

(2008) 11 CAL CK 0043

In the Calcutta High Court

Case No : C.A. No. 62 of 2008 in C.P. No. 70 of 1995

Shivarpan Engineering Pvt. Ltd.

APPELLANT

Vs

Official Liquidator, High Court of Calcutta

RESPONDENT

Date of Decision : 05-11-2008

Acts Referred:

Citation : (2009) 147 CompCas 199 : (2010) 1 CompLJ 285

Hon'ble Judges : Patherya, J

Bench : Single Bench

Advocate : Joy Saha and Aniruddha Roy, for the Appellant; M.C. Ghosh, for the Respondent

Judgement

Patherya, J.—This is an application filed by the applicant-purchaser for a direction upon the official liquidator to forthwith register and convey 4.680 acres in favour of the applicant.

Case of the petitioner/purchaser:

2. The case of the purchaser is that by order dated March 20, 1999, 4.680 acres of land belonging to the company (in liquidation) at Amdanga was sold to the applicant and although possession has been given no step has been taken by the official liquidator to execute conveyance in favour of the applicant. Accordingly, an application was filed in 2000 for a direction upon the official liquidator to execute conveyance in favour of the applicant. By order dated May 17, 2000, the respondent was directed to issue notice in the newspapers inviting persons interested in the said land to claim title therein failing which the official liquidator was directed to take all necessary steps to execute conveyance in favour of the applicant. Pursuant to such publication none appeared to claim title in respect of 4.680 acres of land and therefore the applicant became entitled to execution of the conveyance.

3. Thereafter, the second highest bidder filed an application for setting aside the sale and the same was heard and disposed of by order dated March 22, 2002.

The said order has directed the official liquidator to convey the property to the applicant as from the evidence and material-on-record the entire property comprising of 4.680 acres of land was put up for sale. From the said order an appeal though filed was dismissed by an order dated February 18, 2003. No SLP has been filed and therefore the order has been accepted and acted upon. In spite of reminders, the last of such reminder being sent on November 23, 2007 and receipt thereof by the official liquidator, no step has been taken to execute the deed of conveyance.

4. The grounds for non-execution of the deed of conveyance, in spite of orders passed, is non-existent and the plea taken by the official liquidator that the said lands and lands of A.S. Rototech Ltd., and the company (in liquidation) was bounded by one boundary wall, cannot be accepted. Therefore, directions sought for, be given.

Case of the official liquidator:

Counsel for the official liquidator submits that the applicant is only entitled to an area of 3.16 acres as will be evident from the sale notice issued by the official liquidator. As the applicant is seeking execution in respect of 4.680 acres of land and the only area that can be given is 3.16 acres, the deed of conveyance cannot be executed.

5. The company (in liquidation) and A.S. Rototech Ltd. enjoyed a common boundary wall and both the said companies went into liquidation.

The area in the occupation of A.S. Rototech Ltd. was sold pursuant to the sale confirmed by court and conveyance has been executed in favour of the purchaser. The assets of A.S. Rototech Ltd., was sold pursuant to the letter for direction filed. By an order dated February 24, 2006, such sale was directed and DRT-III was not to give effect to the sale of the landed property of Sri Arun Sud. A surveyor was also directed to be deputed for demarcating the land of the two companies (in liquidation). Thereafter, the demarcation has been effected and the properties of A.S. Rototech Ltd., have been sold in 2007.

6. In view of the aforesaid facts the official liquidator is ready and willing to execute 3.16 acres of land in favour of the applicant and not 4.680 acres as sought for by the applicant.

Conclusion:

Having considered the submissions of the parties and in view of orders dated May 17, 2000 and March 22, 2002, there can be no doubt that 4.680 acres of land of the company (in liquidation) was directed to be conveyed in favour of the applicant. The order dated March 22, 2002, has been affirmed by the appeal court and no SLP was filed therefrom.

7. The official liquidator before selling the lands of A.S. Rototech Ltd. pursuant to order dated February 24, 2006 did not place-on-record that in view of the said

order passed it would not be possible to convey 4.680 acres in favour of the applicant. No application for variation or modification of the orders dated May 17, 2000 or March 22, 2002 or the appeal court order dated February 18, 2003, has been filed by the official liquidator. Therefore, the official liquidator is bound to give effect to the orders dated May 17, 2000, March 22, 2002 and February 18, 2003 by conveying 4.680 acres of land in favour of the applicant.

8. The area set out in the sale notice was considered when order dated May 17, 2000, was passed as publication was directed to be made and in spite of publication no person came forth to claim title in any part of the land comprised in 4.680 acres.

For all the said reasons this application is allowed and the official liquidator is directed to execute the deed of conveyance in favour of the applicant for 4.680 acres within four weeks from receipt of this order.

9. In the event the official liquidator is unable to deliver 4.680 acres then the official liquidator will be at liberty to execute the conveyance for the area that he can convey and will refund sums accordingly to the applicant.

Such direction is given as the land of A.S. Rototech Ltd. (in liquidation) and the company (in liquidation) were contiguous and comprised in one boundary wall. The lands of A.S. Rototech Ltd., has been sold pursuant to orders of court, and deeds of conveyance executed. No Application has been filed to set aside the sale of A.S. Rototech Ltd. (in liquidation).

Later:

10. Xerox certified copy of this judgment be made available to the parties, if applied for, upon compliance of all requisite formalities.