

(2017) 06 BOM CK 0035
In the Bombay High Court
Case No : 634 of 2016

The Provident Investment Company Ltd. (IN THE MATTER
BETWEEN) M/s.Mukund Limited

APPELLANT

Vs

M/s.Devidayala Industries Limited

RESPONDENT

Date of Decision : 23-06-2017

Acts Referred:

Transfer of Property Act, 1882, Section 111(g), Section 108(j), Section 111(g)(3 - Determination of lease - Rights and liabilities of lessor and lessee - Determination of

Citation : (2017) 06 BOM CK 0035

Hon'ble Judges : R.D. Dhanuka

Bench : SINGLE BENCH

Advocate : Yogini D.Chauhan, Prathamesh Kamath, P.S.Dani, Bhushan Walimbe, Rupesh Bobde

Judgement

1. In Company Application (L) No.634 of 2016, the applicant seeks an order and directions against the Official Liquidator to handover quiet, vacant and peaceful possession of the open land admeasuring 3743.21 sq.mtrs. bearing Survey No.194/1 (Part), situated at Village Majiwade, Taluka and District Thane and also seeks payment of Rs.19,800/- together with interest @ 18% per annum at the rate of Rs.19,800/- from the date of filing of this application till realization.

2. The Official Liquidator has filed a report bearing no. 610 of 2015 inter alia praying for a direction for reduction of reserve price of Rs.22 crores fixed by this court in respect of the property of the company in liquidation specified as lot no.3 viz. the leasehold open land admeasuring to 3743.21 sq.mtrs. situated at Survey No.194/1, Village Majiwade, Thane (West), District Thane - 400 606 or in the alternate seeks appropriate directions in this regard. By consent of parties, company application as well as Official Liquidator's Report were heard together and are being disposed of by a common order.

3. Some of the relevant facts for the purpose of deciding these proceedings are as under :- It is the case of the applicant that by virtue of a lease agreement dated 1st July, 1968 for a period of 60 years, M/s.Devidayal Industries Limited (In liquidation) was granted lease in respect of the open land admeasuring 3743.21 sq.mtrs. bearing survey no.194/1 (Part) situated at Village Majiwada, Tal Salsette, Dist.Thane for a period of 60 years on payment of annual term and on the terms and conditions setout therein. As per the lease agreement, the lease period would expire on 1st July, 2028 i.e. approximately after 11 years.

4. By an order dated 21st November,2006 passed in Company Petition No.600 of 1997 with Company Petition No.345 of 2002, the respondent company i.e. M/s.Devidayas Industries Limited was directed to be wound up. Pursuant to the said order passed by this court, the Official Liquidator took possession of various assets of the company in liquidation including the said leasehold open land. The Official Liquidator invited claims and received seven claims. Some of the claims are rejected by the Official Liquidator.

5. Pursuant to the orders dated 19th December,2012 and 5th February, 2013 passed by this court, the Official Liquidator has sold three residential flats of the respondent company (in liquidation) situated at Thane and one flat situated at Chembur.

6. By an order dated 26th February, 2012 passed by this court on OLR's report dated 9th July, 2012, this court fixed reserved price of Rs.30 crores in respect of the property in question and permitted the Official Liquidator to sell the subject property along with other properties by way of public auction as per approved terms and conditions of sale and subject to the confirmation of this court. The Official Liquidator accordingly made attempts to sell the property in question by a public auction on 29th October,2012 and 20th November, 2014. However, the sale could not be materialized in view of the fact that no offer was received by the Official Liquidator. The Official Liquidator accordingly submitted a report dated 11th February, 2014 for seeking directions to reduce reserved price of Rs.30 crores.

7. By an order dated 11th October,2015 this court directed that the Official Liquidator shall advertise the sale of lot no.3 and to invite offers through public auction. The Official Liquidator accordingly published the sale notice in the two newspapers and also on the website of this court and Ministry of Corporate Affairs and of the Official Liquidator of this court. Pursuant to the said sale notice issued by the Official Liquidator, no offer was received in respect of the property in question. Since the Official Liquidator did not receive any offer inspite of various attempts made for the sale of the property in question, the Official Liquidator submitted a report dated 14th October,2015 inter alia praying for an order for reduction of reserve price of Rs.22 crores fixed by this court or in the alternate for other appropriate directions in this regard. This court by an order dated 20th October,2016 directed that the Official Liquidator's Report be placed along with Company Application No.634 of 2016 filed by the applicant. Each of

the party has filed affidavit in the proceedings filed by the other parties.

8. Mr.Dani, learned senior counsel for the applicant invited my attention to the lease deed dated 1st July, 1968 between the applicant and the company in liquidation in respect of the property in question and submits that the company in liquidation was granted the open piece of land on lease for a period of 60 years which would expire on 1st July, 2028. It is submitted by the learned senior counsel that the respondent company has committed default in making payment of the rent since 1st April, 1993 and the total rent of Rs.19,800/- is still due and payable by the company in liquidation to the applicant. He submits that the provisions of Bombay Rent Control Act, 1947 were in force when the lease in respect of the property in question was granted to the respondent company till 1999. He submits that in view of the enactment of the Maharashtra Rent Control Act, 1999, the provisions of Bombay Rent Control Act, 1947 were repealed.

9. It is submitted that under the provisions of Maharashtra Rent Control Act, 1999, the definition of the premises excludes vacant land. No protection is available to the tenant in respect of the vacant land under the provisions of Maharashtra Rent Control Act, 1999. He submits that parties are thus governed by the provisions of Transfer of Property Act, 1882. He placed reliance on section 111(g) of the Transfer of Property Act, 1882 which provides for determination of lease. He submits that under the provisions of the Transfer of Property Act, 1882, since the respondent who was a lessee of the applicant came to be wound up, the lease in favour of the respondent has come to an end by operation of law.

10. It is submitted that the Official Liquidator has made several attempts to sell the said property in question which itself indicates that the said property in question is no more required by the Official Liquidator for the purposes of beneficial winding up of the respondent company in liquidation. He submits that the business of the respondent has come to a stand still for last several decades. It is submitted that the transfer of leasehold rights without consent and/or permission of the lessor is strictly prohibited under the provisions of Transfer of Property Act. Reliance is placed on clause V of the lease agreement in support of the submission that the lessee is prohibited from assigning or subletting or otherwise parting with possession of the said property without the previous consent and writing of the lessor. He submits that in view of this prohibition under the said clause of the lease agreement, the Official Liquidator has no right, title or interest or power to assign or sublet the said property to any third party. He submits that since the business of the company in liquidation has come to a stand still and no business is being carried out by the respondent company or by the Official Liquidator, the said property is thus required to be returned to the applicant.

11. It is submitted that since 2006 onwards, the Official Liquidator had not carried out any business which business was carried on by the company in liquidation or otherwise. It is submitted that the appellant has expressly denied the consent or transfer of the leasehold right of the company in liquidation to any

third party. Learned senior counsel for the applicant placed reliance on the judgment of Supreme Court in case of Ravindra Ishwardas Sethna and another vs. Official Liquidator, High Court, Bombay and another, (1983) 4 SCC 269 and in particular paragraphs 2 and 6 to 11 and submits that even if the liquidator could have carried on business of the respondent company by exercising the power under section 457 of the Companies Act, 1956, since the Official Liquidator in this case admittedly had applied for sale of the property in question, the question of any intention on the part of the Official Liquidator to carry on business by use of the property in question for the beneficial use of the winding up of the respondent company did not arise.

12. In his alternate submission, it is submitted that even if the Official Liquidator is permitted to carry on any business of the company by using the said property in question, the business that can be permitted to be carried out must be the same business which was carried out by the company in liquidation prior to the date of its winding up. He submits that the Official Liquidator cannot seek directions to handover possession of the property under any nomenclature such as a lease, licence or care taker agreement in favour of any third party. He submits that it is not provided in the object clause in the Memorandum of Association of the company in liquidation to give the property on lease or licence by the company in liquidation as a business of the company. He submits that the principles laid down by the Supreme Court in case of Ravindra Ishwardas Sethna and another (supra) squarely applies to the facts of this case. The Official Liquidator is thus bound to return the said property in question to the applicant being lessor of the said property and also to pay arrears of rent.

13. Learned senior counsel for the applicant placed reliance on the judgment delivered by Division Bench of this court in case of Saraswat Co-operative Bank Ltd. Mumbai vs. Chandrakant Maganlal Shah and others, (2002) 1 Mh.L.J. 581 and in particular paragraph 26 of the said judgment and would submit that the Division Bench of this court has after following the judgment of Supreme Court in case of Ravindra Ishwardas Sethna and another (supra) has dismissed the appeal against the order of the learned Company Judge directing the Official Liquidator to handover the land and factory premises of the company in liquidation to the lessor. It is submitted by the learned senior counsel that the Official Liquidator has not stated in any of the affidavits filed before this court and also in the Official Liquidator's Report as to how the property in question is required for the beneficial use of winding up of the respondent company (in liquidation).

14. Learned senior counsel also placed reliance on the judgment of this court in case of Patel Engineering Co. Ltd. vs. Official Liquidator, 2004(4) Bom.C.R.898 and in particular paragraphs 3 and 9 and would submit that this court after following the judgment of Supreme Court in case of Ravindra Ishwardas Sethna and another (supra) has allowed the application filed by the landlord against the Official Liquidator to handover quiet, vacant peaceful possession of the premises.

15. Mr.Kamat, learned counsel for the Official Liquidator on the other hand

invited my attention to clause 2(V) of the lease deed dated 1st July, 1968 executed by the applicant in favour of the company in liquidation which provides that the lessee shall not assign or sublet or otherwise part with the whole of the demised premises without the previous consent in writing of the lessors first obtained, which consent shall not be unreasonably withheld by the lessors. He submits that there is thus no prohibition under the said lease deed from subletting or parting with the property in question with previous consent of the lessor in writing which consent cannot be unreasonably withheld if applied by the lessee. In support of this submission, learned counsel placed reliance on the judgment of Supreme Court in case of Kamala Ranjan Roy vs. Baijnath Bajoria, AIR 1951 SC 1 and in particular paragraph (9). He submits that in view of such provisions in the lease deed if the permission is withheld by the lessor for subletting or parting with the demised premises unreasonably, the lessee is relieved from the burden of the said covenant of not subletting or parting with possession without consent of the lessor. He submits that the Official Liquidator is thus empowered to sublet or otherwise part with possession of the property in question to a third party.

16. Learned senior counsel for the Official Liquidator placed reliance on section 108(j) of the Transfer of Property Act, 1882 and would submit that the said statute does not prohibit the subletting absolutely. He submits that since in this case, there is no absolute prohibition provided in the lease deed, the Official Liquidator is entitled to grant the property on sub-lease or part with possession for the beneficial use of the winding up.

17. Learned counsel for the Official Liquidator placed reliance on the judgment of Madhya Pradesh in case of Shankar Prasad Goenka and another vs. The State of Madhya Pradesh, AIR 1965 MP 153 (V 52 C 48) and in particular paragraphs 4 and 11 in support of the submission that the lessor cannot unreasonably withheld the permission to grant the property on sub-lease or to part with possession. He placed reliance on the judgment of Supreme Court in case of Jabal C.Lashkari & Ors.vs. Official Liquidator & Ors. delivered on 29th March,2016 in Civil Appeal Nos. 3147-3149 of 2016 and in particular paragraphs 12, 19 and 20 in support of the submission that the Official Liquidator cannot be directed to handover possession of the land to the lessor since the company in liquidation continues to maintain its complete existence until it stands dissolved upon completion of the liquidation proceedings in the manner contemplated by the Companies Act.

18. Learned counsel for the Official Liquidator placed reliance on section 481 of the Companies Act, 1956 and submits that only after affairs of the respondent company are completely wound up, at that stage the Official Liquidator may be called upon to handover possession of the lease property and not otherwise. Learned counsel placed reliance on the judgment of Gujarat High Court in case of Legal Heirs of Deceased Fakirchand Ambaram Patel vs. Official Liquidator, Amruta Mills Ltd., 2002 (3) G.L.H.367 and in particular paragraphs 1 to 4, 8, 28 to 32, 36, 37, 40, 44 to 46 and would submit that admittedly there is balance of 11

years lease period in respect of the property in question as on today and the lease has not been terminated admittedly by the applicant. He submits that the said lease continues to subsist and thus the question of the handing over possession of the property in question to the applicant did not arise. He submits that the vesting of the leasehold property in favour of the Official Liquidator is not only for the purpose of taking care of the interest of the creditors and contributories but also workmen who would have pari-passu charge thereon.

19. It is submitted that since the leasehold rights of the respondent company in liquidation are valuable assets and since the balance lease period is 11 years as on today, this court cannot direct the Official Liquidator to handover possession of the property in question to the lessor during the pendency of the winding up process of the respondent company in liquidation. He submits that in this case, the Official Liquidator has not applied for leave of this court to disclaim the property in question on the ground that the said property is burdened with onerous covenants or otherwise under section 535 of the Companies Act, 1956. He submits that since the lease deed is admittedly not determined, the relationship of the lessor and the lessee continues to subsist till the period for which the lease is in subsistence. It is submitted that the Gujarat High Court has accordingly rejected the application of the lessor to handover possession of the leasehold premises to him.

20. It is submitted by the learned counsel for the Official Liquidator that under section 108(j) of the Transfer of Property Act, 1882, the applicant has to show as to why it is withholding the consent for granting the property on sub-lease or for parting with possession in respect of the said property. He submits that there are large number of creditors of the respondent company in liquidation and substantial payment is required to be made to those creditors. He submits that if the leasehold property with lease for atleast another 11 years from today if is directed to be handed over to the applicant, the Official Liquidator will not be able to use the said property for generating income for the purpose of making payment to large number of creditors which purpose itself is a purpose for beneficial winding up of the respondent company in question.

21. Learned counsel for the Official Liquidator on instructions from the Official Liquidator states that the Official Liquidator is ready and willing to pay the arrears of rent in respect of the property in question to the applicant within such period as may be directed by this court.

22. Learned counsel for the Official Liquidator placed reliance on the judgment of Division Bench of Gujarat High Court arising out of the judgment of learned single Judge of the Gujarat High Court in case of Legal Heirs of Deceased Fakirchand Ambaram Patel vs. Official Liquidator, Amruta Mills Ltd., 2002 (3) G.L.H.367 delivered on 17th October, 2008 in O.J. Appeal No.66 of 2006 and more particularly paragraphs 25 and 37 dismissing the appeal against the said judgment.

23. Learned counsel for the Official Liquidator placed reliance on the judgment of Supreme Court in case of *Nirmala R.Bafna vs. Khandesh Spinning and Weaving Mills Co. Ltd.* and another (1992) 2 SCC 322 and in particular paragraph 18 and would submit that even if the company goes into liquidation and Official Liquidator is appointed, the rights of the company vis-a-vis its landlord and/or tenant do not go any change. He submits that merely because the lessee company has been wound up, the lease agreement does not come to an end automatically. He submits that Supreme Court in the said judgment after considering the judgment of Supreme Court in case of *Ravindra Ishwardas Sethna and another* (supra) has dismissed the appeal filed by the landlord.

24. Learned counsel for the Official Liquidator invited my attention to the judgment delivered by this court on 15th February, 1993 in case of *Bimla Holding Company Pvt. Ltd. vs. Dempo Steamship Ltd. & Ors.* in Company Application No.359 of 1988 in Company Petition No.88 of 1987 and also the judgment of Division Bench arising out of the said judgment dated 15th February, 1993 in case of *Dempo Dairy Industries Pvt. Ltd. & Ors. vs. Bimla Holding Co. Pvt. Ltd. & Ors.* and the Official Liquidator in Company Appeal No.359 of 1988 delivered on 8th July, 1994 and would submit that the Division Bench of this court has set aside the judgment of the learned Single Judge directing the Official Liquidator to handover possession of the leasehold property to the lessor. He submits that the matter was however settled in the Supreme Court in Special Leave Petition filed by the lessor. He submits that the judgment of Division Bench is not set aside by the Supreme Court.

25. Learned counsel for the Official Liquidator placed reliance on the judgment delivered by the Full Bench of this court in case of *Tangerine Electronics Systems Pvt. Ltd. vs. Indian Chemicals & Ors.*, 2004(5) Bom.C.R.673 and in particular paragraph 39 and would submit that the judgment of Division Bench of this court in case of *Saraswat Co-operative Bank Ltd. Mumbai* (supra) relied upon by the learned senior counsel for the applicant is distinguished by the Full Bench of this court.

26. It is submitted by the learned counsel for the Official Liquidator that section 111(g)(3) of the Transfer of Property Act is not applicable to the facts of this case. There is no clause in the lease deed which permits the lessor to re-enter as contemplated in clause 111(g) of the Transfer of Property Act. He submits that the rights of re-entry has to be a part of the condition of the lease deed for a lessor to seek reentry. He submits that the mere order of winding up cannot be a ground to direct the Official Liquidator to handover possession of the land to the lessor when the company in liquidation continues to maintain its corporate existence until the same is dissolved upon completion of liquidation proceedings. He submits that the facts before the Supreme Court in case of *Ravindra Ishwardas Sethna and another* (supra) were totally different. The date of commencement of lease was not even available and it was not the case of the Official Liquidator that the lease was for a long duration.

27. Learned counsel for the Official Liquidator submits that the property in question is part of the subject matter of Suit No.36 of 1969 filed by the Premabai Mathradas Goculdas & Ors. against the applicant herein and others. He submits that the applicant itself has annexed a copy of the order dated 27th January,2010 passed by this Court in Notice of Motion No.3905 of 2009 in the said suit in which the applicant herein is defendant no.1 directing the defendant therein to maintain status quo as on the date of the said order as regards the suit property which includes the property in question in this matter. In the said order, it is clarified that if the defendants were desirous of changing the status-quo in respect of any of the suit properties, they may do so after obtaining the permission of the court. My attention is also invited to the order dated 13th January, 2012 passed by the Division Bench of this court in Appeal No.302 of 2011 arising out of the said order dated 27th January,2010 thereby entrusting to the CBI the task of conducting an enquiry into the circumstances in which the records pertaining to the said Long Cause Suit No.36 of 1969 had been destroyed and/or gone missing from the registry of this court. By the said order, the Division Bench has stayed the trial of the said Suit No.36 of 1969.

28. It is submitted by the learned counsel for the Official Liquidator that in view of the status quo order passed by the learned Single Judge of this court which order is not interfered with by the Division Bench of this court in respect of the property in question also, the applicant cannot seek possession of the property in question which is also subject matter of the said suit in which the applicant herein along with other defendants thereto are directed to maintain status-quo in respect of the property in question and various other properties.

29. It is submitted by the learned counsel for the Official Liquidator that unless the lease is terminated after obtaining leave of company court under section 446(1), no prayer for possession of the property can be granted by this court in favour of the lessor. He submits that the relationship of the lessor and the lessee continues. He submits that the right under section 108(j) of the Transfer of Property Act also remains unaffected and thus the Official Liquidator is empowered to sublet the property in question. He lastly submits that if this court comes to the conclusion that the property in question cannot be sold by the Official Liquidator, the Official Liquidator may be permitted to grant the property on sub-lease or leave and licence or on any other arrangement till the respondent company in liquidation is finally wound up in all respect to enable the Official Liquidator to pay the claim of some of the creditors.

30. Mr.Dani, learned senior counsel for the applicant in rejoinder submits that the provisions of the Maharashtra Rent Control Act, 1999 are more harsher than the Transfer of Property Act, 1882. He distinguished the judgment of Gujarat High Court and Supreme Court relied upon by the Official Liquidator on the ground that the facts are totally different.

31. Insofar as judgment of Supreme Court in case of Nirmala R.Bafna (supra) relied upon by the Official Liquidator is concerned, it is submitted that the

Supreme Court has not taken any different view than the view taken in case of Ravindra Ishwardas Sethna and another (supra). He submits that the judgment of Division Bench relied upon by the applicant in case of Saraswat Co-operative Bank Ltd. (supra) is not reversed in the judgment of Full Bench of this Court in case of Tangerine Electronics Systems Pvt. Ltd. (supra). He submits that the judgment of Division Bench of this court in case of Dempo Dairy Industries Pvt. Ltd. (supra) was not considered by this court in case of Saraswat Co-operative Bank Ltd. Mumbai (supra) which judgment is followed by the learned Single Judge of this court in case of Patel Engineering Co. Ltd. (supra). He submits that the judgment of Supreme Court in case of Ravindra Ishwardas Sethna and another (supra) which is followed by the Division Bench of this court in case of Saraswat Co-operative Bank Ltd. Mumbai (supra) and followed by the learned Single Judge of this court in case of Patel Engineering Co. Ltd. (supra) applies to the facts of this case and are binding on this court.

32. Insofar as order of status-quo passed by the learned Single Judge of this court on 27th January, 2010 in Notice of Motion No.3905 of 2009 in Suit No.36 of 1969 filed by Premabai Mathradas Goculdas & Ors. is concerned, it is submitted that the said order of status-quo does not prevent the applicant from taking possession of the property in question from the Official Liquidator. He submits that if the possession of the property in question is handed over by the Official Liquidator to the applicant, the applicant can apply for modification of the said status-quo order in the said proceedings and thus this court can direct the Official Liquidator to handover the possession of the property in question to the applicant. He submits that this court cannot permit the Official Liquidator to give the property in question on leave and licence basis or on care taker basis or under any other arrangement. He submits that in any event, no such case is made out by the Official Liquidator that the said property in question is required for the beneficial use of the winding up of the respondent. REASONS AND CONCLUSIONS

33. It is not in dispute that by virtue of a lease agreement dated 1st July, 1968 entered into between the applicant i.e. The Provident Investment Company Ltd. and the respondent now in liquidation, the respondent was granted lease in respect of the open land admeasuring 3743.21 sq.mtrs. bearing Survey No.194/1 (Part), situated at Village Majiwade, Taluka and District Thane for a period of 60 years on payment of annual term and on the terms and conditions setout therein. The said lease period would expire on 1st July, 2028 i.e. approximately after 11 years from now. It is not in dispute that the lessor has not terminated the said lease till date. By an order dated 21st November, 2006, the respondent company has been already ordered to be wound up in Company Petition No.600 of 1997 with Company Petition No.345 of 2002. Pursuant to the said order passed by this court, the Official Liquidator has already taken possession of various assets of the company in liquidation including the said lease hold open land.

34. It is not in dispute that the Official Liquidator had thereafter applied for permission to sell various assets of the company in liquidation. By orders dated 19th December, 2012 and 5th February, 2013 passed by this court, the Official Liquidator was permitted to sell various assets of the company in liquidation including the leasehold rights of the said land and has sold three residential flats situated at Thane and one flat situated at Chembur.

35. Insofar as the leasehold land in question is concerned, this court had fixed reserved price of Rs.30 crores by an order dated 26th February, 2012 on a report filed by the learned Official Liquidator dated 9th July, 2012 in respect of the said leasehold land in question and permitted the Official Liquidator to sell the said leasehold land along with other properties by way of public auction as per the approved terms and conditions of sale and subject to the confirmation of this court. It is not in dispute that the learned Official Liquidator thereafter made attempts to sell the said leasehold land by a public auction on 29th October, 2012 and 20th November, 2014. The sale however could not be materialized in view of the fact that no offer was received by the learned Official Liquidator in response to the public notice. The learned Official Liquidator thereafter submitted a report dated 11th February, 2014 for reducing the reserve price of Rs.30 crores.

36. By an order dated 10th October, 2015, the Official Liquidator was directed by this court to advertise the sale of lot no.3 and to invite offers through public auction. No offer was received by the learned Official Liquidator pursuant to the sale notice issued by his office in respect of the leasehold land. The learned Official Liquidator thereafter submitted a report dated 14th October, 2015 inter alia praying for order for reduction of reserve price of Rs.22 crores fixed by this court or in the alternate for other appropriate directions in this regard.

37. The applicant herein thereafter filed the company application bearing Company Application (L) No.634 of 2016 in this court inter alia praying for an order and directions against the Official Liquidator to handover the possession of the leasehold land and for payment of arrears of land to the applicant in respect of the said property. By an order dated 20th October, 2016, this court directed that both the proceedings be heard together. It is not in dispute that till date, the applicant has not challenged the order passed by this court on 26th December 2012, 19th December 2012, and 5th February, 2013 and 11th October 2015. The orders passed by this court from time to time for sale of the leasehold land in question has thus attained finality. The applicant has also not applied for vacating or for modifying the said orders till date.

38. This court thus will have to also consider whether this court can direct the Official Liquidator to handover possession of the leasehold land to the lessor in teeth of the orders passed by this court directing the Official Liquidator to sell the leasehold land in question and that also when the lessor has admittedly not determined the lease in question which is subsisting till 1st July, 2028.

39. A perusal of the record indicates that though the learned Official Liquidator

had invited the claims against the respondent company in liquidation by issuing notices in the newspapers, admittedly the applicant lessor did not make any claim for recovery of possession of the leasehold land or any monetary claim. The Official Liquidator has thus already implemented part of the order by effecting the sale of the many properties of the company in liquidation and has also taken several steps to comply with those orders for the purpose of effecting sale of leasehold land in question. For more than 3 years of the orders passed by this court and the Official Liquidator issuing various public notices for the leasehold land in question, the applicant did not raise any objection against sale of the leasehold land in question.

40. Insofar as submission of the learned counsel for the applicant that upon the respondent company in liquidation having been ordered to be wound up by an order passed by this court, the leasehold rights in respect of the leasehold land in question in favour of the respondent company in liquidation having come to an end by operation of law is concerned, in my view there is no substance in this submission of the learned senior counsel for the applicant. Merely because the respondent company in liquidation who was granted the leasehold land for a period of 60 years was ordered to be wound up, the leasehold rights in favour of the company in liquidation will not come to an end automatically by operation of law or otherwise. The applicant has neither issued any notice for determination of the leasehold rights nor has filed any proceedings for such relief and also did not claim any such relief in the company application filed by the applicant before this court. The rights and obligation of the parties to the existing lease agreement continues to be binding on both the parties. The learned Official Liquidator steps into the shoes of the respondent company in liquidation.

41. It is not in dispute that the respondent company in liquidation is still in process of liquidation and has not been dissolved by order of this court under Section 481 of the Companies Act, 1956 read with Company Court Rules and does not cease to be a legal entity so far. The Official Liquidator is not discharged by this court in respect of the affairs of the respondent company in liquidation till date. Under section 456 of the Companies Act, 1956, in view of this court having passed an order of winding up against the respondent company in liquidation and having appointed the Official Liquidator, all the properties of the respondent company in liquidation, the effect and actionable claims to which the company is and appears to be entitled, to vest in the court and custody and control thereof has to be taken by the Official Liquidator.

42. A perusal of the record indicates that the official liquidator has already taken possession of the said leasehold open land admeasuring to 3743.21 sq.mtrs. which is the subject matter of the said lease deed and since then the same is in possession of the official liquidator. A perusal of the lease deed executed by the applicant in the company application and the respondent company in liquidation on 1st July 1968 clearly indicates that the said lease was for initial period of 60 years commencing from 1st July 1968 with a renewal clause under which the

applicant had agreed to renew the said lease at the request of lessee for a period of 60 years at the same rent and upon the same terms and conditions contained in the said lease deed dated 1st July 1968. It is thus not in dispute that the respondent company in liquidation is a contractual tenant in respect of the said leasehold land which vests in this Court and is in control of the official liquidator.

43. It is not in dispute that the official liquidator still is in control of and is in possession of all the assets of the respondent company except those assets which are sold pursuant to the order passed by this Court from time to time. The official liquidator thus continues to exercise its powers prescribed under Section 457 of the Companies Act, 1956 and would continue to exercise such powers till final order of dissolution of the company in liquidation is passed after affairs of the said company would be completely wound up or in the other circumstances set out in the said provision.

44. Supreme Court in the case of S.Hardip Singh & Anr. Vs. Income Tax Officer, Amritsar & Ors., reported in (1979) 3 SCC 345 has held that there are three stages when a company goes into liquidation, namely : (1) the commencement of the winding up of the company; (2) continuation of the proceedings or the steps for winding up and (3) final winding up and dissolution of the company. It is thus clear that as on today, the respondent company in liquidation is passing through the second stage and the steps in liquidation against the respondent company in liquidation are being taken.

45. Supreme Court in the case of Jabal C.Lashkari & Ors. Vs. Official Liquidator & Ors., reported in (2016) 12 SCC 44 has construed the provision of Section 13(1) (k) of the Bombay Rent Act and has held that the mere fact that the company has been ordered to be wound up cannot be a ground to direct the official liquidator to handover possession of the land to the owners inasmuch as the company in liquidation continues to maintain its corporate existence until it stands dissolved upon completion of the liquidation proceedings in the manner contemplated by the Companies Act. In my view, merely because the respondent company in liquidation is ordered to be wound up, the official liquidator is not bound to hand over possession of the leasehold land to the lessor as a matter of course in view of the fact that the respondent company is not finally dissolved as contemplated under Section 481 of the Companies Act, 1956. The principles of law laid down by the Supreme Court in the case of Jabal C.Lashkari & Ors. (supra) apply to the facts of this case. I am respectfully bound by the said judgment. In my view, the parties in this case would be governed by the provisions of the Transfer of Property Act, 1882. Under Section 108(j) of the Transfer of Property Act, 1882 subject to the contract to contrary, the lessee is entitled to transfer the leasehold land in favour of a third party.

46. A perusal of the lease deed dated 1st July 1968 indicates that in clause 2(v) of the said lease deed, it was provided that the lessee shall not assign or sublet or part with the whole of the demised premises without the previous consent in writing of the lessor first obtained which consent shall not be unreasonably

withheld by the lessor. Similar clause in the agreement has been repeatedly construed by the Supreme Court and various High Courts. In the case of Kamala Ranjan Roy Vs. Baijnath Bajoria, reported in AIR 1951 SC 1, it is held by the Supreme Court if the consent is unreasonably withheld by the lessor for transfer or assignment of leasehold rights, the lessee is relieved of such obligations.

47. In this case, admittedly this Court has already granted permission and has issued direction to the official liquidator to sell the assets of the respondent company in liquidation including the leasehold rights in the open land in question which order is in force and is binding on the official liquidator and others. In my view, the leasehold right in favour of the company in liquidation for the remainder period of about 11 years with an option to apply renewal of another 60 years in the open plot of land admeasuring to 3743.21 sq.mtrs. is a valuable right and in the absence of determination of the said leasehold rights by the lessor, the official liquidator cannot be asked to handover possession thereof if the same is required for beneficial purpose of winding up of the respondent company.

48. A perusal of the record indicates that there are large number of creditors of the respondent company in liquidation who have lodged their claims with the official liquidator. If such valuable assets in the hands of the official liquidator of the company in liquidation is directed to be handed over to the lessor, it would affect the large number of creditors whose claims are already adjudicated upon by the official liquidator and they would be deprived of payment of their legitimate and adjudicated dues.

49. In so far as the judgment of the Supreme Court in the case of Ravindra Ishwardas Sethna & Anr. Vs. Official Liquidator (supra) relied upon by the learned counsel for the applicant is concerned, the company in liquidation in that case was carrying on business of floating prize chit schemes which business had come to a standstill in view of the said company has been ordered to be wound up by this Court. The said company in liquidation was a tenant or a lessee of the premises. Supreme Court noticed that the date of the commencement of the lease was not made available to the Supreme Court. It was not the case of the official liquidator in that case that there was a lease for long duration. The official liquidator in that case had proposed to give office premises of the company by entering into a Caretaker Agreement. Supreme Court found that the caretaker agreement was contrary to the objects of the company in liquidation. Supreme Court accordingly thus set aside the order passed by the learned Company Judge authorising the official liquidator to enter into such agreement. It is held by the Supreme Court that the learned Company Judge could not have permitted holding on to possession of the premises, not needed for efficiently carrying on winding up proceedings. The only course open to him was to direct the Liquidator to surrender possession to landlords and save recurring liability to pay rent.

50. The landlords in that matter had offered to deposit compensation amount that would have been faced by the official liquidator for making payment to the

creditors and had in fact deposited the said amount in Court. In those circumstances, Supreme Court had directed the official liquidator to return the tenanted premises to the landlords.

51. However, in the facts of this case, the official liquidator has placed on record the lease agreement entered into between the applicant and the respondent company in liquidation. It is an admitted position that the original lease period of 60 years would expire on 30th June 2028 after more than 11 years. There is also an option to apply to the lessee for further renewal for a period of 60 years. If such option is exercised by the company in liquidation, the lessor is required to grant such extension in favour of the company in liquidation. Before the Supreme Court, the parties had not even brought on record the date of commencement of the lease. The official liquidator had not even pleaded or brought on record that there was a lease for long duration. In my view, the facts before the Supreme Court in the case of Ravindra Ishwardas Sethna & Anr. (supra) are clearly distinguishable in the facts of this case. In my view, substantial period of lease still remains with an option to renew the lease for further period of 60 years. In the facts of this case, the official liquidator cannot be asked to handover possession of the valuable assets to the lessor.

52. Insofar as the judgment of this Court in case of Patel Engineering Co. Ltd. (supra) is concerned, a perusal of the said judgment clearly indicates that the Official Liquidator and the Ex- Directors of the company in liquidation in that matter had conceded the position that the premises in question were no longer required for the company in liquidation. The reliefs claimed by the lessors against the Official Liquidator to hand over possession of the leased property was opposed only by the workers' union of the erstwhile workers of the company in liquidation and not by the Ex-Directors and the Official Liquidator. The lease period had expired in that matter. The tenancy rights of the company were not determined by the landlord. The suit for eviction had been already instituted by the landlord against the company in liquidation before the Small Causes Court and the said suit was pending adjudication. In these circumstances, this Court held that there was admittedly no legitimate ground available to the workers' union to resist the claim of the landlord for possession of the suit premises when it was established from the record that the premises in question were no longer required for the company in liquidation.

53. However, in this matter the facts are totally different. Even according to the lease deed admittedly executed between the parties, the lease period would expire on 30th June, 2028 with an option granted to the company in liquidation to apply for renewal of the lease for another period of 60 years. In this case, the Official Liquidator has not conceded the position that the land in question is no longer required for the company in liquidation. In this case admittedly this Court has already granted permission and directions to the Official Liquidator to sell the assets of the company in liquidation, including the leasehold rights which order is in force and is binding on all the parties and also the Official Liquidator. The

judgment of this Court in case of Patel Engineering Co. Ltd. (supra) thus relied upon by the learned senior counsel for the applicant is clearly distinguishable in the facts of this case and would not assist the case of the applicant.

54. Insofar as the judgment delivered by the Division Bench of this Court in case of Saraswat Co-Operative Bank Ltd. (supra) relied upon by the learned senior counsel for the applicant is concerned, a perusal of the said judgment clearly indicates that the Official Liquidator who was directed to unconditionally surrender the premises to the landlord by the learned Company Judge, made a statement before the Company Judge that the premises in question were not required for beneficial winding up of the company and he had no objection if the premises were to be surrendered to the landlord. Similar statement made by the learned Official Liquidator before the learned Company Judge was also made before the Division Bench of this Court, which was recorded in paragraph 15 of the said judgment. With such facts in hand, the Division Bench of this Court applied the principles laid down by the Supreme Court in case of Ravindra Ishwardas Sethna & Anr. and upheld the order passed by the learned Company Judge directing the Official Liquidator to hand over premises to the landlord after recording his statement that he did not require the tenanted premises for the beneficial winding up of the company.

55. In my view, the said judgment delivered by the Division Bench is clearly distinguishable in the facts of this case. In this case, the reliefs sought by the lessor are strongly opposed by the learned Official Liquidator and it is strongly contended by the Official Liquidator that the leasehold land is required for the beneficial winding up of the company and for the benefit of the creditors of the company at large. Be that as it may, this Court has already permitted the Official Liquidator to sell the said land in question and thus the judgment of the Division Bench of this Court in case of Saraswat Co-Operative Bank Ltd. (supra) relied upon by the learned senior counsel for the applicant would not assist the case of his client.

56. The Full Bench of this Court in case of Tangerine Electronics Systems Pvt. Ltd. vs. Indian Chemicals & Ors., 2004 (2) Mh.LJ 305 has considered the provisions of section 108(j) of the Transfer of Property Act, 1882 and has held that the tenant's right to remain in occupation of the non-residential premises governed by the Maharashtra Rent Control Act, 1999 is a proper law and such property is saleable and the tenant has disposing power over the interest of tenancy for his benefit and in view thereof, the interest of the tenant of non-resident premises to which the Maharashtra Rent Control Act, 1999 applies is attachable and salable in execution of the decree against the tenant. In the said judgment, the Full Bench distinguished the judgment of the Division Bench of this Court in case of Saraswat Co-Operative Bank Ltd. (supra).

57. The Supreme Court in case of Nirmala R. Bafna (supra) has held that merely because the company goes into liquidation and a Liquidator / Official Liquidator is appointed, the rights of the company vis-a-vis its landlord and/or tenants do not

undergo any change. It is further held that after considering its earlier decision in case of Ravindra Ishwardas Sethna & Anr. (supra) that the Official Liquidator who required portion of the flat for storing the company books was certainly irrelevant consideration and could not be forced to store the books in his office or any where else so long as the reason given by him for continuing in possession was irrelevant one.

58. The Division Bench of this Court by a judgment dated 8th July, 1994 in case of Dempo Dairy Industries Pvt. Ltd. vs. Bimla Holding Co. Pvt. Ltd. & Ors. in Company Appeal No.215 of 1993 has set aside the judgment dated 15th February, 1993 delivered by the learned single Judge in Company Application No.359 of 1988 in Company Petition No.88 of 1987 in case of Bimla Holding Co. Pvt. Ltd. vs. Dempo Steamship Ltd. & Ors. Learned single Judge of this Court in the said judgment dated 15th February, 1993 had directed the sub-tenant to hand over possession of the leasehold property to the Official Liquidator.

59. The Division Bench of Gujarat High Court in case of Jabal Lashkari vs. Official Liquidator of Prasad Mills Limited & Ors. in Appeal No.66 of 2006 has construed the provisions of section 108 of the Transfer of Property Act, 1882 and has followed the judgment of the Supreme Court in case of Union Bank of India vs. Official Liquidator (1994) 1 SCC 575 in which the Supreme Court has set aside the directions given by the Company Court to the Official Liquidator to surrender the land to the lessors for avoiding "onerous covenant" of paying the rent of Rs.1200/-. The Supreme Court held that the High Court may give leave under section 535 to the Official Liquidator to disclaim land of any tenure which is part of the property of the company in liquidation if it is burdened with onerous covenant.

60. It is held by the Gujarat High Court that the intention of section 535 is to protect the creditors of the company in liquidation and not mulct them by reason of onerous covenants which powers shall not be likely exercised. It is not the case of the applicant in this case that the Official Liquidator has disclaimed the land under section 535 of the Companies Act, 1956. The Division Bench of Gujarat High Court in the said judgment accordingly had set aside the order passed by the Company Judge directing the Official Liquidator to hand over premises to the landlord. The said judgment of the Division Bench of the Gujarat High Court has been upheld by the Supreme Court in the judgment reported in (2016) 12 SCC 44 referred in earlier paragraph of this judgment. The principles laid down by the Supreme Court are applicable to the facts of this case.

61. The Gujarat High Court in case of Legal Heirs of Deceased Fakirchand Ambaram Patel vs. Official Liquidator, Amruta Mills Ltd. 2002 (3) G.L.H. 367 has held that merely because the company goes in liquidation and the Liquidator is appointed, the rights of the company vis-a-vis its landlord do not undergo any change and they continue to be governed by subsisting contract. It is held that the provisions of the Companies Act, 1956 and the rights made therein if read in conjunction and as a code, from the aim, object and the intention that can be

gathered it is quite apparent that properties of a company in liquidation vest in the Court or the Liquidator appointed by the Court who acts as a custodian on behalf of the Court.

62. It is held that such a vesting and/or custody of the properties is not only for the purpose of taking care of the interest of the creditors and contributories but also of the workmen who have *pari passu* charge. It is further held that it would enable the Court to exercise jurisdiction in relation to all the properties of the company in liquidation including valuable assets like leasehold rights of unexpired portion of the lease. There cannot be any dispute as regards the legal position that the corporate existence of the company in liquidation continues till dissolution and the liquidator steps into the shoes of the company ; he is however, under the control and supervision of the Court and whatever he does, more particularly, in respect of the sale of the assets of the company in liquidation is for the purpose of implementation of the order and under sanction of the Court. It is held that in case the Court is not empowered to deal with an asset like leasehold interest of the company in liquidation it may, in a given situation, either give rise to or encourage malpractice by dishonest persons.

63. The Gujarat High Court also followed and applied the principles laid down by this Court in case of *Vaz Forwarding Ltd. vs. State Bank of India* (1996) 85 Company Cases 603 and held that the leasehold rights of the company were valuable assets and section 15 of the Rent Act did not create any legal impediment in the transfer / assignment of leasehold rights in the premises because till the company was dissolved it retained its corporate existence though the administrative affairs of the company passed on to the liquidator.

64. Insofar as the judgment of the Supreme Court in case of *Ravindra Ishwardas Sethna & Anr. (supra)* is concerned, the Gujarat High Court rightly distinguished the said judgment on the ground that the decision in that matter will have to be read in the context of the controversy which the Court was called upon to decide. The date of the commencement of the lease was not available before the Supreme Court and it was not the case of the Liquidator that the lease was for a long duration. The Gujarat High Court considered its earlier judgment reported in (1999) 1 GLR 429 in which it was held that the leasehold interest is an intangible asset which is valuable in nature though the valuation may differ from case to case depending upon the unexpired period of lease. The leased asset is transferable subject to the same terms and conditions as may be stipulated in the lease deed. There is distinction between point of when an order of winding up is made and at the point of time when an order of dissolution is made, the company continues to exist between the two termini.

65. It is held that once there is a contract which has not been determined, the relationship of the parties to the contract continues to subsist till the period from which the contract is in existence subject to an express condition to the contrary. The Gujarat High Court accordingly rejected the plea of the landlord for seeking a direction against the Official Liquidator to hand over possession of the leasehold

property to the landlord. In my view, the principles laid down by the Gujarat High Court in case of Legal Heirs of Deceased Fakirchand Ambaram Patel (supra) squarely applies to the facts of this case. I am in respectful agreement with the views expressed by the Gujarat High Court.

66. A perusal of the valuation report on record of the leasehold property in question dated 8th March, 2012 submitted by Basavaraj Masanagi & Co. indicates that the leasehold rights in respect of the said land are valued at Rs.30.00 crores. It is stated in the said report that the surrounding area consists of multi storeyed residential building and the property has good access from the road. In the said report, the valuer has not considered the additional factor that there was an option of renewal of the lease given to the lessee for another period of 60 years on the same terms and conditions not only in favour of the lessee itself but any other party in favour of any person or persons or body corporate or incorporate as lessee shall direct.

67. Be that as it may, the leasehold rights in favour of the company in liquidation which is intangible and the valuable assets and being in existence, cannot be directed to be returned to the applicant lessor for the reasons recorded aforesaid. Merely because an order of winding up is passed by this Court in respect of the respondent company, that cannot be a ground to direct the Official Liquidator to hand over possession of the land to the lessors in view of the fact that the respondent continues to maintain its corporate existence until the same is dissolved upon completion of the liquidation proceedings as contemplated under section 481 of the Companies Act.

68. In my view, since this Court has already permitted the Official Liquidator to sell or transfer the leasehold rights of the company in liquidation to a third party, I am not inclined to accept the submission of the learned senior counsel for the applicant that the Official Liquidator if at all could have used the said leasehold land, the same could have been used only for the purpose for which the leasehold land was granted on lease to the company in liquidation by the applicant. Similarly, there is also no merit in the submission of the learned senior counsel that the property could not have given on lease or license as the same was not the object in the Memorandum of Association of the respondent company in liquidation. The facts before the Supreme Court in case of Ravindra Ishwardas Sethna & Anr. (supra) were totally different and are distinguishable in the facts of this case.

69. A perusal of the record clearly indicates that it is an admitted position that Mr.Mathuradas Gokuldas was entitled to various lands including the leasehold land in question. It is the case of the applicant itself that the said Mr.Mathuradas Gokuldas as well as others had mortgaged several lands including the land in question to one Mr.Framroz Edulji Dinshow by a registered Mortgage Deed dated 3rd September, 1925. Insofar as the applicant is concerned, the applicant is claiming the said property through Gwalior Darbar. By a Deed of Transfer dated 10th June, 1938, the Executors and Trustees of late Mr.Framroz, with a consent

of the Finance Minister of Gwalior State, transferred the said mortgage dated 3rd September, 1925 in favour of the applicant. The said applicant thereafter had created a lease in favour of the respondent company in liquidation by entering into a lease deed.

70. A perusal of the record further indicates that the said Mrs. Premabai Mathuradas Gokuldas and others have filed a suit against the applicant herein in this Court (36 of 1969) for redemption of the mortgage properties and to have the same re-conveyed in their favour and have also sought possession thereof. This Court had passed an interim order in Notice of Motion No.3905 of 2009 on 27th January, 2010 thereby directing the defendants in the said suit to maintain status-quo as of date as regards the suit properties. It was further clarified that if the defendants thereto were desirous of changing the status-quo in respect of any of the suit properties, they could do so after obtaining permission from the Court. The applicant herein was the defendant no.1 in the said suit.

71. Being aggrieved by the said order dated 27th January, 2010, passed by the learned single Judge of this Court, the applicant herein preferred an appeal (302 of 2011) before the Division Bench of this Court. By an order dated 13th January, 2012, the Division Bench of this Court has entrusted the matter to CBI for conducting an enquiry into the circumstances in which the records pertaining to the L.C. Suit No.36 of 1969 had been destroyed and/or had gone missing from the Registry of this Court. The trial court proceedings have been stayed by the Division Bench. The said appeal filed by the applicant herein is still pending. It is not in dispute that the said interim order passed by this Court on 27th January, 2010 against the applicant herein and another is in force and is subsisting.

72. Insofar as the submission of the learned senior counsel for the applicant that the said status-quo order passed by this Court in the said notice of motion would not prohibit the applicant from taking possession of the leasehold land and if this Court directs the Official Liquidator to hand over possession of the said leasehold land to the applicant, the applicant would not create any third party rights in respect thereof is concerned, in view of the status-quo order passed by this Court against the applicant in the said notice of motion, which order is in force, in my view the applicant even could not have applied for seeking possession of the leasehold land in question in this proceeding. Be that as it may, the applicant has not made out any case for recovery of possession of the leasehold land from the Official Liquidator, as prayed or otherwise. In my view transfer of the leasehold rights of the company in liquidation for the remaining period which is for substantial period for clearing the debts of the creditors of the company in liquidation is for beneficial winding up of the company in liquidation and is permissible.

73. Insofar as the prayer of the applicant for recovery of the arrears of rent from the Official Liquidator is concerned, the Official Liquidator through his counsel has made a statement before this Court that the arrears of rent would be cleared by the office of the Official Liquidator within such time as may be granted by this

Court. In my view, this grievance of the applicant for recovery of arrears of rent from the Official Liquidator is justified and deserves acceptance.

74. Insofar as the direction sought by the Official Liquidator for reduction of the reserve price fixed by this Court in respect of the leasehold property in question is concerned, in my view, the interest of justice would be met with if such prayer is considered after a fresh valuation report is obtained by the Official Liquidator in respect of the said leasehold rights in view of passage of time. The Official Liquidator can apply for the said relief after such valuation report is obtained by his office in respect of the leasehold land in question.

75. I therefore, pass the following order :- a). Company Application (Lodging) No.634 of 2016 seeking an order and direction against the Official Liquidator to hand over quiet, vacant and peaceful possession of the open land admeasuring 4743.21 sq. mtrs, bearing survey no.194/1, village Majiwade, Thane (West) is rejected.

b). The Official Liquidator is directed to pay the arrears of rent from the date of winding up of the respondent company till 30th June, 2017 within eight weeks from today and shall continue to pay the agreed rent every month to the applicant on or before the 15th day of each month.

c). The Official Liquidator is directed to obtain a fresh valuation report in respect of the leasehold rights in the land in question within three months from today. The Official Liquidator would be at liberty to apply for reduction of the reserve price, if necessary, after obtaining such valuation report by filing a separate report seeking such directions in this Court.

d). Company Application (Lodging) No.634 of 2016 filed by the applicant and the Official Liquidator's Report No.610 of 2015 filed by the Official Liquidator are disposed of in aforesaid terms.

e). There shall be no order as to costs.