courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 08/11/2025

(2012) 08 AP CK 0005

Andhra Pradesh High Court

Case No: Company Application No"s. 1598, 1599, 1600 and 1601 of 2011 in Company Petition No. 39 of 2000

Sri. Patnala Venkata Ramakrishna and two Others	APPELLANT
Vs	
M/s. Midwest (India) Industries Limited and two Others	RESPONDENT

Date of Decision: Aug. 21, 2012

Acts Referred:

- Companies Act, 1956 - Section 10(1)(a), 10F, 2(11)
- Constitution of India, 1950 - Article 226
- Reserve Bank of India Act, 1934 - Section 45

Hon'ble Judges: Ramesh Ranganathan, J

Bench: Single Bench

Advocate: K. Goverdhan Reddy, for the Appellant; M. Anil Kumar, Sri. B. Nalin Kumar and Sri. M.V. Durga Prasad, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Hon"ble Sri. Justice Ramesh Ranganathan

1. These applications are yet another instance of abuse of the judicial process, and its subversion. Several orders passed by the Company Court, the Division Bench of this Court and the Supreme Court are being thwarted by repeated petitions/applications being filed only to drag on proceedings, and thereby prevent the property of "Midwest (India) Industries Limited" (for short the "company"), i.e., Ac.9-16 guntas in Survey No. 451 of Puppalguda Village, from being sold and its proceeds utilized for repayment of the amounts deposited by the depositors of the "company" all of whom have been waiting for nearly a decade and a half to receive even the "principal" repayable to them.

C.A.No.1598 of 2011 is filed by Sri P. Venkataramakrishna and two others seeking a direction from this Court to stay all further proceedings, including auction of the property of an extent of Ac.9-16 guntas in Survey No. 451 of Puppalguda Village, Rajendranagar Mandal, Ranga Reddy District, by way of publication of a "Notice Inviting Sealed Tenders-Cum-Negotiations" dated 01.08.2011 pursuant to the orders of this Court in C.A. No. 675 of 2011 in C.P. No. 39 of 2000 dated 05.07.2011. C.A. No. 1599 of 2011 is filed, by the applicants in C.A. No. 1598 of 2011, for a direction from this Court to delete an extent of Ac.0-39 guntas of land in Survey No. 451/AA of Puppalguda Village from the auction proceedings, and consequently declare that the applicants are bona fide purchasers of the said extent of land.

2. C.A.No.1600 of 2011 is filed by Sri T. Somalingam and two others for a direction from this Court to stay all further proceedings, including auction of the property of Ac.9-16 guntas, in Survey No. 451 of Puppalguda Village, by way of publication of "Notice Inviting Sealed Tenders-Cum-Negotiations" dated 01.08.2011, pursuant to the orders of this Court in C.A. No. 675 of 2011 in C.P. No. 39 of 2000 dated 05.07.2011. C.A. No. 1601 of 2011 is filed, by the applicants in C.A. No. 1600 of 2011, for a direction from this Court to delete Ac.0-39 guntas of land in Survey No. 451/AA of Puppalguda Village from the auction proceedings, and consequently declare that the applicants are bona fide purchasers of the said extent of land.

3. The applicants in C.A. No. 1598 of 2011 claim to have purchased Ac.0-39 guntas of land from Sri L. Purshothama Naidu by registered sale deed dated 06.10.2005 for Rs. 5.62 lakhs. The applicants in C.A. No. 1600 of 2011 claim to have purchased Ac.0-39 guntas of land from Sri Bipin by registered sale deed dated 07.10.2005. The applicants in both these applications would assert that they are bona fide purchasers of the land of Ac.0-39 guntas; after a notification was issued on 06.08.2011 by the Official Liquidator bringing Ac.9-16 guntas of land in Survey No. 451 of Puppalguda Village to auction, they had verified the records and came to know that the Official Liquidator had approached this Court by filing C.P. No. 39 of 2000 for liquidating the assets of the "company"; the "Company" was registered in the State of Maharashtra, and had its registered office at Mumbai; the Company Court at Hyderabad lacked jurisdiction to decide the title of the property, or to pass any order for liquidation, or for winding up, of a Company whose registered office is situated in the State of Maharashtra; an order without jurisdiction is non est in the eye of law, and objections thereto can be taken at any stage till finalization of the proceedings; the property of Ac.9-16 guntas in Survey No. 451 was initially purchased by M/s. Midwest Hire Purchase Limited ("MHPL" for short) and M/s. Midwest Growth Fund Limited ("MGFL" for short) in the year 1994, and the entire extent of land was sold in the year 2004 before orders were passed by this Court; the said property was sold, and the entire extent of Ac.9-16 guntas of land was purchased by different persons, including the applicants herein, who are bona fide purchasers of the extents purchased by them by registered sale deeds paying valuable consideration; as on the date of alienation in the year 2004, there were no orders either from this Court, or from the

Official Liquidator; the notified property, put to auction, has not been attached; the properties mentioned in the notification dated 01.08.2011 were, therefore, liable to be deleted, and the auction proceedings stalled in all respects; Ac.0-39 guntas should be deleted, from the entire extent of Ac.9-16 guntas in Survey No. 451/AA, as the applicants are the absolute owners and are in possession thereof since the date of purchase; no proceedings were issued by the Official Liquidator to take possession of the property except by virtue of the orders of this Court; and, as these properties do not belong to the "company", putting the properties to auction is not proper.

4. Before examining the rival contentions it is necessary to refer to certain events and orders passed by this Court, and the Supreme Court earlier. Dr. N.R. Pinna, the promoter and Managing Director of the "company" filed W.P. No. 32498 of 1998 seeking a direction to the respondents therein to cause an enquiry before registering any crime against the petitioners as and when complaints were lodged against them. This Court initially directed the petitioners to file affidavits furnishing details of the depositors, and the schedule of payments. The information furnished by the petitioners revealed that the deposits which had matured in the year 1996 were for Rs. 43,58,220/-; the deposits which matured in the years 1997 and 1998 were for Rs. 1.90 crores and Rs. 8.90 crores respectively; and the said amounts were yet to be paid to the depositors. This Court passed an interim order on 08.02.1999 appointing Advocate-Commissioners. On being informed by the depositors association that the "Company" had cheated the depositors, this Court noted that the petitioners had not deposited any amount nor had they furnished a bank guarantee for Rs. 10,00,000/- as directed by this Court; and they had also failed to furnish details of their movable and immovable properties, or the title deeds of the immovable properties owned by the Company at Mumbai, or the Balance Sheets, to the Advocate Commissioners; the Advocate Commissioners had informed the Court of the properties owned by the "Company", as also details of the claims received from various depositors; they had informed that the "Company" had not deposited any amount; and that the Reserve Bank of India had issued a notification warning the public not to deposit money in the "Company". This Court, after noting that the fate of lakhs of depositors, defrauded by the Company, was still uncertain, directed the Reserve Bank of India to initiate criminal proceedings against the petitioners, and file an application for winding up of the "company", both u/s 45 - MC of the Reserve Bank of India Act and the Companies Act treating the registered office of the Company as being situated at Hyderabad since the registered office at Mumbai had ceased to function for a number of years, and the Hyderabad office was alone being operated. This Court also directed that the facility of two gun-men granted to the first petitioner would stand revoked; he should be immediately arrested by Begumpet police in connection with the pending crimes; he should not be granted bail by any subordinate Court in the State till the entire investigation was completed by the CBCID; and the order of bail, if any, granted by the lower Courts, in Crime Nos.204, 207 and 238 of 1998 of Begumpet Police Station, would stand cancelled.

5. W.A. Nos.3 and 122 of 2000 were preferred against the said order. In the grounds of appeal filed in W.A. No. 3 of 2000, against the orders passed in W.P. No. 32498 of 1998 dated 13.12.1999, that part of the order of the Learned single Judge, conferring jurisdiction on the Company Court at Hyderabad, was not subjected to challenge. In its order dated 27.09.2001 the Division Bench, while setting aside the order of the learned Single Judge to a limited extent, observed that, as the Company Court was seized of the matter, it was unnecessary for them to interfere or issue any directions at that stage; and the Company Court would take all appropriate steps as and when petitions were filed seeking any directions.

6. This Court, by its order in C.A. No. 119 of 2000 dated 10.10.2000, appointed the Official Liquidator as the provisional liquidator, and authorized him to take all steps as he was authorized to do under law. The Official Liquidator was directed to associate himself with two representatives to be nominated by the second respondent, one of whom should be a qualified Chartered Accountant. C.A. No. 666 of 2003, filed by the provisional liquidator for sale of the Malkapur properties of the Company, was allowed on 22.09.2003. W.P. No. 23082 of 2003 filed by Dr. N.R. Pinna, against the sale of properties in Malkapur village, was dismissed by order dated 05.11.2003. C.A. No. 759 of 2003 and batch were filed by Dr. N.R. Pinna and others wherein, among the several contentions urged, was also that this Court lacked jurisdiction to adjudicate the matter on the ground that the registered office of the "Company" was located at Mumbai. This Court, in its order dated 18.9.2003, observed that this Court, in its earlier order in W.P. No. 32498 of 1998 dated 13.12.1999, had noted that the registered office at Mumbai had ceased to work for a number of years; the Reserve Bank of India was therefore directed to treat the registered office of the company as being located at Hyderabad; and the applicants, having submitted to the jurisdiction of this Court and having allowed the judgment in the Writ Petition to attain finality, could not be permitted to raise the plea of lack of jurisdiction. This Court found no merit in these applications which were all dismissed. Against the order passed in C.A. No. 759 of 2003 and batch, OSA. No. 79 to 83 of 2003 were filed, and the said appeals were dismissed as withdrawn.

7. C.A. No. 2332 of 2004 in C.P. No. 39 of 2000 was filed by the provisional liquidator for sale of items 1 and 2 of "D" schedule property, situated in Puppalaguda village, which were purchased in the name of MHPL and MGFL, which were represented by Dr. N.R. Pinna and his daughter respectively. This Court, by its order dated 29.03.2005, impleaded MGFL and MHPL as respondents in the application. In its order dated 19.07.2005 this Court noted that MHPL and MGFL were not carrying on any business transactions; and they were conduits for moving funds "in" as well as "out" of one concern into the other. This Court found no merit in the claim of these two companies that the items in question, including the aforementioned extent of Ac.09.16 gts of land in Puppalaguda village, were purchased by either of these two companies with their own funds. This Court further held that these items must be treated to have been acquired from the funds diverted from the "Company"; the Official Liquidator was entitled to

proceed against those properties treating them as belonging to the "Company"; and he was entitled to dispose it of for effecting repayment of the deposits collected by the "Company" earlier.

8. Aggrieved by the said order, O.S.A. Nos.41 & 42 of 2005 were filed both by MHPL and MGFL. In its order dated 7.3.2007, the Division bench noted that all the bank accounts and documents produced before the Court were minutely examined by the Learned Company Judge, and he had come to the conclusion that it was difficult to accept that the group companies i.e., MHPL and MGFL were separate entities even though they were registered separately under the provisions of the Act; the Learned Company Judge had also come to the conclusion that there were no business transactions by the said two companies; and their accounts showed that the funds were moved in as well as out from one concern to another concern of the group companies either by way of transfer or by way of inter-corporate deposits. The O.S.As were, accordingly, dismissed holding that the order of the learned single judge did not necessitate interference. Aggrieved thereby MGFL and MHPL filed SLP Nos.5315 of 2007 and 5335 of 2007 respectively and the Supreme Court, by its order dated 30.03.2007, dismissed the said Special Leave Petitions.

9. In the meanwhile Dr. N.R. Pinna and his daughter transferred an extent of Ac.0.39 guntas, from out of Ac.5.00 guntas in Sy. No. 451/AA of Puppalaguda village by sale deed dated 28.08.2004, in favour of Merugumala Venkataramana and three others. Thereafter Merugumala Venkataramana and three others sold Ac.0.39 guntas of the said extent of land to Sri B. Bipin by registered sale deed dated 17.08.2005. Sri B. Bipin, in turn, sold the said extent of Ac.0.39 guntas in favour of Talla Somalingam and two others by registered sale deed dated 07.10.2005. Another extent of Ac.0.39 guntas of land, from out of Ac.5.00 cts of Puppalaguda village, was sold by MHPL to Megugumala Venkataramana and three others by registered sale deed dated 28.08.2004. Merugumala Venkataramana and three others, in turn, sold the said extent of Ac.0.39 guntas to Sri L. Purushotham Naidu by registered sale deed dated 17.06.2005. Sri L. Purushotham Naidu, in turn, sold the said extent of Ac.0.39 guntas to Sri Patnala Venkataramakrishna and two others by registered sale deed dated 06.10.2005. It is relevant to note that Talla Somalingam and two others, and Sri P. Venkataramakrishna and two others, are the applicants in the present company applications; and the sale notice, published on 02.08.2005, was for sale of the entire extent of Ac.9.16 guntas of land.

10. C.A. Nos.1127 of 2005 and batch (which included C.A. Nos.715 to 719 of 2007) were filed before this Court. Both Sri L. Purushotham Naidu and Sri B. Bipin, (the vendors of the applicants herein), filed C.A. Nos.717 of 2007 and 979 of 2005 respectively. C.A. No. 717 of 2007 was filed by Sri L. Purushotham Naidu to implead him as a respondent, and C.A (SR). No. 1910 of 2007 was filed by him seeking dismissal of C.A. No. 1127 of 2005 by setting aside the auction notice. C.A. Nos.978 and 979 of 2005 were filed by Sri B. Bipin to decide his right, title and ownership over the schedule property, and declare the sale notice as illegal and arbitrary; and to grant stay of auction of the property covered by

the notification dated 02.08.2005. In its order dated 06.06.2007, this Court held that the vendors had effected the transactions with the fraudulent intention of delaying proceedings; in the light of the said conduct of the vendors, the applicants" claim to be bonafide purchasers could not be accepted, more so as they did not adduce any evidence; even otherwise, as the vendors did not have title to transfer the property, the transfer deeds executed by them were invalid and had no legal sanctity; the applicants were debarred from making any claim against the properties, as the vendor companies had no title over the property of the "Company"; the vendor companies had no right to effect transfers; and the transfers, if any, effected were illegal and unsustainable. All the applications filed by the claimants, including Sri L. Purushotham Naidu and Sri B. Bipin, were dismissed and C.A. Nos.1127 of 2005 and 746 of 2007 were ordered directing fresh auction to be conducted. Against the order passed in C.A. No. 715 of 2007 and batch, OSA. No. 31 of 2007 and batch were preferred. The Division bench, in its order dated 07.08.2009, held that the appellants had set up a claim only through the companies whose claim had already been negatived; and, hence, there could not be any question of an enforceable claim. The Division bench found no merit and, accordingly, dismissed the said appeals. Against the order passed in OSA No. 31 of 2007 and batch dated 07.08.2009, SLP(C) No. 29693 of 2009 and batch were filed before the Supreme Court. Among the Special Leave Petitions in this batch included SLP (C) No. 29888 of 2009 filed by Sri B. Bipin and SLP(c) No. 30322 of 2009 filed by Sri L. Purushotham Naidu. All the Special Leave Petitions were dismissed by the Supreme Court by its order dated 07.01.2010.

11. C.A. No. 675 of 2011 was filed by the Official Liquidator seeking permission of this Court to sell Ac.9-16 guntas in Survey No. 451 of Puppalguda Village, in a single lot, by inviting sealed tenders. In its order dated 5.7.2001, this Court noted that the property had been put to auction earlier by indicating an upset price; no offers had been received in respect of Ac.9-16 guntas; and consequently an application was moved by the Official Liquidator to issue a public notice inviting sealed tenders for sale of the land. This Court permitted the Official Liquidator to publish the sale notice in the Hyderabad editions of two Telugu dailies and an English daily; approved the draft copy of the notice inviting sealed tenders; the draft copy of the terms and conditions of sale; and the tender form. Three sealed covers were received by the Official Liquidator on 24.8.2011. Among the bids received was the bid of Sri L. Purushotham Naidu, (the vendor of some of the applicants herein), who offered Rs. 5.00 Crores for the entire extent of Ac.9-16 guntas. Subsequently this Court permitted submission of offers in a sealed cover on or before 1.11.2011 on which date four individuals submitted their bids. Thereafter, when C.A. No. 1525 of 2011 was being heard, it was brought to the notice of this Court that further bids were received by the Official Liquidator in sealed covers. On 1.11.2011 the sealed covers were opened and the bid of Sri K.L. Sreedhar Reddy was found to be the highest at Rs. 5.26 Crores. The offerers were given an opportunity to revise their offers, and Sri K.L. Sreedhar Reddy increased his offer to Rs. 5.56 Crores. As he had already been paid Rs. 1.25 Crores as EMD, Sri K.L. Sreedhar Reddy was called upon to pay the balance Rs.

4.31 Crores to the Official Liquidator on or before 1.12.2011. Thereafter C.A. No. 1680 of 2011 was filed by Midwest (India) Investors Welfare Association to conduct fresh auction in respect of Ac.9-16 guntas of land by setting aside the order in C.A. No. 1525 of 2011 and C.A. No. 568 of 2010 dated 1.11.2011. In its order dated 28.11.2011, this Court noted that the amount offered by the third respondent was less than the value of the property as per the approved valuer of Rs. 9.15 Crores; and, even according to the valuation certificate issued by the Stamps and Registration Department, the value of the property stood at around Rs. 9.81 Crores. This Court held that, since the price offered by Sri K.L. Sreedhar Reddy was in no way near to the value indicated in the valuation report or the market value certificate, the sale proceedings conducted by this Court on 1.11.2011 should be set aside. C.A. No. 1681 of 2011 was filed by Sri K.L. Sreedhar Reddy seeking a direction to the Official Liquidator to execute a registered sale deed, in respect of the property admeasuring Ac.9-16 guntas in Sy.No.451 of Puppalguda Village, in favour of the nominees of the applicant. This Court, by its order dated 28.11.2011, observed that, since the sale proceedings conducted on 1.11.2011 had been set aside as per the orders passed in C.A. No. 1680 of 2011, the application did not survive and was liable to be, and was accordingly, dismissed. Aggrieved thereby O.S.A. Nos.53 and 54 of 2011 were filed and the Division Bench, in its order dated 27.4.2012, observed that, in the auction conducted by them, Sri K.L. Sreedhar Reddy had offered the highest amount of Rs. 18.00 Crores on an as is where is basis. The Division Bench confirmed the sale effected in favour of Sri K.L. Sreedhar Reddy. Sri M.Anil Kumar, Learned Counsel appearing on behalf of the Official Liquidator, would submit that Sri K.L. Sreedhar Reddy has paid the entire sale consideration of Rs. 18.00 Crores, and the said amount is lying with the Official Liquidator.

12. The applicants in C.A. No. 1600 of 2011 filed C.A.(SR) Nos.5376, 5377 and 5378 of 2011 to implead them as the respondents in C.A.No.675 of 2011; to set aside the order passed in C.A. No. 675 of 2011 dated 5.7.2011 whereby this Court had permitted the Official Liquidator to publish the sale notice in two Telugu dailies and one English daily, and approved the draft notice. C.A. No. 5378 of 2011 was filed to stay all further proceedings including auction of the property of an extent of Ac.9.16 gts in Survey No. 451 of Puppalguda Village by way of notice inviting tenders dated 1.8.2011. The applicants in C.A. No. 1598 of 2011 filed similar applications in C.A.(SR) Nos.5382, 5383 and 5384 of 2011. These applications were rejected by this Court at the S.R. stage as the learned counsel for the applicants stated that the applicants were not pursuing these applications as they had already filed claim petitions. The present applications are the claim petitions filed by Sri T. Somalingam and two others and Sri P. Venkataramakrishna and 2 others.

13. Sri K. Goverdhan Reddy, Learned Counsel for the applicants, would submit that, since the registered office of the "Company" is situated at Mumbai, it is the Bombay High Court which has jurisdiction to entertain a petition for winding up, and not the High Court of A.P; all the earlier orders, including the order passed initially in the Writ Petition, are a

nullity as all these orders suffer from inherent lack of jurisdiction; since consent does not confer jurisdiction, failure of the applicants" vendors, and their predecessors in title, to raise this plea of lack of jurisdiction is of no consequence; and the applicants, being bonafide purchasers for value without notice of the earlier proceedings, are entitled to claim that this Court declare that they have title over the property, and not the "Company".

14. On the other hand both Sri M. Anil Kumar, Learned Counsel for the Official Liquidator and Sri M.V. Durga Prasad, Learned Counsel appearing for the Investors Welfare Association, would submit that the applicants herein are set up by Dr. N.R. Pinna; the evidence adduced by Sri P. Venkataramakrishna would show that he did not have the necessary means to purchase the property; the very fact that the property, which was valued by the vendors of the applicants at Rs. 5.62 lakhs, fetched Rs. 18.00 Crores in the auction conducted by the Division Bench would show that the applicants are being used by Dr. N.R. Pinna, (the original promoter), to drag on proceedings, avoid the property being put to sale, and the sale proceeds being distributed among the investors of the "Company" whose hard earned money has not been fully repaid. Sri M.V. Durga Prasad, Learned Counsel, would further submit that there is a distinction between territorial jurisdiction, and jurisdiction relating to subject matter; while an order, passed on a subject matter which is beyond the jurisdiction of this Court, would result in the order being declared null and void as it suffers from inherent lack of jurisdiction, the plea of territorial jurisdiction can always be waived; this Court is justified in entertaining the Company Petition for winding up of the "Company" whose registered office at Mumbai was merely a cloak, and all its activities were being carried on within the State of A.P. including duping the investors who were all, substantially, residing within the State of Andhra Pradesh; the other two companies i.e., MHPL and MGFL were companies whose registered offices were located within the State of Andhra Pradesh; the very fact that all the monies were being transferred from one company to another would show that all operations of the "Company" was being carried on from its administrative office at Hyderabad and, as such, this Court is justified in entertaining the petition for winding up; a judgment inter-parties is binding on the parties to the dispute; since the order passed in the Writ Petition has attained finality having been confirmed by the Division Bench, it is not open to the applicants herein to now raise the plea of lack of jurisdiction; the very fact that Sri Bipin and Sri L. Purushotham Naidu continued to prosecute various proceedings before the Division Bench of this Court, and the Supreme Court, even after they had allegedly sold an extent of Ac.0-39 guntas each to Sri T. Somalingam and two others, and Sri P. Venkataramakrishna and two others, was itself proof that the applicants herein were mere fronts for the promoters of the "Company" and the entire litigation, including the present applications, was being prosecuted at their behest.

15. Section 10(1)(a) of the Companies Act stipulates that the Court having jurisdiction under the Act shall be the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situated. In Stridewell Leathers (P) Ltd.

and others Vs. Bhankerpur Simbhaoli Beverages (P) Ltd., the Supreme Court held:-

The expression "the High Court" in Section 10F of the Companies Act means the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate as indicated by Section 2(11) read with Section 10(1)(a) of the Act. Accordingly, in the present case, the appeal against the order of the Company Law Board would lie in the Madras High Court which has jurisdiction in relation to the place at which the registered office of the company concerned is situate and not the Delhi High Court merely because the order was made by the Company Law Board at Delhi.

(emphasis supplied)

16. The submission of Sri K. Goverdhan Reddy, Learned Counsel for the applicants, in short is that this Court lacks inherent jurisdiction to entertain winding up proceedings against the "company" in as much as the registered office of the "company" is situated at Mumbai beyond the territorial jurisdiction of this Court. It is no doubt true that when a Statute gives a right, and provides a forum for adjudication of such rights, the remedy has to be sought, and the rights adjudicated, only under the provisions of that Act. When an Act creates a right or obligation, and enforces the performance thereof in a specified manner, that performance cannot be enforced in any other manner. (Doe d. Rochester (BP) v. Bridges, 109 ER 1001; Barraclough v. Brown 1897 AC 615; The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., and Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., Conferment of jurisdiction is a legislative function. It can neither be conferred with the consent of the parties nor by a Superior court. The finding of a court or tribunal becomes irrelevant and unenforceable /inexecutable once the forum is found to have no jurisdiction. The Court cannot derive jurisdiction apart from the statute. The United Commercial Bank Ltd. Vs. Their Workmen, Smt. Smt. Nai Bahu Vs. Lala Ramnarayan and Others, ; Natraj Studios Pvt. Ltd. v. Navrang Studio AIR 1981 SC 537 ; Sardar Hasan Siddiqui and Others Vs. State Transport Appellate Tribunal, U.P., Lucknow and Others, ; A.R. Antulay Vs. R.S. Nayak and Another, ; Union of India and another Vs. Deoki Nandan Aggarwal, ; U.P. Rajkiya Nirman Nigam Ltd. Vs. Indure Pvt. Ltd. and others, ; State of Gujarat Vs. Rajesh Kumar Chimanlal Barot and another, ; Kesar Singh and Others Vs. Sadhu, ; Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, ; Collector of Central Excise, Collector of Central Excise, Kanpur Vs. Flock (India) Pvt. Ltd. C-7, Panki Industrial Area, Kanpur, ; and Kanwar Singh Saini Vs. High Court of Delhi, .

17. In cases where a provision of an Act specifically bars the jurisdiction of a Court to entertain any proceedings, the said court lacks inherent jurisdiction to take cognizance of the cause, and to pass an order. Challenge to such an order on the ground of nullity can be raised at any later stage. Sarwan Kumar and Another Vs. Madan Lal Aggarwal, No amount of consent can confer on the Court the power to act de hors the statute. In the event the statute prescribes a specific mode, that particular mode alone needs to be

adhered to Commissioner of Labour, Govt. of A.P. and others Vs. Andhra National Textiles Workers Union and others,

18. An order passed by a Court without jurisdiction is a nullity, and its invalidity can be set up whenever and wherever it is sought to be enforced or relied upon - even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the Court to pass an order, and such a defect cannot be cured even by the consent of the parties. Kiran Singh and Others Vs. Chaman Paswan and Others, Any order passed, or action taken pursuant to an order passed, by a court without jurisdiction, or in furtherance thereof, would also be a nullity. Dwarka Prasad Agarwal (D) by LRs. and Another Vs. B.D. Agarwal and Others, ; Sri Ramnik Vallabhdas Madhvani and Others Vs. Taraben Pravinlal Madhvani, A party cannot be made to suffer adversely, either indirectly or directly by reason of an order passed by any Court of law which is not binding on him. Dwarka Prasad Agarwal (D) by LRs. and Another Vs. B.D. Agarwal and Others,

19. It is also true that principles of res judicata are inapplicable to an order passed by a Court inherently lacking jurisdiction to do so. Res judicata is a procedural provision, and has no application where there is inherent lack of jurisdiction, Sri Ramnik Vallabhdas Madhvani and Others Vs. Taraben Pravinlal Madhvani, as an order passed by an authority which lacks inherent jurisdiction is a nullity. National Institute of Technology and Others Vs. Niraj Kumar Singh, ; Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, and Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, In the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must, in a subsequent litigation between the same parties, be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. Where the decision is on a question of law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same. Where, however, the question is one purely of law, and relates to the jurisdiction of the Court, a party affected by the decision is not precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land. Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, .

20. Competent jurisdiction is an essential condition of every valid res judicata, which means that, in order that a judicial decision relied upon, whether as a bar, or as the foundation of an action, may conclusively bind the parties, or (in the case of in rem decisions) the world, it must appear that the judicial tribunal pronouncing the decision had jurisdiction over the cause or matter, and over the parties, sufficient to warrant it in so doing. Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others, ; Res Judicata - Spencer Bower and Turner, 2nd Edn., p. 92).

21. A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous decision, the Court holds that it has no jurisdiction, the question would not operate as res judicata. Similarly by an erroneous decision if the Court assumes jurisdiction, which it does not possess under the statute, the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise. Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy,

22. If a decision of a court or a tribunal is without jurisdiction, such a decision or finding cannot operate as res judicata in any subsequent proceedings. The plea of res judicata presupposes that there is in existence a decree or judgment which is legal, but when the judgment is non est in law no plea of res judicata can be founded on such a judgment, Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others, as an order passed without jurisdiction is a nullity, and is coram non judice. Chandrabhai K. Bhoir and Others Vs. Krishna Arjun Bhoir and Others, ; Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, , Union of India (UOI) Vs. Pramod Gupta (D) by L.Rs. and Others, and National Institute of Technology and Others Vs. Niraj Kumar Singh, .

23. Sri M.V. Durgaprasad, Learned Counsel appearing on behalf of the Investors Welfare Association, would however contend that it is only when the Court is incompetent to examine the subject matter of the proceedings can it be said that the Court suffers from inherent lack of jurisdiction, and merely because the Court lacks territorial jurisdiction to adjudicate the matter it cannot be said that the Court suffers from inherent lack of jurisdiction. It is no doubt true that the validity of an order can be challenged in subsequent proceedings only on the ground that the Court which passed the order was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant /respondent was dead at the time the proceedings had been instituted or order passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the proceedings or over the parties to it. Seth Hiralal Patni Vs. Sri Kali Nath, ; V. Appannammanayuralu Vs. B. Sreeramulu, The objection to its territorial jurisdiction is one which does not go to the competence of the court and can, therefore, be waived. Seth Hiralal Patni Vs. Sri Kali Nath,

24. The judgment in a former proceedings would operate as res judicata if the court which decided the said matter was competent, by virtue of its pecuniary jurisdiction and the subject-matter, to try the subsequent proceedings, and that it is not necessary that the said court should have had territorial jurisdiction to decide the subsequent proceedings. Church of South India Trust Association Vs. Telugu Church Council, Inherent lack of jurisdiction means a power or jurisdiction which does not exit or vest in a Court. A Court can be said to lack inherent jurisdiction when the subject-matter before it is wholly foreign to its ambit and is totally unconnected with its recognized jurisdiction. If it has the power

to entertain causes of a particular category or nature, then it cannot be said that causes belonging to that category or nature are totally foreign to the jurisdiction of that Court for the reason that they could have been brought up before another Court. It cannot be said that the Court could not have seisin of a case when the subject-matter belongs to the nature of its jurisdiction. V. Appannammanayuralu Vs. B. Sreeramulu, .

25. The "company", and its promoter cum Managing Director Dr. N.R. Pinna, did not question the jurisdiction of this Court to entertain a petition for winding up of the "Company", and the initial order in W.P.No.32948 of 1998 dated 13.12.1999 was passed by this Court nearly twelve years ago. Several orders were passed by this Court, the Division Bench and the Supreme Court thereafter. The property of the "Company" of Ac.9.16 has already been auctioned by the Division bench, the sale confirmed and the highest bidder has deposited the highest bid amount of Rs. 18.00 Crores with the Official Liquidator. Accepting the submission that this Court lacked jurisdiction, (to pass the order in W.P.No.32948 of 1998 dated 13.12.1999), after a long lapse of more than 12 years, more so, when the said order has been confirmed in appeal, in W.A.No.3 and 122 of 2000 dated 27.9.2001, would result in the depositors of the "company" being deprived of their hard earned money which deposits matured and were due for payment nearly 15 years ago. As noted hereinabove, the deposits which had matured in the year 1996 were for Rs. 43,58,220/-; and the deposits which matured in the years 1997 and 1998 were for Rs. 1.90 Crores and Rs. 8.90 Crores respectively. It will be wholly inequitable and unjust to deprive the depositors, of the monies due to them, on a belated plea of inherent lack of jurisdiction. Courts in India are courts both of law and equity. Courts of equity exercise jurisdiction in personam. Modi Entertainment Network and Another Vs. W.S.G. Cricket PTE. Ltd., The High Courts in India are superior courts of record. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Supreme Court, the High Courts have unlimited jurisdiction, Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, ; M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, and the jurisdiction to determine their own powers. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court. M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, ; Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, ; Halsbury"s Laws of England, 4th edn., Vol. 10, para 713; M.M. Thomas Vs. State of Kerala and Another, ; Md. Ataur Rahman Khan v. Md. Kamaluddin Ahmed (1987) 1 ALT 216). I consider it wholly inappropriate, therefore, to now examine the rival contentions, urged by Sri K. Goverdhan Reddy on the one hand and Sri M.V. Durga Prasad on the other, on the jurisdiction of this Court to pass the initial order in W.P. No. 32948 of 1998 dated 13.2.1999, or in the subsequent company applications.

26. Even otherwise, this Court would not examine the contention urged at the behest of the applicants, that all the earlier orders passed by this Court, the Division Bench and the Supreme Court are a nullity, as the applicants claim to have purchased Ac.0-39 guntas of land each from Sri L. Purushotham Naidu and Sri B. Bipin, whose claim to be bonafide purchasers has already been rejected by this Court. As noted supra this Court, by its order in W.P. No. 32498 of 1998 dated 13.12.1999, had directed the Reserve Bank of India to file an application for winding up of the "Company" before the Company Court (High Court) at Hyderabad despite the fact that the registered office of the "Company" was situated at Mumbai, for the reason that the registered office at Mumbai had ceased to function for a number of years, and it was the Hyderabad office of the "Company" which was being operated. The appeal preferred against the said order by Dr. N.R. Pinna, the promotor and Managing Director of the "Company", was dismissed by the Division Bench of this Court. It was only thereafter that this Court, by its order in C.A. No. 119 of 2000 dated 10.10.2000, appointed the Official Liquidator as the Provisional Liquidator of the "Company". Dr. N.R. Pinna raised the plea of lack of jurisdiction of this Court in the application filed by him in C.A. No. 759 of 2003 and batch and, in its order dated 18.09.2003, this Court observed that the applicants, having submitted to the jurisdiction of this Court, and having allowed the judgment in W.P. No. 32498 of 1998 dated 13.12.1999 to attain finality, could not be permitted to raise the plea of lack of jurisdiction. The order passed by this Court, in C.A. No. 759 of 2003 dated 18.9.2003, was confirmed by the Division bench in OSA Nos.79 to 83 of 2003. MHPL and MGFL were represented by Dr. N.R. Pinna and his daughter in C.A. No. 2332 of 2004. This Court, in its order dated 19.07.2005, observed that these two companies were not carrying on any business and were merely conduits for moving funds "in" and "out" of one concern to another. This Court held that the property, of Ac.9.16 guntas in Puppalguda Village, must be treated as having been acquired from the funds diverted from, and as belonging to, the "company". OSA Nos.41 and 42 of 2005 preferred thereagainst both by MHPL and MGFL were dismissed by the Division bench and the SLPs preferred thereagainst (SLPs 5315 and 5335 of 2007) were dismissed by the Supreme Court by its order dated 30.03.2007.

27. It is necessary to note that these two extents of Ac.0-39 guntas each were sold by Dr. N.R. Pinna and his daughter to Sri M. Venkataramana by sale deeds dated 28.02.2004. Sri M. Venkataramana, in turn, sold Ac.0-39 guntas of land each to Sri B. Bipin and Sri L. Purushotham Naidu by registered sale deeds dated 17.8.2005 and 17.6.2005 respectively. Sri L. Purushotham Naidu and B. Bipin, in turn, sold these extents of Ac.0-39 guntas each to Sri P. Venkataramakrishna and two others and Sri T. Somalingam and two others (the applicants herein) by registered sale deeds dated 6.10.2005 and 7.10.2005 respectively. Sri L. Purushotham Naidu and Sri B. Bipin filed C.A. Nos.717 of 2007 and 979 of 2007 to decide their right, title and ownership of the property, and to declare the sale/auction notice as illegal. In its order dated 06.06.2007, this Court noted that the vendors had effected the sale transactions with the fraudulent intention of delaying proceedings; the claim of Sri B. Bipin and Sri L. Purushatham Naidu to be bonafide purchasers could not be accepted; as the vendors did not have title to

transfer the property, the transfer deed was invalid, and had no legal sanctity; and Sri L. Purushotham Naidu and Sri B. Bipin were debarred from making any claim against the properties of the "Company". OSA. No. 31 of 2007 and batch, which included the appeals preferred by Sri B. Bipin and Sri L. Purushotham Naidu, were dismissed by the Division bench by its order dated 07.08.2009. Against the order passed in OSA No. 31 of 2007 and batch, Sri B. Bipin filed SLP (C) No. 29888 of 2009 and Sri L. Purushotham Naidu preferred SLP (C) No. 30322 of 2009 which were dismissed by the Supreme Court by its order dated 07.01.2010. As the vendors of the applicants herein (Sri B. Bipin and Sri L. Purushotham Naidu) were themselves held not to be bonafide purchasers, and their vendors to have no title over the property, the contention urged on behalf of the applicants herein to be bonafide purchasers does not merit acceptance.

28. The claim of the applicants to be bona fide purchasers, and for exclusion of these properties admeasuring Ac.0.39 Guntas each from the sale proceedings, also necessitates rejection as it is not open for this Court to sit in judgment over the orders passed by a coordinate bench of this Court, the Division Bench of this Court and the Supreme Court. No coordinate Bench of the High Court or the Supreme Court can even comment upon, let alone sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before another coordinate Bench. Sub-Committee of Judicial Accountability Vs. Union of India and others, ; Official Liquidator Vs. Dayanand and Others, If the decision of a Superior court on the question of its jurisdiction is erroneous, it can be corrected in appeal or revision as may be permissible under the law. But, until the adjudication by a Superior Court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by a co-ordinate bench in the exercise of its writ jurisdiction. Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, ; Madupu Harinarayana @ Maribabu Vs. The Learned 1st Additional District Judge and Others, A High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the same High Court. (Roopa Ashok Hurra v. Ashok Hurra AIR 2002 SC 1771; Madupu Harinarayana @ Maribabu Vs. The Learned 1st Additional District Judge and Others, This limitation, applicable to proceedings under Article 226 of the Constitution, would apply with greater force to the High Court exercising jurisdiction under the Companies Act for, unlike the writ jurisdiction where the powers of the High Court are untramelled, exercise of jurisdiction by the High Court under the Companies Act is circumscribed by the provisions of the Act and the Rules made thereunder.

29. In Official Liquidator Vs. Dayanand and Others, the Supreme Court observed:-

We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline

have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

(emphasis supplied)

30. As has already been noted, several orders were passed earlier by this Court were confirmed in appeal by the Division Bench and, in some cases, even by the Supreme Court. Accepting the applicants" claim to be bona fide purchasers would require this Court hold that all the earlier orders, passed by a coordinate Bench, the Division Bench and the Supreme Court, are a nullity which question this Court is now not entitled to examine, let alone declare it to be so.

31. The applications as filed are also an abuse of process of Court. Rule 9 of the Companies (Court) Rules, 1959 stipulates that nothing in the Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice to prevent the abuse of Court. In P. Ramanatha Iyer, "The Law Lexicon" (2nd edition) "Abuse of Process of Court", is defined to mean the malicious and improper use of some regular legal proceedings to obtain an unfair advantage over an opponent; the term is generally used in connection with action for using some process of the Court maliciously to the injury of another person.

32. The evidence of Sri P. Venkataramakrishna, in these applications, show that he was not even in a position to furnish details of the source from which he had purchased Ac.0-39 guntas of land for Rs. 5.62 lakhs. While the applicants claim to have purchased nearly one acre of land for Rs. 5.62 lakhs in October, 2005, the entire landed property of Ac.9.16 fetched Rs. 18.00 Crores in the auction conducted by the Division Bench of this Court in April, 2012. Even giving room for a rise in the value of the land, in the six and half year period from 2005 to 2012, it is evident that the sale consideration of Rs. 5.62 lakhs, allegedly paid by the applicants to their vendors, is far less than the actual value of the landed property of the "company" which was put to auction. It is, therefore, difficult to accept the applicants" plea that they are bona fide purchasers.

33. At the cost of repetition, it needs to be emphasized that the applications filed by the applicants" vendors, (Sri L. Purushotham Naidu and Sri B. Bipin), were dismissed by this

Court. The applicants claim to have purchased this property in Ocotber, 2005. It is their specific case, in the applications now filed before this Court, that it is only after the auction notification dated 6.8.2011 that they came to know of the aforementioned orders. The only interference which can, therefore, be drawn is that they were unaware, and were not informed of the earlier proceedings by their vendors Sri B. Bipin and Sri L. Purushotham Naidu who, even after having allegedly sold the property to the applicants herein, continued to prosecute their cases not only before the Company Court and the Division Bench of this Court but also before the Supreme Court, for nearly five years after such sales. Both Sri B. Bipin and Sri L. Purushotham Naidu did not disclose their having transferred the property to the applicants, either in the appeals preferred by them (which formed part of O.S.A.No.31 of 2007 and batch) or before the Supreme Court in the SLPs filed by them. The very fact that they continued to prosecute the case before the Division Bench of this Court and the Supreme Court, for nearly five years after sale of the land to the applicants, and their having suppressed the fact, that they had sold the property to the applicants, in their appeals before the Division Bench, and the SLPs before the Supreme Court, gives rise to a strong belief that the present applications have been filed before this Court only to drag on proceedings, and to prevent the hard-earned money of the depositors of the "company" being repaid to them. There is considerable force in the submission of Sri Anil Kumar and Sri M.V. Durga Prasad, Learned Counsel, that the applicants are mere fronts of Dr. N.R. Pinna, and their endeavour is only to drag on proceedings.

34. A person approaching a superior court must come with clean hands, and should not take recourse to the legal proceedings over and over again, as it amounts to abuse of the process of the law. Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs. State of U.P. and Others, In Ravinder Kaur Vs. Ashok Kumar and Another, the Supreme Court held:-

Therefore, raising a dispute in regard to the description or identity of the suit schedule property or a dispute in regard to the boundary of the suit schedule property is only a bogey to delay the eviction by the abuse of the process of court. Courts of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law"s delay and bringing bad name to the judicial system.

35. It is necessary in the interests of justice that gross abuse of the process of the court should not be allowed to pass muster and should, in no event, be allowed to benefit persons indulging in them. Stringent terms have to be imposed so that not only the petitioners/applicants but others like them should also know that they should not play with the Courts. The Court, which is seized of the matter, has the power to make such orders as it thinks just and necessary to meet the ends of justice. Natwar Textile Processor Pvt. Ltd. and another Vs. Union of India and others,

36. As these applications are an abuse of process of Court, I consider it appropriate to exercise the inherent powers of this Court, (as stipulated in Rule 9), and dismiss these applications with exemplary costs of Rs. 5000/- in each of these applications. The applicants herein shall deposit this amount with the Official Liquidator within four weeks from today. In case they fail to do so, it is open to the Official Liquidator to initiate appropriate proceedings for recovery of the said amounts. This amount, along with the amounts received on the auction of the landed property of the company by the Division Bench (which is said to have fetched Rs. 18.00 Crores) shall, in accordance with law, be paid to the depositors of the "company" who have been waiting endlessly to receive the amounts deposited by them with along with interest. C.A. Nos.1598, 1599, 1600 and 1601 of 2011 are dismissed with exemplary costs.