

TCI Distribution Centres Ltd. Vs The Official Liquidator, High Court as the Liquidator of Fidelity Industries Ltd. (in liquidation), IDBI (Industrial Development Bank of India) and First Leasing Company of India Ltd.

Court: Madras High Court

Date of Decision: Sept. 8, 2009

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 21 Rule 90

Companies (Court) Rules, 1959 â€" Rule 9

Companies Act, 1956 â€" Section 455, 460(6)

Transfer of Property Act, 1882 â€" Section 55

Citation: (2010) 153 CompCas 437 : (2009) 4 LW 681

Hon'ble Judges: R. Subbiah, J; M. Chockalingam, J

Bench: Division Bench

Advocate: P.S. Raman for S.R. Rajagopal, for the Appellant; Arvind P. Datar for R1 and R. Senthil Kumar, for R3, for the Respondent

Judgement

M. Chockalingam, J.

All these appeals challenge a common order of the learned single Judge of this Court dated 13.04.2009 made in

C.A. No. 1953 to 1956 of 2008 in C.A. No. 1983 of 2007 in C.P. No. 526 of 2000.

2. Pending the winding up proceedings in the matter of M/s.Fidelity Industries Limited (in liquidation) in C.P. No. 526 of 2000, the Official

Liquidator, High Court Madras, made C.A. No. 1983 of 2007 for the following reliefs:

(a) To open the valuation report and fix the reserve price for the vacant land at Sriperumpudur and to permit the Official Liquidator to sell the

property through this Hon"ble Court;

(b) to permit the Official Liquidator to sell the property at Gandhi Nagar, Adyar by taking the earlier reserve price already fixed by this Hon"ble

Court as the present upset price for sale of the same;

(c) to permit the Official Liquidator to invite sealed tenders through advertisement in the newspapers specified in para 9 of this report, and to pay

the expenses of the advertisement from & out of the funds to the credit of the company in liquidation;

(d) to approve the Draft Sale Notice, Tender Form and terms and conditions marked as "Annexure-A" to this report;

(e) to direct that the expenses incurred for the sale will come out of the assets of the company in liquidation;

(f) to direct that the cost of this application do come out of the funds of the company in liquidation.

3. The appellant/applicant filed C.A. Nos. 1953 to 1956 of 2008 in C.A. No. 1983 of 2007 seeking the following reliefs.

(a) To direct the Official Liquidator to trace the balance original documents pertaining to the property and hand over the same to the purchaser;

(b) to direct the Official Liquidator to engage the services of the concerned revenue officials to locate the lands, survey and to fix the boundaries

and to lay revenue stones and deliver possession thereof;

(c) to direct the Official Liquidator not to disburse the sale proceeds to the creditors till handing over of balance documents, surveying of lands and

laying of boundary stones; and

(d) to direct the Official Liquidator to return the sale consideration with interest in the event of non-compliance of handing over of balance

documents, surveying and laying of boundary stones within the time fixed by this Hon"ble Court.

4. All the applications came to be filed under the following circumstances.

The applicant in all those applications, who is the appellant herein, namely, M/s.TCI Distribution Centers Limited, was the purchaser, in view of the

highest bid made by him in the auction conducted by this Court on 06.02.2008, in respect of 41.12 acres of free hold land belonged to

M/s.Fidelity Industries Limited (under liquidation). The said auction following a publication effected by the Official Liquidator, High Court, Madras,

in respect of those lands, which are situate in two villages, namely, Kilai and Ulundai. The auction conducted on 06.02.2008. The

appellant/applicant, who was the highest bidder, purchased the land for a sum of Rs. 15.20 crores. The sale was also confirmed by the Court in

favour of the applicant/appellant. When a direction was issued for the payment of difference of the earnest money deposit and the balance of sale

consideration within 90 days in two instalments, after remitting the balance of earnest money deposit, the applicant/appellant made a request for

furnishing the title deeds and the field map relating to the property. The Official Liquidator was also directed to collect the documents from the

company under liquidation and furnish the same along with the field map and on 20.03.2008, the appellant/applicant remitted the first instalment of

the sale consideration. When the matter came up for hearing on 24.03.2008, the appellant/applicant made a request to furnish copies of documents

and to order survey of lands. But, there was a direction to the appellant/applicant to remit the balance of sale consideration as per the schedule.

The appellant/applicant paid the second and last instalment on 30.04.2008 though the due date for second instalment was on 05.05.2008. On the

said date, the company under liquidation handed over some documents pertaining to the property and on 30.04.2008, there was a direction to

hand over possession of the property and also the documents and conveyance. The IDBI handed over only 26 documents covering an extent of

20 acres and the other documents were not delivered. When the appellant/applicant made a request on 03.06.2008, the Official Liquidator handed

over 26 documents. The date of handing over possession was fixed on 12.06.2008. When the applicant was present for taking possession the

property, it was found that it was a barren land and there were no boundary stones. The Official Liquidator had also prepared the minutes for

handing over physical possession on the said date but he has not handed over physical possession of the properties with boundaries. However, the

appellant/applicant has taken possession of the property in full faith. On a perusal of the documents, the appellant/applicant was not able to identify

the correct location of the lands. He approached the Official Liquidator, requesting for handing over of documents and surveying of lands and also

requested not to disburse the sale consideration to any secured creditors. Though the appellant/applicant has paid the full sale consideration, he

was unable to take possession of the entire property and also the original documents were not available. Under these circumstances, the

appellant/applicant filed all the above applications for the said directions to the Official Liquidator.

5. The learned single Judge, on scrutiny of the materials available, took a view that all those applications were misconceived and there was

absolutely no ground to interfere with the sale, which was confirmed by the Court, and hence, made an order of dismissal of all those applications.

Hence all these appeals at the instance of the applicant.

6. Advancing the arguments on behalf of the appellant/applicant, Mr. P.S. Raman, learned senior Counsel would submit that the common order

under challenge is contrary to the provisions of the Companies Act and Rules, more particularly when it conferred absolute powers on the Official

Liquidator, sanctifying any illegality committed by him and removing all obligations cast on him u/s 455 of the Companies Act; that the Official

Liquidator appointed in respect of the company in liquidation is required to submit a statement or a preliminary report of the company under

liquidation to the court in and whereby the affairs, assets, etc. are required to be investigated and verified and hence, the finding recorded by the

learned single Judge that it was not possible for the Official Liquidator to investigate into the title of the properties brought to auction was liable to

be set aside since it is contrary to the provisions and the objects of the Companies Act; that the discrepancies as stated by the appellant in the

affidavit dated 8th September, 2008 were found by the appellant subsequent to the payment of entire sale amount; that it is pertinent to note that

the same goes to the root of the matter, amounting to misrepresentation thereby vitiating the same; that therefore, the Court should have set aside

the sale and directed the refund of the amount with interest, damages and costs to the appellant; that there was a positive assertion by way of

annexure to the tender terms and conditions as regards the description of the immovable property and that the same was admittedly erroneous and

on the basis of the same, an offer was made by the appellant and therefore, the auction sale was liable to be set aside.

7. Added further the learned senior Counsel that there was a breach of duty on the part of the Official Liquidator under the provisions of the

Companies Act in so far as to the identification of the properties and making representations as to the company in liquidation's interest therein,

which was evident from the fact that the description of the property mentioned in the tender terms and conditions were erroneous and prepared

without application of mind and without any basis and hence, the offer made in furtherance of the same by the appellant and accepted by the Court

was liable to be recalled and set aside; that the words "as is where is and whatever there is basis" cannot apply to the facts of the case or to a sale

made by the Court in exercise of the powers conferred under the provisions of the Companies Act, more particularly to immovable properties and

sanctify the act of the Official Liquidator in mis-describing the property or including the survey numbers of lands which admittedly cannot or never

belonged to the company under liquidation and thereby exposing the auction purchaser, i.e. the appellant, to loss; that subsequent to the

acceptance of the bid of the appellant and payment of the amount representing the earnest money deposit, the appellant had moved a memo

seeking for verification of the title deeds, which was opposed by the Official Liquidator that the same could be done only after remittance of the

entire amount and therefore, holding that the appellant had ample time prior to the remittance of the amount to investigate title, was contrary to the

facts and the same cannot be the reason for dismissing the applications or denying the relief to the appellant and that the learned single Judge has

not appreciated the series of orders passed in C.A. No. 1983 of 2007 by the court subsequent to the confirmation and prior to passing of the

order under challenge.

8. Added further the learned senior Counsel that ITCOT Consultancy and Services Limited was entrusted with the work of valuation and

preparation of the report; that the said agency has been paid amount towards their services; that based on their report, the Official Liquidator has

brought the properties for sale and fixed the upset price and thus, the order of the learned single Judge that in so far as holding that the Official

Liquidator could not investigate into the title of the property was factually incorrect and the dismissal of the applications is liable to be set aside on

this ground; that in the valuation report prepared by ITCOT Consultancy and Services Limited, they have categorically stated that the valuation of

the said property was arrived without any land documents and the ownership of the land was determined from the previous owners, which was

suppressed by the Official Liquidator in the tender terms and conditions and hence, the sale was vitiated; that the statement made by the Official

Liquidator in the terms to tender were misleading and based on the same, the appellant had offered to purchase the property; that when admittedly

the representations made by the Official Liquidator during negotiations which had led to the contract were not true, the sale was void; that the

Official Liquidator was duty bound to disclose the interest of the company in liquidation to the properties brought for auction; that the Statute

imposes and casts an obligation on the part of the Official Liquidator to verify the title of the company in liquidation to the property brought for

sale; that in the absence of the same, any sale made in furtherance of any such representation, that is found to be untrue, is void entitling the offerer

or purchaser to rescind the sale at any point of time; that subsequent to tendering of the entire sale amount and after handing over symbolic

possession, the boundaries were sought to be fixed by the purchaser i.e. the appellant pursuant to the orders passed by the Court and that during

the same, several mis-discrepancies, as set out in the memo and extracted in the order, were found rendering the sale void and those discrepancies

were well within the knowledge of the Official Liquidator, who did not bring it to the notice earlier; that even prior to the completion of the sale and

remittance of the amount, the appellant had sought for fixing of boundary stones as there was no demarcation of the property, which was opposed

by the Official Liquidator on the ground that the relief sought for at that point of time was luxurious; that having opposed the memo filed for fixing

boundary stones and furnishing title deeds, it was not open to the Official Liquidator to oppose the applications; that the duty is cast upon the

Official Liquidator to disclose the every aspect, more particularly when the said disclosure, if not done, would affect the judgment of the bidders;

that any sale by the court is one on good faith, trust and confidence and classified as Contract of Uberrimae fidel and therefore, when the auction

purchaser reposes confidence and faith on the representations made in the court sale and the same being ipso facto, accepted as true and no

opportunity, whatsoever, provided to the purchaser to scrutinize the title and when the representations found to be false, the sale was liable to be

set aside.

9. The learned senior Counsel would further submit that the First Leasing Company, who claimed themselves to be the secured creditors, have

failed to furnish the documents of the title in respect of entire 41.12 acres and that much after the payment of the entire consideration and after

directions from the court, the title deeds were given by IDBI to the Official Liquidator, that too, only in respect of 20.18 acres and, hence, there

was no opportunity to verify the title deeds in the facts of the case and it cannot be put against the appellant, more particularly to deny the relief;

that the Official Liquidator was in a fiduciary position owing a duty to make full disclosure of all material facts known and available with him; that

the fact that the non-availability of title deeds ought to have been incorporated in the statement made in the tender sale and therefore, the sale was

liable to be set aside; that the relief sought for in C.A. No. 1953 of 2008 was for tracing of original title deeds, which was opposed and registered

by the Official Liquidator; that the property is in the custody of the court and that the Official Liquidator was bound to furnish all the documents to

the purchaser; that in the absence of the same and the tender notification speaking contrary, the sale was liable to be set aside; that the learned

Judge failed to note that by an order dated 13.03.2003 the company was ordered to be wound up and that as late as November 2007, the

application for sale was preferred; that therefore, the Official Liquidator had ample time and should have investigated the title of the company in

liquidation to the properties and prepared a report as to the properties belonging to the company in liquidation; that for the act of negligence and

lethargy on the part of the Official Liquidator, the innocent purchasers, who have participated in the auction based on the representation made in

the tender terms and conditions, cannot be fastened with liability or exposed to damage and loss; that it is not a case where the doctrine of caveat

emptor could be applied; that it is not correct that Section 55 of the Transfer of Property Act was not applicable to the sale made by the Official

Liquidator; that it is also not correct that the provisions of Order 21 Rule 90 to 92 of C.P.C. were not applicable to the sale made by Official

Liquidator in exercise of the powers of the Companies Act.

10. Added further the learned senior Counsel that it is also not correct to state that the rough sketch submitted along with the tender terms and

conditions showing the property to be contiguous and having entrance from the main road, did not amount to any representation; that based on the

same, believing the land to be contiguous and having access from the main road, an offer was made by the appellant and that when the same was

not true, the appellant was entitled to rescind from the sale; that the appellant, at no point of time, wanted to walk out of the sale for any reason,

more particularly the reasons set out by the learned single Judge as to global recession; that it is pertinent to point out that the reliefs sought for in

C.A. Nos. 1953 to 1955 of 2008 seeking for curing of the defects were resisted by the Official Liquidator and therefore, the appellant was entitled

for the relief of setting aside the sale; that the Official Liquidator has contended in his written statement that the sale was not in further of the

advertisement and was in voluntary offer by the appellant and if to be so, the Official Liquidator could not contend that in the publication made it

was mentioned that the sale was "as is where is and whatever there is basis"; that the learned single Judge has erred in coming to the conclusion

that there was no mistake in the minds of the parties which would vitiate the contract of sale and in this regard, failed to appreciate several of the

representations in the tender terms and conditions were admittedly erroneous and the Official Liquidator has suppressed the same; that the pre-

contractual representations in the form of tender terms and conditions were lacking good faith and amounted to willful misrepresentations and

therefore, the sale was liable to be set aside; that at no point of time, the passing of high tension wire and construction of an overhead tank and

T.V. room by the Government and the property has no access was ever brought to the knowledge of the appellant and hence, the sale was

vitiated; that the land was vacant land without any boundaries and the Official Liquidator having engaged services of an agency to finalise the

description and ownership of the property and arrive at the valuation, ought to have disclosed the existence of high tension wired the construction

of overhead tank, TV room etc. and thus, the sale was vitiated by fraud, misrepresentation and mistake of facts and therefore, void enabling the

purchaser appellant to seek for refund of the purchase money and under such circumstances, all the appeals have got to be allowed.

11. Learned senior Counsel appearing for the appellant took the Court to the different reports and affidavits filed by the Official Liquidator before

and after the sale in question. The learned senior Counsel, in support of his contention relied on a decision of the Apex Court in The Ahmedabad

Municipal Corporation of the City of Ahmedabad Vs. Haji Abdulgafur Haji Hussenhbai, .

12. Contrary to the above contentions, Mr. Arvind P. Datar, the learned senior Counsel representing the Official Liquidator (1st respondent)

would submit, inter alia, that when the company is wound up, the duty of the Official Liquidator is to take into custody of the properties of the

company; but the properties do not vest with the Official Liquidator and he could act only as per the records of the company under liquidation; that

the Official Liquidator cannot hold any guarantee or warranty when he sells the properties of the company under liquidation; that in case of auction

sale, there is no warranty of title and issuance of a notification by the Official Liquidator was only an invitation to treat and the offer is actually made

by the bidder and the acceptance is by the auctioneer, namely, the Official Liquidator; that only on acceptance, the contract becomes complete;

that the auction purchaser is expected to investigate into the title before making such offer; that in the instant case, the notification was issued and

publication was also made on 16.12.2007; that after long interval of such publication, the appellant has purchased the property and that during the

interregnum period, the appellant should have made necessary enquiry in respect of title and possession of the properties and if not done, it was his

fault and he should not find fault with the Official Liquidator; that in the instant case, the Official Liquidator has not suppressed any fact; that since

at the time of publication and also notice of tender, it was specifically stated that "as is where is and whatever there is basis" and thus, there was no

deception or misrepresentation made. Placing reliance on the decision of United Bank of India Vs. Official Liquidator and Others, , the learned

senior Counsel would submit that the sale by the Official Liquidator did not mean that he held out a warranty or guarantee in respect of the

property sold and it was distinguishable from the sale effected by the individuals selling immovable properties.

13. Added further the learned senior Counsel that if the Official Liquidator has not willingly or deliberately made any false statement, the Court

cannot interfere; that in the instant case, what was done by the Official Liquidator was placing a report before the Court with all available records

of the company under liquidation and seeking an order of sale of the property; that it is also not in the case of the appellant that an attempt to

deceive was made by the Official Liquidator; that the Official Liquidator is not the person, who is making the sale of the property; that he was only

an instrument in the hands of the Court; that there was no relationship, much less, fiduciary relationship between the Official Liquidator and the

auction purchaser and that even if the statements made fall under the category of negligence, that would not be sufficient to set aside the sale.

14. Added further the learned senior Counsel that u/s 460(6) of the Companies Act, any such conduct of the Official Liquidator can be the subject

matter of the decision by the Court, if the party aggrieved approaches the Court and that when an auction sale is conducted by the Official

Liquidator though pursuant to the orders of the Court, the execution proceedings, as envisaged under Order 21 of Civil Procedure Code, have no

application. Placing reliance on a decision of The Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdulgafur Haji

Hussenbhai, , the learned senior Counsel would further add that in the instant case, the doctrine of caveat emptor (purchaser beware) is applicable

and Order 21 Rule 91 of C.P.C. has no application to the present facts of the case. The learned senior Counsel also pointed out that even if the

judgment debtor had no salable interest at all in the property sold, the same is not covered by the doctrine of Caveat Emptor as what is

contemplated in Order 21 Rule 91 C.P.C. is different; that even Order 21 Rule 90 C.P.C. cannot be applied to the present case since for

application of the said provision, not only some material irregularity should be there, but also it should have caused substantial injury; that the law

would require a specific plea and proof for the substantial injury; but, in the instant case, there was neither pleading nor proof therefore and that

under such circumstances, even Order 21 Rule 90 C.P.C. cannot be pressed into service by the appellant.

15. The learned senior Counsel would further submit that had the auction purchaser acted in a reasonable and prudent manner, these discrepancies

could have been discovered earlier and there was an opportunity for him to drop out from the sale even before making the balance of sale

consideration; that in the absence of pleadings that steps were taken by the appellant for verification of the title, inspection of site etc., it would be

quite clear that the appellant was only taking advantage of the fall in prices of the immovable properties and thus, it was an attempt to back out

from the offer made by him and the same cannot be permitted and if permitted, it will cause much prejudice to the creditors both secured and

unsecured; that it was made clear in clause 12 of the terms and conditions that the buyers were to satisfy themselves about the condition of the

property; that it cannot be stated that there was any mistake, much less, material mistake regarding the nature of the lands; that the parties have

fully understood the subject matter of the sale before it was effected; that the Official Liquidator has to look after 450 companies in the entire

State, which are in the control and supervision of this Court; that while disposing of the assets either movable or immovable, it would not be

practically possible for the Official Liquidator to scrutinize the correctness of the title, measurement of the properties, defects, if any, in the assets;

that it remains to be stated that the Official Liquidator has no personal knowledge to the property at all; that only after passing of the order of

winding up, he got the control of the property and that in many of the cases, the erstwhile Directors do not co-operate and they do not place all the

material records for perusal, inspection and for further proceedings.

16. Added further the learned senior Counsel that it is true, certain discrepancies were pointed out by the appellant; but they did not carry any

merit for setting aside the sale; that even the averments in the affidavit filed by the appellant would clearly indicate that they have taken possession

of the property; that no person shall purchase the property without making inspection of the same; that the appellant has complained about the

overhead tank, TV room, etc; that on inspection, the appellant should have noticed the same and in so far as the entry point is concerned, it was

originally a poramboke and the same was being used by the company in liquidation for its passage and the same state of affairs continues; that so

far as the land to an extent of 2.16 acres is concerned, according to the appellant, it was classified as "Cherry Natham"; that till the time of sale, in

all the revenue records, the said property was found as agricultural land and the ownership was with the company in liquidation and if there was

any classification later, the Official Liquidator cannot be found fault with or there was no mistake on his part when he issued the tender notice; that

it is not correct to state that the properties are not contiguous or in different places and the field map would clearly indicate that the entire extent of

41.12 acres situate in two villages as one piece of land; that in so far as the complaint made by the appellant that the documents in respect of the

entire landed property was not handed over is concerned, admittedly, 26 original documents were actually handed over; that in respect of the other

documents, the First Leasing Company of India Limited has given the certified copies of all the documents of title pertaining to the entire property;

that in so far as the original documents are concerned, excepting 26 documents which were actually handed over to the appellant, the remaining

cases were in the custody of Apple Credits, one of the creditors of the company in liquidation; that it is also pertinent to point out that the said

Apple credit company has filed an application before the Company Court showing the Official Liquidator as sole respondent for recovery of the

dues and hence, it remains to be stated that the company was under winding up proceedings and it is quite natural that all the documents of title

would not be with the company in liquidation and in the instant case, part of the documents were actually handed over and part of the documents

were in the custody of the Apple Credit Company, which has sought for recovery of money in the proceedings before the Company Court;

however, the certified copies of all the documents were handed over by the First Leasing Company of India Limited to the appellant, which fact

cannot be denied; that under such circumstances, the non-delivery of documents was nothing but a reason invented by the appellant to wriggle out

of the contract; that out of 41.12 acres of land, the documents were not available only in respect of 0.27 cents, which is extremely meagre and that

the sale made by the Official Liquidator was pursuant to the orders of the Court and the Official Liquidator is not in any fiduciary relationship with

the appellant.

17. Learned Counsel appearing for the 3rd respondent put forth his submissions in his sincere attempt of sustaining the order under challenge. He

has also relied on the following decisions:

Karamchand Appliances Pvt. Ltd. v. Bharat Carpets Ltd. (In Liquidation and Ors. 103 Comp Cas 552 (Delhi)

International Coach Builders Ltd. v. Karnataka State Financial Corporation (2003) 2 Com LJ 166 (SC)

Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others,

I.T.C. Limited Vs. George Joseph Fernandes and Another,

18. The Court has paid its anxious consideration on the submissions made by the learned senior Counsel on either side and made a scrutiny of all

the materials available.

19. An order dated 14.06.2001 was made by this Court in Company Petition No. 526 of 2000, whereby M/s. Escorts Finance Limited, Chennai,

was ordered to be wound up and the Official Liquidator attached to this Court has become the Official Liquidator of the Company. A direction

was also issued to take charge of all the properties and effects of the company. The Official Liquidator filed his report on 20th June, 2007, which

reads as follows:

3. In compliance of the above said order, the Official Liquidator took possession of Company's movable and immovable properties situated at

various places. Subsequently as directed by the Hon"ble Court, the Official Liquidator has valued the said properties through ITCOT.

20. Pursuant to the orders of this Court, the Official Liquidator requested ITCOT, Chennai, to value the properties in question, namely, 41.12

acres of land of the company in liquidation situated in Kilai and Ulundai villages. In paragraph 7 of the report of the Official Liquidator dated

20.06.2007, it was stated as follows:

7. It is submitted that the sale of another property a vacant land to an extent of 41.12 acres belonging to the company in liquidation, situated at in

various survey numbers in Killai and Ulundai Village, Sriperumpudur, Thiruvallur District was confirmed for an amount of Rs. 14.00,000,000/- in

favour of Shri S. Yusuf Siddique, the highest bidder, who subsequently failed to remit the balance sale consideration and this Hon"ble Court by an

order dated 26.04.2007 in C.A. No. 392/2007 forfeited the EMD of Rs. 2,00,000/- received from Shri S. Yusuf Siddique and directed the

Official Liquidator to obtain fresh valuation report from ITCOT for auctioning the said property. Accordingly, the Official Liquidator has got the

property valued afresh through ITCOT on 28.05.2007 and received the valuation report in a sealed envelope, which is in the custody of the

Official Liquidator and will be submitted before this Hon"ble Court, at the time of hearing of this application.

All the above reports of the Official Liquidator would indicate that he has taken actual delivery of possession of the lands in question and all the

movable and immovable assets of the company in liquidation except the property mentioned above and another property situate at Adyar, were

sold.

21. A perusal of the valuation report given by ITCOT for the land in question, as found in page 1 to 8 of the paper book, would indicate the

following:

Location Of The Property:

I. Village and Survey No. : 1. Kilay Village- 294

295

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297

330

2. Ulundai Village- 368

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375

II. Boundaries of the property:

North : Wet land

South : Village Road leading to Kilay Village

East : Mango Trees

West : Munivardhan Naidu land

III. Type of road available at

present : Village road leading

to Kilay Village

IV. Extent of land considered

for valuation : 41.12 acres

Out of the extent of 41.12 acres of land purchased by the company from the open market, 13.28 acres of land is coming under Ulundai Village

and 27.84 acres of land is coming under Kilay Village.

22. A perusal of the rough sketch attached to the report in page 6 of the paper book, would indicate that the entire land of 41.12 acres, which was

under valuation, was shown as one piece of land. It was also stated therein that the individual survey numbers and the extent of land in each village

were shown in the Annexure. As the title deeds of the property was not provided to ITCOT, it relied upon the documents made available with the

previous owners of the land to ascertain the extent. It was further stated that since the Official Liquidator Office has not provided ITCOT with any

land documents, the extent of land, as ascertained from the provisos owner, has been taken as the base for this report. The valuation report also

contained 49 items of land totaling to an extent of 13.28 acres in different survey numbers in Ulandai village. Equally, item Nos. 50 to 98 totaling to

an extent of 27.84 acres were shown in different survey numbers in Kilai village.

23. From the very reading of the report of the ITCOT, it will be quite clear that the title deeds pertaining to the property were never handed over

for valuation and the ITCOT had relied upon the documents made available with the previous owners of the land to ascertain the extent and the

same was used as the basis for the report. According to the report, there was a village road leading to Kilai Village. But, it could be seen from the

available materials, though there is a road, the starting point of the road is actually blocked by the property in possession of the Government

department. The rough sketch would indicate as if the entire land of 41.12 acres was contiguous and also in one piece. But the field map in the

hands of the Court would clearly indicate that the properties are in two different villages.

24. Apart from that, with regard to the survey numbers, as found in paga 8, S. No. 294/1G measuring an extent of 1.18 acres; item No. 12 to 21

relates to survey No. 330/6A1, 330/6A2, 330/6A3, 330/6B, 330/6B2, 330/6B3, 330/6C1, 330/6C2, 330/6D1 and 330/6E1. All these pieces of

land, as could be seen from the map, are actually not situate in the Ulandai village. Thus, the survey numbers and the extent of lands given by

ITCOT attached to the report, were wrong and misleading. By placing the sketch along with said valuation report, the Official Liquidator, sought

the permission of the Court for sale of the property. Pursuant to the orders of the Court, a sale notice was made in "THE Hindu" and "DAILY

THANTHI" on 16.12.2007, where it was stated that the land mentioned in the Schedule belonging to M/s.Fidelity Industries Limited (in

liquidation) on ""As is where is and whatever there is basis"". In the description schedule, it was shown as ""41.12 acres of free hold vacant land

which cannot but mean that the ownership was with the company in liquidation. Tender forms were issued, as found in page Nos. 12 to 15 of the

paper book. A perusal of the terms and conditions found in the tender form shows that the property has been described as vacant land to the

extent of 41.12 acres, annexing the very same survey numbers and extent of lands, which were originally attached to the valuation report, that is, all

wrong and misleading statements regarding the survey numbers along with the extent of properties, were actually found in the description of

property annexed to the terms and conditions.

25. It cannot be denied that the appellant/auction purchaser, when he came forward to purchase the property in auction, should have relied on the

particulars regarding the extent, survey numbers, etc., of the properties in question. Needless to say, the particulars regarding the extent and

measurement were material particulars. The Court ordered sale. At the time of confirmation of sale, the first E.M.D. deposit was made on

06.02.2008 while the balance was paid on 12.02.2008. Out of the total sale consideration of Rs. 15.20 crores, the 1st instalment was paid on

20th March 2008 and the second instalment was due on 05.05.2008 but the same was made on 30.04.2008. The learned single Judge, by order

dated 06.02.2008, confirmed the sale in favour of the appellant and also directed the Official Liquidator to receive Rs. 1.50 crores deposited by

the appellant by way of demand draft towards the part of earnest money deposit. The matter was called on 13.02.2008 for compliance. On

13.02.2008, it was represented by the Official Liquidator that as directed by the Court, the appellant, being the successful bidder, has paid the

balance earnest money deposit of Rs. 2 lakhs only and the Court made the following order:

2. Therefore, call this matter on 24.03.2008 for reporting compliance of the payment of first 50% of the balance sale consideration. In the

meantime, the Official Liquidator is directed to get copy of the documents which are said to be in the possession of Industrial Development Bank

of India.

3. Learned Special Government Pleader (Civil Side) is also directed to get the Field Map of the two properties, namely, Ulandhai Village in

Tiruvallur Taluk and Killai Village in Sriperumbudur Taluk and hand it over to the Official Liquidator. Since the successful purchaser desirous of

scrutinizing the Field Map, the Special Government Pleader is directed to get the same at the earliest, not later than 06.03.2008 and hand it over to

the Official Liquidator. The Official Liquidator on getting the document from Industrial Development Bank of India and Field Map from the Special

Government Pleader, may hand over the same to the successful bidder by the Official Liquidator.

4. Call on 24.03.2008.

26. Since the said direction of the Court was not complied with by the Official Liquidator, there arose necessity for the appellant to file a memo on

24.03.2008, where it was reported that till that date the documents and the field map of the property were not handed over to the purchaser and

the bankers of the purchaser were requesting for the same at the earliest for their local scrutiny and sanction of the loan. It was also further averred

in the memo that as per the physical inspection, it was noticed that in one corner of the property, a High Tension Electric Tower was located/High

Tension Wire was passing and hence, the appellant sought the directions against the Official Liquidator to collect the documents from IDBI

pertaining to the property sold and hand over the same to the purchaser, to direct the Tahsildar, Sriperumbudur and Tiruvellore to give a certified

copy of the field sketch of the survey numbers of the property, to permit the purchaser to survey the land and submit a detailed report.

27. On this memo, an order came to be passed by the Court on 30.04.2008, which reads as follows:

...Thus, he made the final payment totalling in all to a sum of Rs. 15,20,00,000/-. In the circumstances, the Official Liquidator is directed to hand

over possession of the property of an extent of 41.12 acres situated at Kiloy (Sriperumbudur Taluk) and Ulundai (Tiruvallur Taluk).

At this juncture, it is pertinent to point out that even this date, all documents pertaining to the property have not been handed over by the Official

Liquidator to the appellant.

28. Much reliance was placed to a letter addressed by the appellant on 20th June 2008 to the Official Liquidator stating to the effect that the

appellant has taken possession of the entire property and all documents in the hands of the Official Liquidator were handed over. The said letter

dated 20.06.2008 reads as follows:

In compliance to the order dated 30.04.2008 you have handed over the possession of the property and 26 original documents pertaining to the

subject property on 12.06.2008. In respect of the possession of the property, it was noticed that the land is in irregular shape and no boundary

stones are available anywhere in the site and the lands are located at two villages. Though there was difficulty in identifying the correct location and

the extent of lands without the boundaries, we have taken possession of the property on good faith.

29. This letter would clearly indicate that though it was stated that the possession of the property was taken, the properties could not be identified

and the possession was also taken on good faith. It was also stated in the very same letter that only 26 documents were given and that would be to

an extent of approximately 20 acres and the documents pertaining to the balance of 21 acres and odd were not handed over to the appellant and

the delay in handing over of the documents and the correct extent of the land fixing the boundaries was causing huge loss to the company day by

day and even in that letter, the appellant has requested the Official Liquidator to hand over the correct extent of land with boundaries by engaging

the services of the concerned revenue officials to locate the lands, fix the boundary and to survey the lands and also to hand over the original

documents in respect of remaining 21 acres of land and not to disburse the sale consideration to the secured creditors, pending issues. Under such

circumstances, the said applications, namely, Company Applications 1953 to 1956 of 2008 were taken, seeking the above mentioned reliefs, on

30th June 2008.

30. Pending applications, on 16th July 2008, the learned single Judge has made the following order:

2. In the circumstances, the Official Liquidator is hereby directed to take the assistance of the Tahsildar of Tiruvellore Taluk and Sriperumbundur

Taluk to survey the lands and file a report on 28.07.2008. The successful purchaser has agreed to bear the charges for surveying the land....

31. The appellant has also filed additional affidavits complaining of non-delivery of the records and the vast discrepancies found in the survey

numbers and also the land. When a report was called for from the Official Liquidator, he filed a report in October, 2008, which indicated the

following facts;

When the land was surveyed with the help of surveyor, the discrepancies were noticed.

(a) In so far as the piece of land at Ulundai village is concerned,

(i) it is a fact that a big pylon carrying high tension wires (40,000 volt.) was erected in S. No. 375/11 and high tension wire going through S. No.

375/10 and 375/9 and the total land involved was 0.59 acres. The same came in one corner of the land as per the Survey and the Field Map;

(ii) As per the revenue records, the land of 0.09 acres in S. No. 353/9 was not demarcated when the State Government allotted some lands to

local individuals, a water tank and TV room (community) was also constructed. This vacant land was coming at one end of the land virtually

projecting out of the land of the company, as could be seen from the field map produced;

(iii) an extent of 0.13.5 acres in S. No. 369/2 stood in the name of individuals which was in the middle of the impugned land. The purchaser can

verify the revenue records thoroughly and if it was in the name of an individual he might negotiate with the concerned individuals for purchase;

(iv) The purchaser also brought to the notice of the Official Liquidator the discrepancies found in the revenue records vis-a-vis documents

furnished to them. As both the lands were in the name of the Company, the purchaser might take up the matter with the revenue authorities to

indicate the correct survey numbers, extent of land etc., in their records. This Court may also direct the revenue authorities to do the needful.

(v) In so far as the documents in respect of 20 acres, it was submitted that the Ex-Directors have not handed over all the documents to the Official

Liquidator nor they have informed the Official Liquidator whom the documents might be available. The Ex-Directors have not co-operated with the

Official Liquidator in that regard. In so far as the execution of 0.68 acres in S. No. 375/9, 375/10, 375/11 and 353/9, the Court might determine

the issue and give directions accordingly.

(b) In so far as the land at Kilai village is concerned,

(i) the land to an extent of 2.33 acres of S. No. 330/7 as per the documents and 2.16 acres as per the revenue records is classified as "Cherry

Natham" and the purchaser has requested re-classification of the said land which was possible only by the State Government. Hence, the Court

might consider issuing a direction to the Government of Tamil Nadu for re-classification of the land in accordance with law. Since the land is situate

in the middle of the land purchased, the purchaser will be put to hardship, if not reclassified.

(ii) It is also the fact that the entry/entrance to the site part of S. No. 330 is designated as Government land and does not belong to the company in

liquidation. This is the only entrance available to the impugned lands. Hence, the Court might direct the Government of Tamil Nadu to consider

giving the land on lease or sell the land to the purchaser as the case might be, as desired by the purchaser.

32. The Official Official Liquidator at the final part of the report has stated as follows:

That the Official Liquidator submits there are so many discrepancies pointed out by the purchaser based on the documents furnished by the Official

Liquidator and Revenue records etc., it is not clear why ITCOT who has valued the lands has not pointed out even one discrepancy especially

regarding entrance to the land and the land designated as "Cherry natham".

In the light of the foregoing circumstances and as the sale is to the value of Rs. 15.20 crores, the purchaser is raising many serious issues, it is

submitted that the First Leasing Company of India Limited the secured creditor who is having exclusive charge on the land may be served notice of

this application as well as the Official Liquidator's report seeking detailed response as to how they lent money on the strength of this impugned

land. So far their role is confirmed to demand the money from the Official Liquidator.

33. The very reading of the above report filed by the Official Liquidator, who moved the initial report stating that he has taken possession of the

property and pursuant to which it was sold to the appellant, makes it evident that there was a high tension wire going through the survey fields in

question, covering 0.59 acres in Ulundai village and 0.09 acres was demarcated for a water tank and TV room, which was also constructed,

0.13.5 acres of land was in the name of the individuals; that in so far as the return of documents in respect of 20 acres, the Official Liquidator could

not secure the documents and hence, he could not hand over possession to the purchaser and in so far as the land at Kilai village was concerned,

2.16 acres, a part of the land in question, was classified as "Cherry Natham" and for the purposes of re-classification, the Court has to make

necessary directions to the Government of Tamil Nadu and if not re-classified, the purchaser would be put to hardship since it is in the middle of

the land sold; that in so far as entry/entrance to the site, it was designated as a Government land and did not belong to the company and hence, the

Court could issue a direction to the Government of Tamil Nadu to give that piece of land on lease or sell the land to the appellant purchaser. The

crowning circumstance noticed by the Court is that the Official Liquidator has stated that while such discrepancies were noticed, it was not clear

why ITCOT gave such a valuation report and how First Leasing Company of India Limited, the secured creditor, has availed loans on the strength

of the impugned land.

34. It is contended by the respondents before the learned single Judge and equally here also that the sale was not in furtherance of the sale notice

and even assuming that the sale took place as such, there was a long interval available for the appellant purchaser to verify all information and

particulars regarding the property in question, since it is a case where the doctrine of Caveat Emptor (purchaser beware) would apply and not the

doctrine of Uberrimae fidel (in good faith). As could be seen from the available materials, originally on 04.01.2008 there was only one bidder and

in view of the deficiency of offers, the same was adjourned to 01.02.2008, that was, on the representation on behalf of the prospective buyers on

24th January, 2008 and hence, it would be quite clear that the offer made by the appellant was in furtherance of the sale notice.

35. As rightly contended by the learned senior Counsel for the respondents that it is not a contract in Uberrimae fidel since there was no fiduciary

relationship between the Official Liquidator on the one side and the appellant purchaser on the other side. It is also true that the purchaser cannot

rest his case under Order 21 Rule 91 of C.P.C. to set aside the sale. In the judgment reported in The Ahmedabad Municipal Corporation of the

City of Ahmedabad Vs. Haji Abdulgafur Haji Hussenhbai, , the Supreme Court has held as follows:

3. To begin with it was contended that there is no warranty of title in an auction sale. This general contention seems to us to be well-founded

because it is axiomatic that the purchaser at auction sale takes the property subject to all the defects of title and the doctrine caveat emptor (let the

purchaser beware) applies to such purchaser. The case of the judgment-debtor having no saleable interest at all in the property sold such as is

contemplated by Order 21 Rule 91 CPC is, however, different and is not covered by this doctrine.

36. Placing reliance on a judgment rendered by the Apex Court in United Bank of India Vs. Official Liquidator and Others, and also making

emphasis on "as is where is and whatever there is basis", the learned senior Counsel for the 1st respondent would submit that the sale by the

Official Liquidator did not mean that he held out any warranty or guarantee in respect thereof and hence, it was distinguishable from the sale

effected by the individuals selling immovable properties. It would be more apt and appropriate to reproduce the following part of the judgment of

the Apex Court;

13. In our view, the complete answer to Triputi's allegation in regard to the failure of the Official Liquidator to hand over to it possession of certain

properties which were sold to it, which, according to it, the company in liquidation did not even own, is contained in clause 2 of the Terms and

Conditions of Sale upon the basis of which the property and assets of the company in liquidation were sold by the Official Liquidator to Triputi

under the orders of this Court. Clause 2 reads thus:

2. The sale will be as per inventory list on "as is where is basis" and subject to the confirmation of the Hon'ble Supreme Court of India. The

Official Liquidator shall not provide any guarantee and/or warranty in respect of the immovable properties and as to the quality, quantity or

specification of the movable assets. The intending purchaser must satisfy themselves in all respect as regards the movable and immovable assets, as

to their title, encumbrances, area, boundary, description, quality, quantity, and volume etc. and the purchaser will be deemed to offer with full

knowledge as to the description, area etc. of the properties and defects thereof, if any. The purchaser shall not be entitled to claim any

compensation or deduction in price on any account whatsoever and shall be deemed to have purchased the property subject to all encumbrances,

liens and claims including those under the existing legislation affecting labour, staff etc. The Official Liquidator shall not entertain any complaint in

this regard after the sale is over. Any mistake in the notice inviting tender shall not vitiate the sale.

(emphasis supplied)

14. When the Official Liquidator sells the property and assets of a company in liquidation under the orders of the Court he cannot and does not

hold out any guarantee or warranty in respect thereof. This is because he must proceed upon the basis of what the records of the company in

liquidation show. It is for the intending purchaser to satisfy himself in all respects as to the title, encumbrances and so forth of the immovable

property that he proposes to purchase. He cannot after having purchased the property on such terms then claim diminution in the price on the

ground of defect in title or description of the property. The case of the Official Liquidator selling the property of a company in liquidation under the

orders of the Court is altogether different from the case of an individual selling immovable property belonging to himself. There is, therefore, no

merit in the application made on behalf of Triputi that there should be a diminution in price or that it should not be made liable to pay interest on the

sum of Rs 1 crore 98 lakhs.

37. A reading of the above clause in the said judgment would indicate that based on the terms and conditions of sale, the property and assets of

the company in liquidation were sold and that the sale would be as per inventory list on "as is where is basis" and subject to the confirmation of the

Hon"ble Supreme Court of India. The clause also made it clear that the Official Liquidator should not provide any guarantee or warranty in respect

of the immovable properties and as to the quality, quantity or specification of the movable assets and it also made clear in the terms that the

intending purchaser must satisfy themselves in all respect as regards the movable and immovable assets, as to their title, encumbrances, area,

boundary, description, quality, quantity and volume etc., and the purchaser would be deemed to offer with full knowledge as to the description,

area, etc. of the properties and defects thereof, if any. But in the instant case, the collateral terms and conditions issued by the Official Liquidator in

the present case read as follows:

12. All the prospective buyers desirous of submitting tender for purchase of the assets are to satisfy themselves about the condition of the assets.

38. In the judgment rendered by the Supreme Court in United Bank of India Vs. Official Liquidator and Others, wherein the terms and conditions

stipulated, the Apex Court has made it clear that the intending purchaser should satisfy in respect of the title, description encumbrances, area,

boundary, description, quality, quantity, etc. and the purchaser would be deemed to offer with full knowledge as to the same. But, in the instant

case, in the terms and conditions as shown above it was stated that the purchasers were to satisfy themselves about the conditions of the assets. It

is true that the Official Liquidator did not hold out a warranty or guarantee when a sale of an immovable property was made by him. It was urged

by the respondents" side that it is a fit case where the doctrine of caveat emptor (purchaser beware) would apply to the present facts of the case.

The Court is of the considered opinion that this doctrine, which is ordinarily applicable, cannot be extended to a case, where the vendor did not

have title to the property. As could be seen above, in respect of a piece of land in the middle of the land to an extent of 2.16 acres, it is described

as "Cherry Natham", and the title of the property, during the relevant time, was not with the company in liquidation. Apart from that, the piece of

land situate in the front point of the road was actually Government poramboke in which also the company under liquidation did not have the title

over the property. Further, in respect of some pieces of land, the title of the property vested with individual owners, who had nothing to do with

the company under liquidation. Under such circumstances, the Court is of the considered opinion that the doctrine of caveat emptor cannot be

extended to the present case. The Official Liquidator is required to disclose all material facts within his knowledge and should not suppress any of

the information regarding the nature, description, extent of the property, the non-availability of the title deeds, interest of the company in liquidation

in the properties and also the encumbrances if any. As indicated above, the descriptions of the properties, as found in the sale notice, pursuant to

which the offer was made by the purchaser and the sale by the Official Liquidator, were erroneous.

39. The Official Liquidator has taken the services of ITCOT for valuation of the property and on the strength of its report, the upset price was

fixed. The report of ITCOT would clearly indicate that the sale deeds were not produced by the Official Liquidator and on inspection and

verification of the property, the report was prepared on the basis of the enquiry made with the previous owners. Even the rough sketch produced

shows that the property did not have the frontage. It was the contentions put forth by the respondents' side that in the sale notice it was made clear

that the property was sold "as is where is and whatever there is basis" and, hence, whatever be the discrepancies found, the appellant purchaser

should not complain but take the property as it is. No doubt, the sale notice contained the clause "as is where is and whatever there is basis". But,

the Official Liquidator should not be permitted to take shelter under the clause in a case where the company under liquidation had no title to sell in

respect of the part of the property and there were lot of mis-descriptions in respect of the property and the survey numbers were found to be

different. Even the Official Liquidator has candidly admitted that an extent of 2.33 acres of land in S. No. 330/7 was classified as Cherry Natham

and the Court has to issue a direction to the Government for re-classification of the land in accordance with law. It is pertinent to point out that he

has stated in the report that the said land is in the middle of the land purchased and the purchaser would not be put to hardship, if not reclassified.

He has also stated that the entry/entrance to the site part of S. No. 330 was designated as Government land and it did not belong to the company

in liquidation and that was the only entrance available to the impugned land and hence, the Court has to give a direction to the Government of Tamil

Nadu to consider giving the land on lease or sell the land to the purchaser. The court is afraid to allow the Official Liquidator to get shelter under

the clause that the property was sold "as is where is and whatever there is basis" or under the doctrine of Caveat Emptor.

40. In so far as the possession of the property is concerned, the Official Liquidator approached this Court for sale of the property with a report

that he has taken possession of the immovable property of the company along with the materials available. Equally a letter dated 20.06.2008 was

addressed by the appellant/purchaser to the Official Liquidator stating that pursuant to the order dated 30.04.2008, the possession of the property

was handed over along with 26 original documents; but it was difficult to identify the correct location and the extent of the lands without the

boundaries; but they have taken possession of the property on good faith. All the materials placed before the Court would clearly indicate that

neither the Official Liquidator, as per the report, has taken possession nor the appellant/purchaser has taken actual possession of the property

though it was recorded so and hence, it will be quite clear that the Official Liquidator was under the mistaken belief that the possession of the entire

property was in the hands of the company in liquidation and he sought permission of the Court for sale making such a report and equally on the

belief that that possession of the entire land was with the company in liquidation, the appellant/purchaser also made his offer. Thus, both of them

were under the misapprehension and also made a mistake as to the possession of the property and thus, it was a common mistake. Thus, both

parties to the sale were under a mistake in respect of possession of the property which was one of the essential ingredients of the sale. It is not a

case where the parties were disputing as to the value of the property. The mistake noticed was a common one to both the parties entertained as to

the possession of the entire property and a part of the property, as pointed out above, was actually in the hands of the Government and also with

third parties. It is true that a sale has been made in respect of 41.12 acres of land in respect of the notified survey number and extent thereon. But it

is certain that the Official Liquidator cannot execute any sale certificate in respect of the survey numbers and extents which were not originally sold.

41. An identical situation arose before the High Court of Bombay in Jaikisandas Balchand Pamnani and Anr. v. Municipal Corporation of Greater

Bomay and Ors. reported in AIR 1991 Bom 345, in which case the auction sale made by the Official Liquidator was sought to be set aside under

Order 21 Rule 90 C.P.C., on the basis of the mis-description of the property in the sale proclamation and the sale was set aside on that ground.

Order 21, Rule 90 of C.P.C. reads as follows:

Order XXI: Execution of Decrees and others:

90. Application to set aside sale on ground of irregularity or fraud: (1) Where any immovable property has been sold in execution of a decree, the

decree holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the

sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied

that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the

date on which the proclamation of sale was drawn up.

42. For the application of the above provision, the party, who is seeking to set aside the sale, must specifically plead and prove that there was not

only the material irregularity but he has also suffered substantial injury. It was contended by the appellant's side that the provision under Order 21

Rule 90 of C.P.C. has got application to the present facts of the case, since there was not only material irregularity but also there was substantial

injury to the appellant. But the respondents contended contrary. In the instant case, it is noticed that in the description of the immovable property,

there was a positive assertion by way of Annexure to the tender terms and conditions and, as narrated above, they were thoroughly erroneous,

misguiding and misleading. The act of the Official Liquidator in mis-describing the property and including the survey numbers of land, which

admittedly did not belong to the company under liquidation, can neither be ratified nor sanctified on the ground that he was only an instrument in the

hands of the Court in making the auction sale and also he could act only on the information available to him at the time of issuing tender for sale and

making publication therefor.

43. Much was commented by the respondents that there was sufficient time in the hands of the appellant/purchaser, during which, he should have

investigated the title and all relevant particulars about the property, which he offered to purchase. It is pertinent to point out that subsequent to the

acceptance of the bid and payment of initial earnest money deposit, the appellant has filed a memo seeking for verification of the title deeds, but it

was the Official Liquidator, who opposed the same that the purchaser could be permitted only after the remittance of the entire sale consideration.

Contrarily, after payment of the entire sale consideration by the appellant, the Official Liquidator has taken a different stand that only 26 documents

were available in respect of the property and the sale was made only "as is where is and whatever there is basis" and hence, the purchaser could

not make any complaint thereof. The contention put forth by the respondents that in view of the voluminous work, the Official Liquidator could not

investigate into the title of the properties, cannot be accepted even for a moment for the simple reason, in the instant case, he has engaged the

services of ITCOT Consultancy and Services Limited, with whom the valuation of the property was entrusted and the agency has also been paid

for that purpose. While there is a statutory obligation on the part of the Official Liquidator to verify the title of the properties of the company in

liquidation, which is brought for sale, the Official Liquidator has miserably failed in his duty. He has neither verified the title of the properties, which

are brought for sale, nor possession of the property even after the valuation report was filed by ITCOT. From the above, it is quite clear that the

Official Liquidator has not even verified the report of the ITCOT, but placed before the Court along with his report and has obtained an order for

sale of the property. The report filed by the Official Liquidator, as shown above, would stand a good piece of evidence as to the mis-description of

survey number and ownership of the property. Had the Official Liquidator made a disclosure of all the material aspects after the payment of the

earnest money deposit, the Court would not have ordered the sale and if there was disclosure, the appellant could not have ventured into make an

offer. Even after the payment of earnest money deposit, he has filed a memo seeking reliefs and there were directions issued by the Court to the

Official Liquidator to do, but the Official Liquidator, instead of following the orders of the Court, filed a detailed report accepting the

discrepancies, along with making an admission that the land to an extent of two acres and odd was classified as "Chery Natham", which is in the

middle of the property, and the same has to be re-classified and that in so far as the entry point was concerned, the property belongs to the

Government. The contention put forth by the appellant is that in respect of 2.16 acres classified as Cherry Natham, though it could be re-classified,

there was a proposal for exchange made by the Government. But, at this juncture, it is pertinent to point out that the re-classification of Cherry

Nathan was possible if the private owner was willing to provide for extension of village site in exchange for a land at the disposal of the

Government. In so far as the entry point of the road is concerned, the Official Liquidator in his report has stated that the Court, if felt necessary,

may issue directions to the Government to consider the same either for sale or lease out the same to the appellant. The appellant has specifically

averred in para 13 of the affidavit, which reads as follows:

13. It is submitted that unless the Hon"ble Court give suitable directions we will be put to great loss and hardships. Further if the Official Liquidator

is not able to handover all the documents and locate the lands by surveying within a period of two weeks, we seek this Hon"ble Court to nullify the

sale and refund of sale consideration with interest....

From the said averments made in the affidavit, it will be quite clear that the appellant has pleaded material irregularity and also the substantial injury

caused to him. The said averments would stand a good proof for the same. Under such circumstances, the respondents cannot be permitted to say

that necessary requisites for setting aside the sale were not pleaded and proved.

44. The contention put forth by the respondents" side that the value of the property has fallen down and under such circumstances, the applications

were a device by the appellant in order to wriggle out of the contract, cannot be accepted for the two reasons,

firstly, even before making payment of the balance of earnest money deposit, the request for handing over possession and for making survey and

also for delivery of documents was made by the appellant; but at that juncture, it was resisted by the Official Liquidator that it could be done only

after the payment of the entire sale consideration; and

secondly, the appellant has taken four applications, namely, (a) to trace the original documents pertaining to the property and hand over the same,

(b) to engage the services of revenue officials to locate the lands and fix the boundaries; (c) not to disburse the sale proceeds to the creditors till

handing over of the balance of documents; and (d) in the event of the non-compliance of the above, to issue a direction to the Official Liquidator to

return the sale consideration along with interest.

This would be the indicative of the fact that the intention of the appellant was not to come out of the contract but to stick to the sale, if he was given

possession and documents pertaining to the property. On the contrary, the Official Liquidator vehemently opposed the first three reliefs. Under

such circumstances, the appellant had no option but to press the fourth relief, namely, setting aside the sale and refund of the consideration amount

and hence, the said contention put forth, cannot be accepted.

45. In view of the material irregularities noticed, which would go to the root of the sale effected by the Official Liquidator, and the appellant, who

believed the sale tender notice and the report of the valuer, which were with mis-descriptions, suppression of necessary material particulars and

suggestive of things, which were not available, made the offer to purchase and despite the memos and orders of court neither the title deeds

pertaining to the property were given nor he was put in actual possession and thus, he has incurred the substantial injury. Under such

circumstances, the Court is of the considered opinion that it has to exercise its inherent powers conferred under Rule 9 of the Companies (Court)

Rules, 1959, which reads as follows:

9. Inherent Powers of Court:

Nothing in these 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 or to prevent abuse of the process of the Court.

46. Hence, for the reasons stated above, the auction sale made by the Official Liquidator on 06.02.2008 is set aside and subsequently confirmed

by the Court is also set aside and the Official Liquidator is directed to return the sale consideration to the appellant. The Court is of the considered

opinion that it is not a fit case, the Court could order interest on the sale consideration till the time of passing of the order, since the company is

already under liquidation.

In the result, O.S.A. No. 88 of 2009 is allowed, setting aside the sale with direction to the Official Liquidator to return the entire sale consideration

along with accrued interest in the bank deposit, to the appellant purchaser, within a period of four weeks herefrom, in default, the sale

consideration shall carry interest at the rate of 12% therefrom.

Since the relief is granted to the appellant in O.S.A. No. 88 of 2009, all other appeals do not arise for consideration and are disposed of.

Consequently, connected M.P.is closed. The parties shall bear their costs. The above order will not impede the Official Liquidator to approach the

learned single Judge for fresh auction sale, taking into consideration the aforesaid observations and after following all procedural formalities, as

required in law.