

(2016) 01 AP CK 0006

In the Andhra Pradesh High Court

Case No : O.S.A. Nos. 21 and 29 of 2015

Telangana State Industrial Infrastructure Corporation Limited
(TSIIC Ltd.)

APPELLANT

Vs

Lamino Paper Products Limited and Others

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Citation : (2016) 01 AP CK 0006

Hon'ble Judges : Nooty Ramamohana Rao and Anis, JJ.

Bench : Division Bench

Advocate : P. Roy Reddy, for the Appellant; Anil Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—1. These Original Side Appeals preferred under Clause 15 of the Letters Patent are directed against the order and judgment rendered by the learned Company Judge in Company Applications No. 767 and 1225 of 2013.

2. The appellant is Telangana State Industrial Infrastructure Corporation Limited, a public sector undertaking entrusted with the task of providing industrial infrastructure for securing rapid industrialization and economic growth. The 1st respondent in O.S.A. No. 21 of 2015 is a company under liquidation. One of the debtors of the said company initiated winding up proceedings against it by instituting for the said purpose Company Petition No. 14 of 2000. After due enquiry and upon being satisfied that the company is not in a position to liquidate its debts, the Company Court, by its order, dated 08.12.2001, ordered for its winding up. It is pursuant to the said order, the Official Liquidator has taken charge of its assets, books of records and deeds and started taking steps for liquidating the company. An industrial shed standing on a plot of land of the company was sold, in that process, in favour of the 2nd respondent M/s. Haryana and Steel Center (KDM) Private Limited, who emerged as the best bidder for a sum of Rs. 69.50 lacs. When the Official Liquidator was taking steps to liquidate

the said industrial plot, it should be noted that the Andhra Pradesh Industrial Infrastructure Corporation Limited, the fore-runner and predecessor-in-interest of the present appellant when the combined State of Andhra Pradesh was in existence, filed Company Application No. 622 of 2006 seeking leave of the Company Court for resumption of possession of the industrial shed bearing No. D- 74 of a plinth area of 30 x 60 standing on an industrial plot measuring 1416.85 square yards in Phase-V, Industrial Development Area, Jeedimetla, Ranga Reddy District. That Application No. 622 of 2006 was dismissed on merits by the Company Court on 01.08.2006. It is thereafter, the asset has been liquidated.

3. Company Application No. 767 of 2013 has been moved seeking a direction to the Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC), Hyderabad to execute a sale deed in favour of the 2nd respondent purchaser. The background fact relevant is that the APIIC has allotted an industrial shed standing on a plot of land in Phase V, IDA, Jeedimetla in favour of the company under liquidation. The APIIC has also executed a registered lease-cum-agreement of sale deed on 14.02.1985 and in pursuance thereof, vacant possession was delivered of the industrial shed together with the land appurtenant thereto on 13.03.1985 to the company under liquidation. When the company under liquidation proposed to raise financial support by way of creating charge/mortgage on the said industrial plot, APIIC tendered No Objection Certificate on 13.03.1985 in favour of the Andhra Pradesh State Financial Corporation (APSFC) and accordingly, the industrial plot has been mortgaged in favour of the APSFC and the company under liquidation availed the financial support offered by the APSFC. However, in spite of the No Objection Certificate granted in favour of the APSFC on 13.03.1985, the APIIC cancelled the allotment of the industrial shed on 06.11.1986 and requested the company under liquidation to surrender possession of the industrial plot. However, most crucially, the APIIC has received payment affected by the APSFC in a sum of Rs. 1,17,550/- and a further amount of Rs. 28,019.90 Ps. representing the sale consideration amount of the shed together with outstanding interest amount receivable by the APIIC. Upon receipt of this money, the APIIC has gone on record by addressing a communication on 09.06.1987 to the company under liquidation offering to restore the allotment, subject to payment of a sum of Rs. 1,000/- representing the nominal penal charges leviable for restoration of allotments, which stood cancelled earlier. The whole controversy now generated is that this amount of Rs. 1,000/- representing the penal costs has not been tendered by or on behalf of the company under liquidation. Hence, the successor body of APIIC, namely the appellant herein, would urge that the allotment of the industrial plot and shed in favour of the company under liquidation stood cancelled as long back as on 06.11.1986 itself and hence, the Company Court could not have ordered the appellant to execute a sale deed. The learned Advocate General assisted by Sri P. Roy Reddy, learned Standing Counsel for the appellant would also urge that the industrial plot was not sold in favour of the

company under liquidation. It was merely leased out and an agreement of sale was only entered into. Therefore, while liquidating the assets of the company under liquidation, the Official Liquidator could not have transferred anything better than the title that was held by the original allottee, namely the company under liquidation.

4. This argument was resisted by Sri Anil Kumar, learned counsel for the Official Liquidator and Sri Jaganmohan Reddy, learned counsel for M/s. Haryana and Steel Center (KDM) Private Limited, the auction purchaser, by pointing out that when once the entire consideration value has been received on behalf of the company under liquidation by the APIIC, what remained thereafter was a mere execution of a conveyance deed duly conveying right, title and interest over the said industrial plot in favour of the company under liquidation. Since the Court has sold the said asset of the company under liquidation by way of public auction as a part of the winding up exercise carried out by it, the auction purchaser steps into the shoes of the company under liquidation and stands at par in all respects with it. It is only, therefore, appropriate that a regular deed of conveyance is required to be executed by the appellant, being the successor to the APIIC.

5. While considering Company Application No. 622 of 2006, this Court has traversed the entire breadth and length of the controversy and for the reasons assigned therein, rejected the plea of the APIIC for resumption of possession of the industrial plot on merits. The prime ground that weighed with this Court for rejecting Company Application No. 622 of 2006 on 01.08.2006 was that the APIIC has tendered No Objection Certificate to the company under liquidation to enable it to mortgage the industrial plot with the APSFC as part of capital mobilization exercise by the company under liquidation and in due consideration and deference thereof, the APSFC has tendered the entire consideration amount forming part of the registered lease-cum-agreement of sale deed, dated 14.02.1985. Thus, the entire consideration for sale of the industrial plot in favour of the company under liquidation has also been received by the APIIC. That apart, it has also received Rs. 28,019.90 Ps. towards interest for delayed payment of the sale consideration as the said agreement has provided for such payment of interest. Thus, in all respects, entire sale consideration amount for conveying title over the industrial plot in favour of the company under liquidation has been received by the APIIC. In fact, it has also acted thereon and by its communication dated 09.06.1987 has accepted to restore the allotment of plot in favour of the company under liquidation, subject, of course, to the condition that the company under liquidation shall pay the penal charges of Rs. 1,000/- for restoration. Therefore, the APIIC, by its conduct exhibited on 09.06.1987, is estopped from resiling there from. May be that the company under liquidation, though asserted that it has also paid the penal charges of Rs. 1,000/-, is not in a position to produce concrete material in proof thereof, but however, we cannot lose sight of the fact that the company under liquidation has dealt with the asset as belonging to it and possessed by it, subject to the same terms and conditions as are stipulated in the original registered lease-cum-agreement of sale dated

14.02.1985. The APIIC or for that matter, its successor, the appellant herein, cannot maintain the position that the original allotment having been cancelled on 06.11.1986, they can resume possession of the industrial plot and/or that they cannot be compelled to act any further in terms of and in accordance with the lease-cum-agreement of sale, dated 14.02.1985, for, it is subsequently the APIIC accepted the amount representing the full sale consideration together with interest thereon. Hence, the APIIC by its own conduct abandoned the course of cancellation of the allotment of the industrial plot in favour of the company under liquidation, and forfeited its right of resumption of the possession thereof. If APIIC preferred to stay on course of cancellation of the allotment, it could not have accepted the sale consideration amount together with interest at all. The APIIC cannot blow hot and cold simultaneously. In equity, what, at best, in the given circumstances, the appellant can urge is payment of Rs. 1,000/- for a formal closure of the contentious issue.

6. We are satisfied that the Company Court has acted in right earnest in liquidating the asset, after deciding Company Application No. 622 of 2006. In fact, Sri Anil Kumar, learned counsel for the Official Liquidator is right in relying upon the principle enunciated by the Supreme Court in *United Bank of India v. Official Liquidator*, 1994 Company Cases (vol.70) 262, wherein after considering as to how the assets of a company under liquidation are put to sale by the Official Liquidator on as is where is basis, the Supreme Court has held as under:

"When the official liquidator sells the property and assets of a company in liquidation under the orders of the court he cannot and does not hold out any guarantee or warranty in respect thereof. This is because he must proceed upon the basis of what the records of the company in liquidation show. It is for the intending purchaser to satisfy himself in all respects as to the title, encumbrances and so forth of the immovable property that he proposes to purchase. He cannot after having purchased the property on such terms then claim diminution in the price on the ground of defect in title or description of the property. The case of the official liquidator selling the property of a company in liquidation under the orders of the court is altogether different from the case of an individual selling immovable property belonging to himself. There is, therefore, no merit in the application made on behalf of Triputi that there should be a diminution in price or that it should not be made liable to pay interest on the sum of Rs. 1 crore 98 lakhs."

7. In that view of the matter, we find no error of jurisdiction carried out by the learned Company Judge in dismissing Company Application No. 1225 of 2013 and then, allowing Company Application No. 767 of 2013, but however, we hasten to add that the learned Company Judge may not be justified in directing the APIIC or for that matter, its successor, the present appellant, to execute a sale deed in favour of the 2nd respondent. Instead, the learned Company Judge ought to have directed the 2nd respondent purchaser who has stepped into the shoes of the company under liquidation, to take necessary steps and follow-up

action in terms of the registered lease-cum-agreement of sale dated 14.02.1985 and it shall be open to the 2nd respondent purchaser to secure a proper conveyance deed in its favour from the appellant upon tendering the penal costs of Rs. 1,000/-.

8. With this modification, the Appeals, which are otherwise meritless, fail and they are accordingly, dismissed. No costs.