

(2005) 02 GUJ CK 0048
In the Gujarat High Court

Case No : Company Application No. 300 of 2003 in Company Petition No. 79 of 1989

Textile Labour Association

APPELLANT

Vs

O.L. of Vijaya Mills Ltd.

RESPONDENT

Date of Decision : 22-02-2005

Acts Referred:

Companies Act, 1956 — Section 446(2)

Citation : (2006) 129 CompCas 423 : (2005) 62 SCL 53

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : D.S. Vasavada, in Company application No. 300 of 2003, for the Appellant; S.N. Soparkar, Senior Advocate and Swati Soparkar and K.B. Pujara, in Company Application No. 300 of 2003, for the Respondent

Judgement

K.A. Puj, J.—The applicant, Textile Labour Association has taken out this Judge's Summons praying for the following reliefs :-

(A) To please direct the O.L. to take steps to evict the respondent from the premises of Vijaya Mills Ltd. as he has taken many illegal connections and he is also using the mills premises for unauthorised and illegal use;

(B) To please direct the Sale Committee to dispose of the land immediately after evicting the respondent No.3;

(C) Respondent No. 4 may be directed to inform this Hon''ble Court as to when and under whose order or application the meter as shown in photograph was put up on 05.02.2003;

(D) To grant such other and further relief(s) as are deemed fit in the interest of justice;

2. An affidavit is filed by one Mr. Ravikant Mohanlal Solanki, one of the office bearers of the applicant Union in support of the present Judges Summons. It is

stated in the affidavit that by an order dated 07.09.1993, the Company, namely, Vijay Mills Limited was ordered to be wound up by this Court. The Official Liquidator attached to this Court was appointed as the Liquidator of the Company. It is further stated that the unit was closed down on 22.01.1988 and thereafter in the winding up petition filed by one of the petitioning creditors being Company Petition No. 79 of 1989, the order of winding up was passed on 07.09.1993. It is further alleged that the respondent No.3, namely, M/s. Amin Traders has encroached upon some portion of the land of the Mills Company since 1993 and the Official Liquidator, under the mistaken belief has put the said party into possession of the premises in question. The Ex-Directors of the Mills Company who have filed statement of affairs have not indicated the name of the respondent No.3 anywhere and there was no documentary evidence showing that the respondent No.3 came into possession of the Mills company even prior to the winding up order passed by this Court.

3. It is further alleged in the affidavit that the respondent No.3 was merely a Contractor for opening the empty bobbins and he was never tenant of the Mills Company. The respondent No.3 has put up some machines after altering the construction below the time keeper's office and started giving some portion of land for hosting marriage and dinner party. In support of the allegation and averments, the applicant has also produced necessary photographs with the affidavit.

4. The applicant has also submitted that the respondent No.3 has put up an electric meter without obtaining any permission from this Court. The A.E.C. which is joined as respondent No.4 in the present application might have granted the said electric connection without obtaining prior permission of this Court. The prayer was, therefore, made against A.E.C. to inform as to on what basis the said electric connection was granted to the respondent No.3.

5. The applicant has also produced affidavit of one Mr. Udesing Himmatsing Rajput, one of the Security Guards in Doxen Security Agency who has stated that he was guarding this property since 1993 and further stated that the respondent No.3 had entered the premises after 1993 and at that time he was using very small portion of land. The respondent No.3 has thereafter put up construction and started giving portion of land for hosting the marriage party. He has confirmed the facts stated and averments made by the applicant in his affidavit filed in support of the present Judges' Summons.

6. This Court has issued notice on 11.07.2003. An affidavit-in-reply is filed on behalf of respondent No. 4 i.e. Ahmedabad Electricity Company (hereinafter referred to as "A.E.C.") on 01.08.2003 wherein it is stated that the respondent No.3 had applied for electric connection for industrial purpose of Cone Winding on 20.04.1994 and the respondent No.4 had granted the connection on 17.11.1994 vide Service No. 623803. The burnt meter of the said service was replaced on 26.12.2002.

7. An affidavit-in-reply is filed by respondent No.3 on 09.09.2003 wherein it was stated that the occupation of the property in question by the respondent No.3 has already been decided by this Court vide order dated 31.01.1996 in Company Application No. 205 of 1994 in which the applicant, namely, T.L.A. was also party and was very much aware about the decision of this Court. The respondent No. 3 has been carrying on the business of reeling the yarn in the name and style of M/s. Amin Traders and respondent No.3 was in lawful possession of the premises in question which includes Godown and factory on the land admeasuring about an area of 2,500/Sq. Mtrs. for the last more than 20 years. The respondent No.3 has been regularly paying rent. In the order dated 31.01.1996 passed by this Court in Company Application No. 205 of 1994 filed by one of the secured creditors of the Company in liquidation, Central Bank of India, it was clearly observed that the present occupant had been in the possession of the property for the last more than 10 years and he has been paying the rent for the premises since December, 1987. It is further submitted that the O.L. has prepared the minutes on 03.02.1994 while taking possession of the Mills Company after order of winding up was passed by this Court and in the said minute, it was recorded that the respondent No. 3 was in possession of the premises in question for the last more than 10 years.

8. With regard to the allegation of encroachment made by the applicant in this application, it is stated that after taking the possession of the properties of the Mills Company in liquidation, the O.L. had issued notice dated 12.05.1994 directing all the tenants of the premises as per the list given by the Ex-Directors of the Company to deposit the arrears of rent to the O.L. The said notice dated 12.05.1994 was also served upon the respondent No.3. The respondent No. 3 has further submitted that they have not disturbed or altered the permanent structure. The machines were utilised by the respondent No.3 right from the beginning as the respondent No.3 was working as Reeling Contractor for the Company and was also doing reeling of the yarn on jobork basis for others. However, during the riots which took place in February, 2002, the premises including the plant and machinery was substantially damaged for which FIR was also lodged with the concerned Police station on 28.02.2002. The respondent No.3 has, therefore, carried out certain repairing work and no other construction was carried out by the respondent No.3.

9. With regard to the electric connection, it is stated by the respondent No.3 that the electric connection existed for many years. Since the fire during the riots had damaged the cables and electric meter, the reconnection was applied for and A.E.C. has reconnected and installed new meter on 05.06.2003. It was specifically stated that this was not a new connection as alleged by the applicant.

10. So far as the affidavit filed by Mr. Udesingh is concerned, the respondent No. 3 has submitted that the O.L. is in charge of the premises and has all the authorities to take action against the unauthorised occupants and the present applicant or said Shri Udesinh has no locus standi to make any baseless

allegation against the respondent No.3.

11. The O.L. has filed his first report on 22.09.2003 wherein it is stated that the respondent No.3 is occupying the premises / space belonging to the Company and as per the statement of affairs submitted by Ex-Directors showing therewith various tenants, the name of respondent No. 2 does not appear along with other similar tenants as one of the tenants. The statement of land and property of the Company was annexed along with the said report. The O.L. has further submitted in the report that respondent No. 3 had applied for electric connection for industrial purpose of Cone winding on 24.04.1994 i.e. after the date of winding up order of the Company and he was granted reconnection on 17.11.1994. No permission of the winding up Court was obtained for providing this connection.

12. An affidavit-in-rejoinder was filed by the applicant on 25.09.2003 in response to the affidavit-in-reply of the respondent No.3. It was stated that the respondent No.3 was merely a Contractor of the erstwhile management of the Vijay Mills Limited and he was never a tenant. The respondent No.3 was entrusted the work of empty bobbins. The A.E.C. disconnected the power supply on 21.01.1988 and the Labour Court had applied its seal to all the machineries including the machineries which were alleged to have been owned by the respondent No.3. Till 07.09.2003 all these machines were closed and order of winding up was passed on 07.09.2003. No rent note or receipt was produced showing that the respondent No. 3 was the tenant. Even no electricity bill was produced prior to 17.01.1988.

13. The O.L. has filed his further report on 07.10.2003 wherein it is submitted that the receipt dated 05.08.2003 issued by the Official Liquidator was without prejudice as it has been specifically stated on the right hand Top of the receipt and since the office of the O.L. is a government and public office and anybody coming for payment of money, the receiving cash section is accepting payment without prejudice and issuance of this receipt does not in any case confer any right whatsoever on the payer of the amount to the O.L.

14. The respondent No. 3 has filed further affidavit on 29.06.2004 wherein it is stated that the respondent No. 3 has been regularly paying the rent at the rate of Rs. 100/- per month. Along with this affidavit, a copy of the rent note entered into between the erstwhile Ex-Directors of the Mills in question and the respondent No.3 was annexed. Various rent receipts issued by the office of the O.L. from time to time for the rent paid for the period starting from 01.01.1988 till 31.07.2003 were also produced along with the said affidavit. The respondent No. 3 has paid the rent throughout the period of occupation and there was no arrear of rent till the date of application. The respondent No.3 approached the office of the O.L. to pay further rent. However, the O.L. has denied to accept the rent and hence, the rent was sent through Money Order for the period of August 2003 - June 2004. The respondent No.3 has, therefore, submitted that the respondent No. 3 is the tenant and has been regularly paying the rent and hence, the application moved by the applicant seeking eviction of the respondent

No.3 should not be entertained by this Court.

15. The applicant has filed affidavit in Sur-rejoinder on 03.07.2004 wherein it is stated that the rent receipt produced by the respondent No. 3 at Annexure A to his affidavit is absolutely false and fabricated. It is further stated that Krishna Chawl is situated outside the Mills premises and there is a distance of about 1000 Meters from the gate of the Mills Company. The respondent No.3 was never a tenant in Krishna Chawl and it is purely a fabricated document. While drawing the minutes dated 03.02.1994, the respondent No.3 was shown to be a Contractor. The said minutes was retyped and the respondent No. 3 was shown as a Reeling Contractor. It is further stated that the Contract with the respondent No. 3 has come to an end on the closure of the Mills Company. On closure of the Company, the respondent No. 3 has concocted this false document showing himself to be the tenant of the Company. However, the Krishna Chawl which was owned by the erstwhile Management of the Mills Company was used as the residence of the employees of the Mills Company and the respondent No. 3 was never an employee of the Mills Company. The respondent No. 3, therefore, cannot be permitted to continue to occupy on the basis of the said receipt which is false and concocted.

16. The O.L. has further filed his report on 12.07.2004 wherein it is stated that the applicant has paid rent to the office of the Official Liquidator and the rent receipt No. 1529 dated 12.01.1988 produced by the applicant was signed by one Mr. A.M. Brahmbhatt on behalf of the Mills Company (In Liquidation). The O.L. has further stated that the Mills Company was closed somewhere in the month of January, 1988 and the receipt was also produced by the applicant for the said period. The O.L. has, therefore, submitted that the respondent No.3 may be directed to produce the original rent agreement and rent notes for the period prior to January, 1988. The respondent No. 3 has vide its affidavit filed in September, 2003 submitted that he has been paying rent from December, 1987 i.e. just in the previous month before the closure of the Mills Company in January, 1988. This fact itself creates some doubt or suspicion as when the Mills Company was already closed, there was no need to give the premises on rent by the Mills Company to the applicant.

17. An additional affidavit was filed by the respondent No. 3 on 17.08.2004 wherein it was stated that the affidavit filed by two different persons of T.L.A. are totally misconceived and are clearly an abuse of process of law. The said two affidavits were filed with ulterior motive and without any locus standi. The affidavit filed by one of the persons, namely, Shri Vithalbhai Bachubhai Patel who was present at the time when the O.L. first took the possession of the Mills premises and has signed the report dated 03.02.1994. With regard to the second affidavit filed on behalf of the T.L.A., it is stated that the deponent of the said affidavit claimed himself to be in the possession of the original record pertaining to the Company in liquidation. It is, therefore, alleged that he has no authority to retain the original record of the Company in liquidation. The O.L. who represents

a company in liquidation and takes care of the interest of the workers can take necessary action for eviction under due process of law and the applicant has no locus standi to move the present application before this Court. With regard to the receipt issued on the Krishna Chawl, it is submitted that it is absolutely irrelevant to consider the location of the Chawl vis.a.vis area occupied by the respondent No.3. The rent receipt issued by the Mills Company on 12.01.1988 clearly gives the description of the part of the property which was given on rent to the respondent No.3 and the said fact was further confirmed by the description given in the application form, Installation Test Report as well as Main Service record for the electric connection. The report of the O.L. at the time of taking possession of the Mill in liquidation till 03.02.1994 also clearly records that the premises occupied by the respondent No.3 are near the main entrance. The notice issued by the O.L. dated 12.05.1994 clearly refers that the Ex-Directors of the Company had submitted list of the tenants of the Company and as per the said list, the respondent No.3 being the tenant of the Company, notice was issued demanding the rent in arrears and rent for the current month. In response to the said notice, the respondent No.3 has paid the arrears of rent. The Liquidator has accepted all subsequent payment made by the respondent No.3 and hence, it is not open for the O.L. to raise an issue that the respondent No.3 is not the tenant of the premises of the Mills Company in question.

18. The O.L. has filed his further report on 09.08.2004 wherein it is stated that the respondent No.3 was occupying the portion in the capacity of Reeling Contractor and the said Contract came to an end on the closure of the Mills and it needs to be examined as to how the respondent No.3 is shown as the tenant of the Krishna Chawl which Chawl is meant for employees of the Company and also location is away from the Mills company. The allegation as to whether the respondent No.3 has occupied certain portions of the Mill also needs to be examined.

19. In the further report dated 16.08.2004, the O.L. has submitted that there is no justification in saying that the office of the O.L. has supported the respondent No.3 in creating the tenancy in its favour.

20. In his further report filed by the O.L. on 02.09.2004, a request was made to this Court to direct the respondent No.3 to provide a copy of the agreement executed by the Mills premises for working as a Contractor. A further direction was sought for to the respondent No.3 to produce balance sheet and profit & loss account of his business for the period from 1987 till the date of filing of the present application before this Court so as to examine the contentions about Reeling Contractor and his other businesses as submitted before this Court.

21. The respondent No.3 has filed an additional affidavit on 01.10.2004 wherein it is stated that in the year 1994, the respondent No.3 had approached the Official Liquidator being the landlord of the property, for confirmation of his tenancy to the A.E.C. for the purpose of obtaining the electric connection. The respondent No.3 was unable to trace the copy of the same. However, pursuant to

the same, the office of the O.L. had issued a letter dated 12.09.1994 addressed to the A.E.C. which was produced on record and pursuant to that letter of the O.L., the electric connection was installed at the premises in question.

22. An additional affidavit was filed by respondent No.4 i.e. A.E.C. on 08.10.2004 wherein it was stated that the letter dated 17.06.1994 written by the office of the O.L. was not traceable in the record of the Company. From the Main Service Record Sheet, it appears that rent receipt for the year 1994 was obtained from the applicant and the estimate was advised vide letter No. C/75/REC/8252 dated 13.09.1994. Neither such rent receipt nor the letter are available with the office of respondent No.4.

23. The respondent No.3 has filed additional affidavit on 29.11.2004 along with which the letter dated 17.06.1994 written by the O.L. to the A.E.C. was produced wherein Liquidator has stated that he has no objection for issuance of electric connection to respondent No.3 at its own cost and consequence.

24. In response to this, the applicant has also filed an additional affidavit on 11.12.2004 wherein it is stated that the Liquidator had no authority to recommend the A.E.C. to sanction the power supply as the Liquidator is bound to take prior permission of this Court. A letter issued by the Liquidator was without jurisdiction and it speaks volume about the credibility of the functioning of the office of the O.L. The O.L. has acted absolutely in illegal manner and hence, the prayer made in this application is required to be granted.

25. Since the pleadings as referred to hereinabove were completed, the matter was taken up for final hearing.

26. Heard Mr. D.S. Vasavada, learned advocate appearing for the applicant and Mrs. Swati Soparkar, learned advocate with Mr. S.N. Soparkar, learned Senior advocate for respondent No.3 and Mr. K.B. Pujara, learned advocate for respondent No.4.

27. Mr. D.S. Vasavada, learned advocate appearing for the applicant has submitted that the respondent No.3 was and is never the tenant of the Mills Company and was merely a Reeling Contractor. As soon as the Company is closed and winding up order is passed by this Court, the Contract has come to an end. The respondent No.3 has, thereafter, no right to retain the possession of the disputed premises. He has further submitted that rent receipt dated 12.01.1988 produced by the respondent No.3 is the false and fabricated document and it is purposefully created so as to create tenancy right. He has further submitted that the Mills Company was closed down on 22.01.1988 and the alleged rent receipt was got issued in connivance of an employee of the Mills Company on 12.01.1988 showing the receipt of rent for the period from 01.01.1987 to 31.12.1987. He has further submitted that the said receipt was issued on the letter head of Shri Krishna Chawl which is meant for the residence of the workers of the Mills Company and the proprietor of the respondent No.3 was never the worker of the Mills Company. Even certain interpolations on the alleged receipt

are clearly visible which prove beyond any doubt that the said receipt is bogus and concocted one.

28. Mr. Vasavada has further submitted that the Official Liquidator has no business to issue the notice dated 12.05.1994 stating that the Ex-Directors of the Company has submitted the list of the tenants of the Company and that as per the said list, the respondent No.3 was one of the tenants and was liable to pay rent/compensation in arrears as well as current rent. He has further submitted that the said notice was issued without verifying the record as the name of the respondent No.3 did not appear in the Statement of Affairs filed by the Ex-Directors and there was no documentary proof, except the rent receipt dated 12.01.1988 which is fabricated, either rent agreement or any other receipt showing that the respondent No.3 was the tenant. Mr. Vasavada has further submitted that the Official Liquidator has misused his power and position in collecting the rent and in writing letter to the Ahmedabad Electricity Company to give electric connection to the respondent No.3. Mr. Vasavada has, therefore, submitted that the respondent No.3 is an encroacher and is in illegal and unauthorised occupation of the disputed premises and is therefore, liable to be evicted forthwith.

29. The Official Liquidator has denied the allegations made by the T.L.A. He, however, supported the case of the T.L.A. to the extent that the respondent No.3 was merely a Reeling Contractor and he was never the tenant of Shri Krishna Chawl nor was a worker of the Mills Company. He has also expressed his doubt and suspicion about the rent receipt dated 12.01.1988. He has also expressed his inability to explain as to on what basis the notice dated 12.05.1994 was issued on the respondent No. 3 and submitted that in absence of any cogent, clear and unequivocal evidence before the Court establishing the tenancy right of the respondent No.3, he should be directed to vacate the premises forthwith.

30. Mr. S.N. Soparkar, learned Senior counsel appearing with Mrs. Swati Soparkar, learned advocate for respondent No.3 has submitted that the applicant has no right or locus whatsoever to file this application before this Court seeking eviction of the respondent No.3 from the disputed premises. The O.L. is in charge of the affairs of the Company in liquidation and he takes care of the properties of the Company. He has further submitted that it is not open for the applicant to raise the dispute about rent receipt dated 12.01.1988 after somany years. Based on the said report and considering the actual possession of the respondent No.3 at the time when the winding up order was passed and possession of all the assets of the Mills Company was taken over by the O.L., all subsequent rent receipts are issued by the Official Liquidator and the respondent No. 3 is in actual possession of the disputed premises.

31. Mr. Soparkar has further submitted that the present application is not maintainable even on the ground that similar application was earlier moved by the secured creditor, namely, Central Bank of India being Company Application No. 205 of 1994 and while disposing of the said application on 31.01.1996, this

Court has rejected the prayer of evicting the respondent No.3 from the disputed premises. He invited the Court's attention to the following observations made by the Court :-

"It appears very clearly that the respondent in the present petition, Shri Mansuri is trading in the premises and is in possession of the same, since last many years and he had paid the rents regularly upto a particular period. In view of this, prayer (A) can not be granted. Any how, it is made clear that, if Shri Mansuri is in arrears of rent, the same shall be paid by him, as early as possible."

Mr. Soparkar has, therefore, submitted that this issue has already been concluded and it cannot be reagitated now after somany years.

32. Mr. Soparkar has further submitted that issues now raised by the applicant involve many disputed questions of facts which require full-fledged trial and after leading of evidence and proper adjudication of the issues by the competent rent Court, these issues can be resolved. This Court, in this summary proceeding, cannot and should not direct the respondent No.3 to vacate the disputed premises. In support of his submission, Mr. Soparkar has relied on the decision of the Hon"ble Supreme Court in the case of Smt. Nirmala R. Bafna/Kershi Shivax Cambatta and others Vs. Khandesh Spinning and Weaving Mills Co. Ltd., and another/Official Liquidator and others, wherein it is held that merely because a Company goes in liquidation and the Liquidator / Official Liquidator is appointed, the rights of the Company vis-a-vis its landlord and/or its tenants do not undergo any change. Mr. Soparkar has, therefore, submitted that the respondent No.3's tenancy rights are established and rent is being regularly collected from him and hence, his right as a tenant cannot under go any change simply because the Mills Company went into liquidation. He has, therefore, strongly urged that the application be rejected with cost.

33. After having heard the learned advocates appearing for the respective parties and after having considered their respective pleadings and submissions and after having gone through the documents produced before the Court, the Court is of the view that the objections raised by the respondent No.3 against the maintainability of the present application and against the grant of relief prayed for therein, are not sustainable. The applicant Association represents the workers and the workers are having pari-pasu charge along with the Secured Creditors on the assets of the Company in liquidation. They have got direct interest in the realization of the assets and in the distribution of sale proceeds of such assets. It is, therefore, not correct to state that the applicant has no locus or no right to move this application before this Court. As far as earlier order passed by this Court in Company Application No. 205 of 1994 is concerned, first of all, the applicant was not a party in the said application and hence principle of Res-judicata is not applicable to the present proceedings. Neither the applicant in that application being the Secured Creditor nor the Official Liquidator has placed the correct facts before the Court. The record, on the contrary, reveals that the then Official Liquidator has misled this Court. Except the Rent Receipt dated

12.01.1988, there was no other evidence showing that the respondent No.3 was the tenant for the last many years and that the rent was regularly being paid by him till December, 1987. Even in the present proceedings, the respondent No. 3 could not produce any rent agreement or rent receipt prior to 1987. The rent receipt dated 12.01.1988, on the face of it, seems to be false and fabricated. First of all, it is issued on the letter head of Shri Krishna Chawl which is outside the Mills Premises and 1000 meters away from the Mills premises. This Chawl is meant for the residence of the employees and workers of the Mills Company. The proprietor of the respondent No.3 was never an employee or worker of the Mills Company. Secondly, there are certainly interpolations in the said rent receipt which are made by different ink and different hand-writing. Thirdly, the person who has issued the said rent receipt had no authority to issue it as he was never the rent collector. Fourthly, the Mills Company was closed down on 22.01.1988 and the alleged rent receipt bears the date "12.01.1988" showing the receipt of rent for the period from 01.01.1987 to 31.12.1987. Had all these facts been pointed out to the Court, the Court would have taken the different view and would not have held that the present respondent No.3 had paid the rent regularly upto a particular period. Even otherwise, the Court has simply observed that Shri Mansuri is trading in the premises and is in possession of the same since last many years. As the respondent No. 3 was merely a Reeling Contractor, no sooner the Company went into liquidation, the said Contract came to an end and he could not have retained possession, but for the said bogus receipt dated 12.01.1988. In this view of the matter and in light of the fresh evidence produced on record, this Court is of the firm opinion that the present application deserves to be decided on its own merits and earlier order would not, in any way, prevent the Court either from entertaining this application or from taking different view in the matter.

34. It is true that simply because the company went into liquidation, the rights of the respondent No.3 as a tenant, if such rights were at all there, do not undergo any change. But in the present case, such tenancy rights were not at all there. Such rights were claimed on the basis of false and fabricated document i.e. rent receipt dated 12.01.1988. It was the basis of retention of possession by the respondent No.3, subsequent to the date of closure of the Mills Company and even the date of winding up of the Company and taking over the possession of the assets of the Company by the Official Liquidator. Once this rent receipt is taken out, nothing remains there to show that the respondent No. 3 was the tenant. Even subsequent rent receipts issued by the Official Liquidator do not assume much significance as the respondent No.3 had not paid any rent for the period from 1988 to 1994. His name was not there as a tenant in the statement of affairs filed by the Ex-Directors of the Mills Company. The Official Liquidator has wrongly issued the notice for recovery of arrears of rent and current rent and thereby allowed the respondent No.3 to create evidence in his favour. The fact, however, remains that the first document allegedly creating tenancy right is false and fabricated and hence, all subsequent documents based on it, pale into

insignificance and claim of the respondent No. 3 falls to the ground.

35. Considering the entire facts and circumstances of the case and having regard to the above opinion formed by the Court, it is not necessary to relegate the parties to the competent rent Court. Even otherwise, this Court has an ample power u/s 446(2) of the Companies Act, 1956 to entertain and dispose of any suit or application by or against the Company. This Court, therefore, holds that the respondent No.3 was never and is not the tenant of the Mills Company in liquidation. His possession is that of an encroacher and he is illegally and unauthorisedly occupying the disputed premises. He is, therefore, required to vacate premises forthwith. The Official Liquidator is hereby directed to take away the possession from the respondent No.3 immediately and he is further directed to inform the Ahmedabad Electricity Company to disconnect the electricity supply forthwith.

36. It is further to be noted that the disputed land forms part of the land which is already sold by the Official Liquidator and the said sale is confirmed by this Court in O.L.R. No. 6 of 2005 decided on 16.02.2005. In this view of the matter, the purchaser enters in the shoe of the O.L. and it is his duty to protect the said property and defend this order along with the Official Liquidator, if it is challenged in appeal before the Division Bench of this Court.

37. Before parting, the Court takes very serious view of the role played by the office of the Official Liquidator in this entire episode. But for his casual approach and taking the matter in slipshod manner, this unpleasant situation could have been avoided and illegalities which have been perpetuated during all these years, could have been stopped much earlier. Over the years, while sitting as a Company Judge, the Court found that the office of the Official Liquidator has become the centre of many malpractices, malfunctioning and maladministration. A thorough and detailed scrutiny and investigation is required in its working and dealing with Ex-Directors of the Companies in liquidation, security agencies, Valuers, auction purchasers, workmen, secured and unsecured creditors etc. This is not an occasion to go into much detail in all these aspects. However, in an appropriate case, the Court will certainly undertake this exercise and appropriately directs the authorities to look into it.

38. Subject to the aforesaid directions and observations, the present application is allowed with no order as to costs.

39. At this stage, Mrs. Swati Soparkar, learned advocate appearing for respondent No.3 requested the Court that the operation, implementation and execution of this order be stayed for a period of two weeks as the respondent No.3 wants to approach the Division Bench of this Court by way of filing an appeal. Mr. D.S. Vasavada, learned advocate appearing for the applicant has objected to the said request. However, since the respondent No.3 is in possession over all these years, the request is granted and this order is stayed for two weeks from today.