets as well as the land in question at a maximum price after getting the valuation done by the valuer appointed by them. The Official Liquidator was directed to get the valuation report and after

getting the valuation report he was directed to take inspection of the assets and thereafter to publish advertisement in the newspapers inviting tenders in a shield cover from the intending purchaser for sale the assets on "as is where as basis".

6. The Official Liquidator was also directed to give inspection of the goods both moveable and immovable property in question to the intending purchasers and thereafter the matter was directed to be placed before the Court on 5th June, 2011 at 2pm for holding auction in open Court. On 6th June, 2011, since the formality was not completed within the period as directed, the matter was directed to be placed before the Court on 7th July, 2011 at 2pm for holding auction in open Court. Pursuant to the aforesaid order sale notice was published on 16th June, 2011 in two daily newspaper viz. Telegraph and Dainik Viswamitra. The terms and conditions of the sale were also published. Item No. 1 of the terms and conditions of sale reads as follows :-

The sale will be held on 7th July, 2011 at the time of hearing of the application being C.A. No. 136 of 2009 before Hon"ble Justice Ashoke Kumar Dasadhikari (as per cause list) as per inventory list and/or Valuation Report made by the Valuer on "As Is Where Is And Whatever There Is" basis the Official Liquidator shall not provide any guarantee and/or warranty as to the quality, quantity or specification of the assets sold. The Offerers/Bidders are to satisfy themselves in this regard after physical inspection of the assets and the intending purchasers will be deemed to offer with full knowledge as to the defects, if any in the descriptions, quality or quantity of the assets sold. The Official Liquidator shall not entertain any complaint in this regard after the sale is over. Any mistake in the notice inviting offer shall not vitiate the sale. No offerer will be allowed to bid in the name of nominee or nominees and any subsequent request or application either to transfer to a nominee or enjoining any new entity shall not be entertained either by the undersigned or by the Hon"ble Court.

7. Clause No. 5, 8 and 10 of the aforesaid terms and conditions reads as follows :

The successful bidder shall have to pay the balance earnest money @25% of the highest bid as reduced by the amount already tendered within such time as may be decided by the Hon"ble Court not exceeding 7 days from the date of auction.

The successful purchaser will have to pay the balance purchase price to the Official liquidator within 30 days from the date of confirmation of sale by the Hon"ble Court either by Bank Draft or Pay Order. Upon failure to pay such money within such time, the earnest money already deposited shall stand forfeited and the assets will be re-sold at the risk and cost of the defaulting offerer without prejudice to any rights, which the Official Liquidator may have against the same.

It is made clear that this would not prevent the Hon"ble Court from fixing any other date for such deposit or extending such time even if such time has expired on such Terms and Conditions as the Hon"ble Court may deem fit and proper

The successful purchaser shall have to take delivery/possession of the goods/

articles properties sold within 15 days from the date of payment of full purchase consideration or any other time fixed by the Hon''ble Court. Upon failure, unless otherwise ordered by the Hon''ble Court, the sale in favour of the purchaser shall stand cancelled and all sums paid on account of the same shall stand forfeited without any further reference to the purchaser. No claim in respect of the same shall be entertained thereafter.

8. On 7th July, 2011 valuation report was produced before the Court in a shield cover and the Court took note of the valuation report. The valuation report was kept under shield cover. However, the offers made by the intending purchasers were not acceptable and the Court wanted to hold auction again in open Court. Ultimately, on 15th July, 2011 the applicant Gourinandan Real Estate Private Limited offered 26 crores which was accepted by the Court and the sale was confirmed in favour of said Gourinandan Real Estate Private Limited on payment of Rs. 6,42,00,000 in addition to a deposit of Rs. 10 lakhs paid by them.

9. However, the order of sale was questioned before the Hon''ble Appeal Court and the Hon''ble Appeal Court by its order dated 20th July, 2011 passed by the following order :-

The Court :- There will be an order in terms of prayer (a) of the Notice of Motion. Subject to deposit of a sum of Rs. 60,000/- being the estimated cost of advertisement incurred by Official Liquidator for the sale which is challenged here by the appellant, in course of tomorrow, there will be an interim order to the effect that Official Liquidator shall obtain prior leave of this Court before execution and registration of the conveyance in favour of the purchaser and also handing over possession of the property.

However, hearing of the appeal is expedited in the manner as follows:

Let the informal paper book be filed within a week from date enclosing all papers used before the learned Trial Judge in connection with CA 24 of 2009. Liberty is given to mention for early hearing of these appeals and these appeals will be heard also with another appeal being APO 204 of 2011 and APO 205 of 2011 analogously, one after another.

In view of this order APO 204 of 2011 and APO 205 of 2011 (being items 14 and 15) are to go out of list for the time being.

In the event of failure to deposit the aforesaid amount this interim order will stand vacated.

Allegations contained in the petition are not admitted by any of the parties, since no affidavit-in-opposition has been called upon to be filed.

Needless to mention in the event this appeal fails them Mr. Banerjee's client shall pay interest on the amount of Rs. 6,52,00,000/- because of the interim order passed by this Court and shall execute an indemnity bond in favour of Official Liquidator in this regard.

Accordingly, the application is disposed of.

10. On 17th August, 2011 Gourinandan Real Estate Private Limited the auction purchaser filed an application stating therein that they made enquiries at the office of the Official Liquidator of relevant papers and documents relating to the Company and the purchaser by its letter dated 4th August, 2011 asked for all details relating to status of land of the Company in liquidation. The Official Liquidator in its turn by issuing a letter dated 4th August, 2011 informed that two notices bearing No. 1189/SDSR dated 12th July, 2005 and 1284/SDSR dated 29th July, 2005 were issued u/s 6(3) read with Section 57 of West Bengal Estate Acquisition Act, 1953 by the Sub-Divisional Land and Land Reforms Officer, Serampore, Hooghly for an alleged enquiry. The Official Liquidator in response to the aforesaid letters replied to the following effect :-

I am directed to refer to you Notice No. 1284/SDSR dated 29.07.2005 on the above subject and to say that the aforesaid Company was directed to be wound up vide Hon''ble High Court order dated 4th June, 1990 and the Official Liquidator was appointed Liquidator thereof.

In terms of the provisions of the Section 456 of the Companies Act, 1956 wherein winding up order has been made the Official Liquidator shall take into his custody or under his control all the properties to which the company is entitled. Further all the properties and the effects of the Company shall be deemed to be in the custody of the Hon''ble Court as from the date of the order of the winding up of the Company.

In view of the aforesaid statutory provisions you are requested not to proceed in the matter without the leave of the Hon''ble High Court, Calcutta. However, in the mean time the matter is being placed before the Hon''ble Court for direction.

11. The applicant's apprehension is that in view of the aforementioned two notices the auctioned land being the subject matter of the sale is either in part or in its entirety encumbered under the provisions of the West Bengal Estate Acquisition Act, 1953 or other land laws of the state and as such questioned the marketability of the land. The applicant in this application stated that purchaser requires necessary time for making further enquiries relating to the land of the Company. Accordingly a direction upon the Official Liquidator was prayed for, thereby directing him to make further inquiries with regard to the proceedings pending before the Sub-Divisional Land and Land Reforms Officer, Serampore pertaining to the Rishra Steels Limited (in liquidation). Further direction was sought for directing the Official Liquidator to file a report pertaining to the status regarding the marketability of the land in question and also prayed for the order dated 15th July, 2011 be modified to the extent that time to deposit the balance amount of Rs. 19.48 crore in terms of the said order within two weeks from the date of the report of the Official Liquidator. After the application was moved by the auction purchaser this Court directed the Sub-Divisional Land and Land Reforms Officer, Serampore, Hooghly to submit a report as regards the land. Sub-

Divisional Land and Land Reforms Officer, Serampore submitted a report before this Court and the contents of the aforementioned report reads as follows :-

1. That, no proceeding is pending at the end of the Sub-Divisional Land and Land Reforms Officer, Serampore.

2. That M/s. RISHRA STEEL Ltd. was allowed to retain 37.56 acres of land in mouza Rishra, J.L. No. 27, P.S. - Rishra and Konnagar, J.L. No. 107, P.S. Uttarpara within the jurisdiction of Block Land and Land Reforms Office, Serampore-Uttarpara u/s 6(3) of WBEA Act vide L&LRD Department's Notification No. 4416-L, Ref. Dated 06.04.1962 to run a factory with condition for resumption if the land is not used for the purpose of factory.

3. Later, as per direction of the Government of West Bengal in the L & L.R. Department the S.D.L&L.R.O., Serampore issued notice for reconnaissance survey upon the Official Liquidator to ascertain latest status of the concerned factory and its land vide this office notice No. 1189/SDSR Dt.12.07.2005 (copy closed).

4. Till date the said enquiry has not been completed for want of co-operation from the part of the Liquidator.

12. Upon completion of affidavits on the aforementioned application matter was heard and different learned lawyers submitted on behalf of the purchasers and questioned the marketability of the land in question. Mr. Mukherjee, learned Counsel appearing for the purchaser submitted that the properties of the Company (in liquidation) is affected by the provisions Section 6(1)(g) and Section 6(3) of the Estate Acquisition Act, 1953 and the State proposes to resume the land in view of closure of the factory. Mr. Mukherjee, submitted the judgment of the Hon'ble Supreme Court reported in 2009 (4) SCC 453 (State of West Bengal Vs. Ratnagiri Engineering Pvt. Ltd.) appears to be affected by the subsequent introduction of the explanation u/s 6(3) of the Estate Acquisition Act. Mr. Mukherjee, argued that Section 4(1) of the Land Reforms Act confers ownership on the raiyat but the explanation u/s 4(1) introduced with effect from 7th August, 1969 makes Sub-section 4(1) in applicable to a raiyat retaining land u/s 6(1)(g) read with Section 6(3) of the Estate Acquisition Act and, thus, makes such land non-transferable. Mr. Mukherjee, further argued that no clearance had been obtained under Urban Land Ceiling Act and under the provisions of the said Act the lands involved excluding an insignificant portion a vacant lands and only 500 square meters are retainable thereunder. Mr. Mukherjee also cited a decision that where there is a statutory bar even a Court sale is not permissible. Mr. Mukherjee also cited a judgment reported in 1990(67) Company Cases, Page 16 at Page 26 (Saknw Industries) and submitted that where a continuance of interest is uncertain and the property is not transferable even a Company Court does not direct a sale to be made.

13. Learned Counsel for the Official Liquidator submitted that the order of winding up was passed on 4th June, 1990 and had become final. The Company

has become non-functional since long before the order of winding up. Several proceedings were initiated but all failed and the Hon"ble Supreme Court have clearly directed that in any case within a period of 10 weeks from the date of the order i.e. 26th September, 2000 the Company could be sold as a "going concern". In case it is not concluded within the aforesaid period the order of the High Court directing the sale of the Company as a "going concern" shall stand set aside. It was further directed that the Official Liquidator will then proceed to sell the assets of the Company first by selling the plant, machinery and other moveable assets in such a manner to fetch the maximum price, keeping the interest of all other creditors, etc.

14. He submitted that the 10 weeks passed but the sale of the Company as a "going concern" could not be made. Therefore, the assets of the Company are to be sold as directed by the Hon"ble Supreme Court on 20th September, 2000. He submits there cannot be any controversy as regards as the marketability of the land after the order passed by the Hon"ble Supreme Court. He also submits that it would appear from the report of the Sub-Divisional Land and Land Reforms Officer, Serampore dated 13.12.2011 to effect that no proceeding is pending at the end of Sub-Divisional Land and Land Reforms Officer, Serampore. He submitted that although a notification was mentioned but no paper was disclosed. He further submitted that this Hon"ble Court issued direction for production of land records and the notification and/or conditions if at all there be any but the State respondents including the said Sub-Divisional Land and Land Reforms Officer, Serampore could not produce any scrap of paper. He submits the impugned letters were vague and without any substance. Simply because two provisions under the Estate Acquisition Act, 1953 was mentioned, there is no scope on the part of the auction purchaser to question the marketability of the land in question. He submits that since long before the order of winding up is passed, no factory is there. He further submits that on 20th September, 2000 when the order was passed by the Hon"ble Supreme Court for selling the property in question, there was no such proceedings before any of the authorities. He submits that the judgment delivered by the Hon"ble Supreme Court in case of Ratnagiri Engineering Pvt. Ltd. (Supra) is clearly applicable. He submits that under Paragraph 25 of the aforesaid judgment of the Hon"ble Supreme Court have decided as follows :-

In view of the above, while we do not agree with the view taken by the High Court in the impugned judgment, we also hold that once an order under the main part of Section 6(3) of 1953 Act is passed by the State Government, the power under the proviso to Section 6(3) of the 1953 Act cannot be exercised by the State Government by taking into consideration the events which occurred after the said order was passed.

15. The auction purchaser was informed by the notice of the Official Liquidator that the property would be sold "as is whereas basis" and the petitioner/purchaser was satisfied about the property and then offered highest price,

therefore, the pleas taken by the purchaser are not at tenable in the eye of law. The judgments cited by Mr. Mukherjee are delivered on different set of facts which have no manner of application in the instant case.

According to him the State Government cannot resume the land for the subsequent events after the order if at all there be any u/s 6(3) of the said Act. He submits that in case of Ratnagiri (Supra) the order passed by the State Government for resumption of the land was set aside by the Hon''ble Supreme Court. He submits that in the instant case also the State Government have no power to resume under any circumstances for any subsequent events, specially closing of the factory, took place long before the order of winding up was passed. Learned Counsel further submit that the apprehension on the part of the applicants is also not at all tenable since the State Government have never issued any notice either under Land Acquisition Act or Land Reforms Act and moreover there is no proceedings pending before any authority under the aforesaid two Acts as would appear from the report of the SDL & LRO. He submits that all these pleas are taken for purchasing time before the Court so that the balance amount of money could be paid beyond the time fixed by this Hon''ble Court. He submits that by way of adding explanation u/s 6(3) of the Estate Acquisition Act, 1953 the status of the land cannot be affected nor the order of the Hon''ble Supreme Court could be bypassed. It was submitted that the impugned amendment is of no affect in the instant case in view of the judgment delivered by the Hon''ble Supreme Court in case of Ratnagiri Engineering Pvt. Ltd. Learned Counsel submits that there is no dispute as regards the marketability of the land in question and the applicant's application should be dismissed. It was submitted by the learned Counsel that the records allowing such retention u/s 6(3) of West Bengal Estate Acquisition Act after assessing the requirement for the purpose of running of the said factory was never produced before this Hon''ble Court. He submitted that mere issuance of the impugned letters by the SDLLRO, Serampore by referring two provisions of the West Bengal Estate Acquisition Act cannot create any embargo on the marketability of the land. The State Government specially the SDLLRO could not produce any record relating to the matter to justify their claim over and in respect of the land in question in spite of several opportunities granted by this Court. They also failed to produce the land records (showing the status of the land) on the date of the alleged vesting. It was submitted that the definition of the word factory abundantly makes it clear that the word referred u/s 6(1)(g) and Section 6(3) of the West Bengal Estate Acquisition Act must be running factory on the date of vesting. And the word factory of the aforementioned Act cannot be equated with the state of a pre-existing factory. If the factory is not in operation/closed, a structure of it could be covered u/s 6(1)(b) of the West Bengal Estate Acquisition Act in case the applies. He submitted that in view of the judgment of the Hon''ble Apex Court delivered in case of Ratnagiri Engineering Pvt. Ltd. (Supra) there is no scope for any resumption. The purported explanation which was added very recently long after the date of

liquidation and the order of Hon''ble Supreme Court, cannot touch the finality of the matter specially when in view of the winding up order the Hon''ble Supreme Court directed to sale the assets of the Company on 26th September, 2000. He also submitted that the notification of the State Government dated 9th November, 2010 is not at all applicable in the instant case. He submitted that the explanation cannot over ride the main provision, nor can over ride the judgment of the Hon''ble Apex Court. He also submits that by way of adding explanation under the provision the State Government have no power to authority to resume the land. However, in the instant case the question of using of land for factory or workshop do not arise nor the State Government acquire any right to resume such land on the basis of such explanation being explanation to under West Bengal Estate Acquisition Amendment Act of 2009 which has come into effect on 9th November, 2010. He submitted the apprehension of the applicant is without any basis and there cannot be any dispute and/or doubt of the marketability of the title of the land in question. It was submitted that the matter has become final before the Supreme Court on 26th September, 2000 and this Hon''ble Court is following the order of the Hon''ble Supreme Court. In case of any clarification and/or any rectification is necessary this Hon''ble Court have no jurisdiction to decide the same. This Hon''ble Court is, in fact, executing the direction of the Hon''ble Supreme Court. He submits the judgment cited by Mr. Mukherjee are not on similar set of facts. Therefore, the same are not applicable in the instant case. It was submitted that this application should be dismissed with costs.

16. Heard the learned Counsel appearing for the parties and considered the materials available on record. It appears to this Court that on 26th September, 2000 the Hon''ble Supreme Court passed an order for selling the assets of the Company (in liquidation) both movable and immovable. Thereafter several proceedings were initiated against selling the property in question and lastly this Court have passed an order for selling the property as per the Hon''ble Supreme Court direction and on that basis paper publication was made and it was clearly mentioned that the property would be sold "as is whereas basis". The applicants being satisfied about the marketability of the property offered highest price and paid an amount of Rs. 6.52 crores and the balance amount of Rs. 19.48 crores were to be deposited within the time stipulated but, the balance money was not deposited, rather the present application is filed on the ground of issuance of two letters by the SDLLRO, Serampore as mentioned hereinabove. The two letters were issued by the SDLLRO, Serampore, Hooghly, mentioning Section 6(3) read with Section 57 of the West Bengal Estate Acquisition Act for holding an alleged enquiry although there is no proceedings pending before the said Sub-Divisional Land and Land Reforms Officer, Serampore as admitted by him. The Official Liquidator replied to the said notice stating therein that the properties/assets of the Company is under the custody of the Hon''ble Court from the date of winding up of the Company. He also requested the SDLLRO not to proceed in the matter without leave of the Hon''ble Court. He also pointed out that the Company have gone in liquidation under the order dated 4th June, 1990 and since then the

Official Liquidator was appointed. It appears that except the said two letters issued by the SDLLRO, there is no record relating to this case although it was claimed that there was a notification of 6th April, 1962. But no copy of such notification was produced. The concerned State respondents could not show the original status of the land in the land records on the date of alleged vesting. It was also not known whether the factory was in operation on the land on the date of vesting. It was also not known whether the land is within ceiling or who were the owners on that date. In spite of several adjournments granted by this Court Mr. Banerjee, Junior Standing Counsel could not show a scrap of paper as regards the lands in question. In my view mere issuance of the aforementioned two letters cannot be a sufficient ground to raise a doubt about the marketability of the property in question. The important informations and the records which the State could not supply are as follows:

1. The status of the land on the date of coming into force of Estate Acquisition Act of 1953 not disclosed by the State.
 2. No application and order u/s 6(3) of the Estate Acquisition Act of 1953 was produced and it is unknown whether there is any such order at all.
 3. No gazette notification produced although a reference was given.
 4. Unless notification is produced it could not be ascertained in respect which land the notification was issued.
- a) It is also not disclosed by the State, what are the Plot Nos. and the area if at all allowed to be retained over and above the ceiling limit.
- b) It was also not disclosed if the land were within the ceiling limit and who were the owners on the date of the Act coming into force.

These records are in the custody of State respondents but nothing was produced by them to claim any interest over the land in question. Moreover, Company gone into liquidation in the year 1990 and it is not in operation and/or closed long long back, therefore, after few decades it cannot be claimed that the lands are factory land.

17. In my view the said two notices issued by the SDLRO, Serampore after 15 year of winding up without any particulars cannot create any doubt as regards the marketability of the land in question. The impugned notice for holding the alleged survey for utilisation in the year 2005 is of no consequence when the mill/factory was not in operation since long before the winding up in 1990 and an order for sale was passed on 26th September, 2000 by Hon''ble Apex Court and the matter reached its finality. Therefore, the purported notices are of no merit in the eye of law. In my view the explanation which was added sometimes in the year 2010 has no nexus with the aforementioned two notices issued in the year 2005.

18. Further there is no factory on the lands in question since long long back

before the winding up and as such it cannot be a factory land now. Therefore, by virtue of added explanation of 2010 the State Government also cannot raise any question as regards utilisation of lands, holding it as factory land. The explanation added in 2010 cannot override the provisions u/s 6(3) of the Estate Acquisition Act. There is nothing in record to show that the land in question was beyond ceiling limit either. Even if it is accepted, for the sake of argument, that there is an order u/s 6 (3) of the said Act in that event also the ratio of judgment delivered by the Hon''ble Appex Court in case of Ratnagiri Engineering Pvt. Ltd. (Supra) is applicable and, therefore, the power under the provisions to Section 6(3) of the 1953 Act cannot be exercised by the State Government taking in account the subsequent events which occurred after the said order u/s 6(3) was passed. The relevant paragraphs under the aforementioned judgment being Paragraphs 24, 25 and 26 reads as follows :

Moreover, on a plain reading of Section 6(3) of the 1953 Act it can be seen that the State Government can revise an order passed under the main clause of Section 6(3) of the 1953 Act. The use of the word "revise" in the proviso also supports the view we are taking. In other words, only the facts as existing at the time when the order under the main part of Section 6(3) of the 1953 Act was passed by the State Government can be taken into consideration while exercising the power under the proviso to Section 6(3) of the 1953 Act. Events subsequent to passing of the order under the main part of Section 6(3) cannot be seen for exercising the power under the proviso.

In view of the above, while we do not agree with the view taken by the High Court in the impugned judgment, we also hold that once an order under the main part of Section 6(3) of 1953 Act is passed by the State Government, the power under the proviso to Section 6(3) of the 1953 Act cannot be exercised by the State Government by taking into consideration the events which occurred after the said order was passed.

Since in the present case the power under the proviso to Section 6(3) of the 1953 Act was exercised by the State Government by taking into consideration the events which happened after the order under the main part of Section 6(3) of the 1953 Act passed, the order of the State Government for resuming the land in question cannot be sustained.

19. In my view the State Government have no power to resume the land in question, nor they get any right by way of adding explanation to the aforementioned section. In view of the order of the Hon''ble Supreme Court dated 26th September, 2000 the matter reached its finality and the Official Liquidator is authorised and empower to the sale land in question. It also appears that the State Government have not initiated any proceedings under the Urban Land Ceiling Act nor under the Land Reforms Act nor those questions are involved in this matter. Although some submissions on the side of the applicant were advanced on the same but there is no specific ground in the application. The plea is without any substance and as such rejected. It is pertinent to point

out if it was a question at all, in the mind of the applicant; the applicant had ample opportunity to get satisfied before participation in the bid. Now the applicant cannot raise such plea and create observation to sale the property. This conduct on the part of the applicant is highly improper. However, this application is pending before this Court since 17th August, 2011 but the applicant could not show anything that any proceedings is pending or order is passed in respect of the land in question under any land Act. Therefore, the doubt and/or apprehension of the auction purchaser is without any basis and/or substance. In my view there is no defect or any dispute about the marketability of the property in question which was sold in auction. However, the applicant is granted one week's time to pay the balance dues. In the event balance payment is made within a week from date the Official Liquidator is directed to execute the necessary documents in favour of the auction purchaser after taking leave of the Hon"ble Division Bench, otherwise the order of forfeiture as passed earlier would stand. Let urgent Xerox certified copy of this judgment, if applied for, be given to the learned Advocates of the parties on usual undertaking.