

(2013) 04 DEL CK 0396

Delhi High Court

Case No: Writ Petition (C) 1399 of 2010, C.M. Application 4324 of 2010, 4325 of 2010, 6975 of 2012, 11128 of 2012, 11229 of 2012, 2053 of 2013 and 3279 of 2013 and Rev. Petition 160 of 2013

National Investor
Forum Regd.

APPELLANT

Vs

Golden Forests India
Ltd.

RESPONDENT

Date of Decision: April 22, 2013

Citation: (2013) 04 DEL CK 0396

Hon'ble Judges: S. Ravindra Bhat, J; Najmi Waziri, J

Bench: Division Bench

Advocate: Ajay Majithia and Sh. S. Bhowmick in Rev. Pet. 83/2013, Sh. Rajeev Saxena and Ms. Toshika K., in C.M. appl. 6975/2012, Sh. Rajesh Banati in C.M. appl. 4324/2010 and 4325/2010 and Sh. Akshat Goel in C.M. appl. 11128/2012, for the Appellant; Harpavan Kumar Arora and Sh. Saurabh S. Sinha, Advocates for the Committee GFIL, Sh. Satish Kumar and Sh. Ashok Arien, Advocates for DC, SSP (Indore) and Sh. Rajkumar Haldar, Tehsildar, Kshipra in C.M. No. 2053/2013, Sh. Shailendra Bhardwaj and Ms. Aroma S. Bhardwaj, Advocates for Golden Forests India Ltd. (5) and Sh. Akshat Goel, Resp. No. 1 in C.M. Appl. 6975/2012, for the Respondent

Judgement

S. Ravindra Bhat, J.

Pursuant to the order, by this application, the Committee seeks directions to the District Collector (Indore) to immediately hand-over possession of the lands which were the subject matter of an auction - the results were confirmed by previous orders of the Court to the concerned buyer - M/s. Avensis Exports Pvt. Ltd. The applicant had complained that the local authorities, especially the Tehsildar, had, despite orders of the Court, entertained the objections as to the transaction and sought to exercise jurisdiction which he did not possess. After considering the submissions of the parties and previous orders, this Court had issued notice, proposing to start contempt proceedings against the Tehsildar, the District Collector and Senior Superintendent of Police (SSP), of Indore. By

its previous orders dated 26.02.2013 and 15.03.2013, the Court had also directed the local revenue authorities to ensure that possession was offered to the successful bidder - M/s. Avensis Exports Pvt. Ltd. Today, the concerned Tehsildar - Sh. Rajkumar Haldar is present. He tendered unqualified apology for intervening in the matter and further stated that the possession of the suit lands had been handed-over to M/s. Avensis Exports Pvt. Ltd.. It is also stated that mutation of the transaction/sale of the suit lands has been duly entered in favour of the said buyer in the concerned revenue records. Sh. Ravinder Kumar, Director of M/s. Avensis Exports Pvt. Ltd. is present in Court. He confirmed the statement made by the Tehsildar about the handing-over of the possession and the mutation done by the revenue authorities in favour of the company.

2. Having regard to the above the Court hereby takes on the record the apology tendered by Sh. Rajkumar Haldar, Tehsildar and the statement made by him. The contempt notice issued on 15.03.2013 is accordingly discharged.

3. The claim in the application stands satisfied in view of the statements recorded today. C.M. Appl. 2053/2013 is accordingly disposed of. The contempt notices shall also stand discharged as far as the District Collector (Indore) and Senior Superintendent of Police, Indore are concerned. Rev. Pet. 160/2013

4. The applicant seeks review of the order of this Court dated 28.09.2011. By that order, the Court had dismissed the present review petitioner's application for recall of its previous order dated 10.02.2011. The effect of the 10.02.2011 order was to confirm the action of the Committee in regard to the sale of the properties, i.e., 47.451 Hectares of land in Village Gari Piplaya, Tehsil Saver, District Indore (Madhya Pradesh) for Rs. 45.09 crores to M/s. Avensis Exports Pvt. Ltd..

5. It is urged on behalf of the review petitioner that the previous order - review of which is sought, i.e. 28.09.2011 has not addressed itself to the basic question with regard to the legality of the company's Resolution dated 05.12.2000 which was to be done on a case-by-case manner, having regard to the order of the Supreme Court dated 05.09.2006. It is next urged that the Committee could not have taken upon itself the task of conducting the auction in respect of the properties of which it had not taken possession.

6. The Court has considered the submissions. The averments in the present review petition are substantially similar to those made in C.M. Appl. 9078/2011 - a copy of which was made over to the Court today. That application in fact sought the review/recall of the previous order of the court dated 10.02.2011 which had the effect of confirming the respondent/Committee's action in proposing to sell the suit properties to M/s. Avensis Exports Pvt. Ltd. Having taken its choice earlier, the petitioner cannot be allowed to approach the Court for same or identical relief's, under the cloak of a review petition. That apart, this Court notes that the legality of the resolution of 05.12.2000 which is relied upon is no longer debatable in view of the order dated 10.02.2011 by which the sale of

the property in question was confirmed. The sale could be held illegal only if the resolution relied upon by the petitioner were not allowed to stand.

7. In view of the above discussion, there is no merit in the petition. It is accordingly dismissed.

C.M. Appl. 6975/2012

8. The Committee - appointed by the Supreme Court seeks confirmation of its order/determination dated 22.11.2010 in respect of 62 bighas of land, being Khasra Nos. 396 Min (0-10), 397 (4-0), 398 (4-00), 404 Min (2-0), 407 (4-0), 408 Min (2-0), 412 (3-10), 415 (4-0), 502 (4-0), 503 (4-0), 505 (4-0), 506 Min (3-10), 1851/508 (2-0), 1950/508 (1-18), 1853/509 (1-18), 515 (4-0), 525 (4-0) and 526 (4-0) at Village Malikpur (Lalru), Tehsil Dera Bassi, District S.A.S. Nagar (Mohali), Punjab.

9. The Committee, while considering the sale deeds made in favour of A.P. Paper Mills Limited - for 95 Bighas, of which 62 bighas were sold by the said vendor (A.P. Paper Mills Limited) to Guru Nanak Dev Educational and Charitable Society noticed the order of the Supreme Court dated 05.09.2006. The relevant extract of that order reads as follows:

39. In so far as the period prior to the appointment of provisional liquidator in the winding up petition in the Punjab and Haryana High Court and Delhi High Court is concerned, the Bombay High Court in its order dated 23rd November 1998 had restrained the Company, its subsidiary as well as directors not to dispose of the properties of the respondent Company or its subsidiaries or its directors till further orders. It would be to the Committee to make appropriate recommendations to this Court regarding the status of sales made after the restraint order passed by the Bombay High Court on 23rd November, 1998. Any application putting a claim for settlement of properties after the restraint order passed by the Bombay High Court should be made to the Committee which shall be at liberty to make appropriate recommendations to this Court for its consideration.

40. In so far as the settlement/sales of immovable properties for the period between the appointment of provisional liquidator passed by the High Court of Punjab and Haryana and the restraint order dated 17th August, 2004 passed by this Court are concerned, any sales/settlement made contrary to the orders passed after the appointment of Provisional Liquidator by the High Court of Punjab and Haryana on 20th January, 2003 and the restraint order passed on 17th August, 2004 by this Court shall be ignored and the Committee would be at liberty to get hold of those properties by taking vacant possession thereof with the help of civil and police authorities and deal with them in accordance with the directions already given.

10. The Committee considered the submissions of M/s. Guru Nanak Dev Educational and Charitable Society which had relied upon a resolution of M/s. Golden Forests (India) Ltd. conveying the suit property firstly to A.P. Paper Mills Limited on various dates through sale deed saying that it was a bonafide purchaser from A.P. Paper Mills Ltd. The

Committee then went on to hold that in view of the order of the Bombay High Court dated 23.11.1998, which was considered - in terms of the directions of the Supreme Court citing 05.09.2006 to be the cut-off date for determining the validity of transactions of sale/purchase of various kinds of properties that belongs to M/s. Golden Forest (India) Ltd., the transactions in question clearly could not be upheld. The Committee, therefore, rejected the submissions of both the society and its alleged predecessor in title M/s. A.P. Paper Mills Ltd.. It was urged on behalf of A.P. Paper Mills Ltd. that the observations made by the Committee against it are not sustainable. Learned counsel endeavoured to submit that the procedure adopted by the Committee was valid and further that there was no public notice with regard to the restraint order made by the Bombay High Court.

11. So far as M/s. Guru Nanak Dev Educational and Charitable Society is concerned, it does not articulate any grievance with regard to the order of the Committee. However, it sought to urge that the Committee had in its case observed that the society had established and was managing several educational institutions which housed or catered to more than 4,000 students. Having regard to this peculiar facts, the Committee proposed that the said 62 bighas could be sold to Guru Nanak Dev Educational and Charitable Society and after considering the relative prices - of the year 2010 determined the market price for such land at Rs. 15 lakhs per bigha. The Committee's order also indicates that this alternative was being proposed in peculiar facts of the case and was in terms of the Supreme Court's order - which had vested it with discretion to either put such properties to sale or permit such offers to be made subject to confirmation. The society's objection is not to the order of the committee with regard to the validity of the transaction by which it acquired title but with regard to the fixing of value at Rs. 15 lakhs per bigha. The society urges that the market value at the relevant time in 2010 was Rs. 6.60 lakhs per acre (i.e. 1,49,822/- per bigha).

12. This Court is of the opinion that the order of the Committee, holding that the sale of 62 bighas of land to Guru Nanak Dev Educational and Charitable Society cannot be countenanced since it was pursuant to a resolution made much after the cut-off date, i.e. 23.11.1998 is unexceptionable. This Court has upheld similar orders of the committee in the past in respect of other resolutions seeking to alienate company's property after the said cut-off date.

13. So far as the objections of M/s. A.P. Paper Mills Ltd. are concerned, after making the submissions, its counsel stated that the objector/company would be satisfied if this Court keeps the question open for determination in any action that may be brought against it by M/s. Guru Nanak Dev Educational and Charitable Society. Viewing the circumstance that the observations of the committee, with regard to the validity of the transaction that the committee was primarily dealing with transaction as other's title in favour of M/s. Guru Nanak Dev Educational and Charitable Society is concerned, this Court is of the opinion that in the event the society sues the M/s. A.P. Paper Mills Ltd. for defect in title, all rights of the parties to urge all contentions should be expressly reserved. It is so observed. This is only in the context of any claim that may be made by Guru Nanak Dev Educational and

Charitable Society against M/s. A.P. Paper Mills Ltd. in further civil action for recovery and shall not extend to the validity of the Committee's determinations which shall stand concluded by the present order. So far as the objection of the society with regard to the fixation of market value is concerned, this Court observes that the present market value which can be reasonable with the present value of the land would be higher than Rs. 15 lakhs determined by the committee. The Court notes that while determining the said value it took into consideration the location of the suit property and appropriately discounted its value having regard to the distance from the highway and other facilities available. Furthermore, this Court has taken notice of the fact that the location of the suit property is located about 30 minutes driving distance from Chandigarh and 20 minutes from Ambala. The website of Guru Nanak Dev Educational and Charitable Society describes the location as advantages to the pupils who study in the various institutions which offer besides others, B. Tech (Electrical), B. Tech (Computer Science) and B. Tech (Mechanical Engineering) and other sought-after disciplines. In view of the above discussion, this Court is of the view that the order of the committee dated 22.11.2010 has to be confirmed. It is so ordered. The application is disposed of in the above terms. All replies and objections to the application are accordingly rejected and the orders of 22.11.2010 and 30.04.2012 are hereby confirmed. In view of the above conclusions, in case the society wishes to purchase the property the amounts determined by the committee shall be deposited with it within eight weeks from today. In the event of failure, it shall hand over vacant and peaceful possession of the suit property - 62 bighas to the Committee through its representatives on or before 30.06.2013.

C.M. Appl. 11128/2012

14. The applicant seeks an order for setting aside the determination of the Committee through its order dated 22.11.2010 whereby it had held that the transfer of 18 bigha, made by the Golden Forests (India) Ltd. to Sh. Rajinder Mittal who was in turn alleged to have been sold it to Guru Nanak Dev Educational and Charitable Society was not binding and was consequently void.

15. Learned counsel for the applicant urged that the Committee did not take into account the relevant facts pertaining to the purchase of the suit lands. It was submitted that the lands were purchased through valid sale deed and had resulted in title vesting in the vendee/applicant. It was urged that the applicant had made various enquiries from the revenue authorities and other concerned parties but was unaware about the interim orders made by the Bombay High Court and this Court. Learned counsel further emphasized that the suit lands were hypothecated/encumbered and loan was financed by Indian Overseas Bank which would never have occurred if the amounts were in fact subject matter of any litigation. Lastly learned counsel urged that the procedure adopted by the Committee cannot be sustained and that adequate opportunity was denied to it to contest the proceedings. This Court has considered the submission of the parties. The facts in this case are closely similar if not identical with the facts which this Court had to deal with in C.M. Appl. 6975/2012, which was disposed of today. In this case, as in those

proceedings, the vendee/applicant claims to be a bonafide purchaser. This Court had in the C.M. No. 6975/2012 relied upon the order of the Supreme Court dated 05.09.2006 which in turn had indicated that the relevant cut-off date would be 23.11.1998 to judge the validity of transactions of sale or alienations said to have been made by the Golden Forests (India) Limited. In this case, the applicant claims to be beneficiary of three sale deeds - two of them are said to have been executed on 25.07.2000 and 07.09.2000 and an undated sale deed. Clearly, it could not have vested in the applicant in view of the orders of 23.11.1998 enjoining the company not to transfer or in any manner alienate its immovable or any other properties. Consequently, the applicant's submissions are unmerited. C.M. No. 11128/2012 is accordingly dismissed.

C.M. Appl. 3279/2013

16. Issue notice. Sh. Akshat Goel, Advocate is present on behalf of Sh. Rajinder Mittal, applicant in I.A. No. 11128/2012, which was disposed of today; he accepts notice Sh. Rajeev Saxena accepts notice on behalf of Guru Nanak Dev Educational and Charitable Society. The said respondents shall file an affidavit in response to the application and shall file an application. It is clarified that in the event the vendee of the applicant Guru Nanak Dev Educational and Charitable Society initiates any civil action with regard to claiming damages or any such relief vis-à-vis title and rights and contentions of the parties, such rights are reserved. This however, shall not in any manner impact the order of the Committee which stands confirmed.

C.M. Appl. 11229/2012

17. The application is rendered infructuous in view of the order in 11128/2012. It is accordingly dismissed.

C.M. Appl. 4324/2010 & 4325/2010

18. The applicant here questions the order of the Committee constituted to oversee the affairs of the Golden Forests (India) Limited (hereafter referred to as "GFIL") by the Supreme Court. The order in question was made on 22.06.2007. It concerns the area of 40 acres of land, spread over Khasra Nos. 58 and 59, Village Nolta; Khasra Nos. 145-149, Village Toran, District Panchkula (hereafter collectively known as "the suit lands").

19. The applicant claims that pursuant to an agreement evidenced by the contract-cum-rent agreement dated 09.12.2002 and the Memorandum of Understanding (MoU) dated 20.03.2004 suit lands were handed-over to it by the owner GFIL for development and management of a resort. It is stated that in terms of the understanding lands were to be developed by the applicant and were also to manage the resort and part of the understanding was that for a period of 18 months initially, no rent was payable after which the lease rental was to be Rs. 1 lakh per month. Relying upon the stipulations in the agreement it is stated that eventually, the lease rent was to be Rs. 2 lakhs per month.

After the plans of the GFIL came under cloud in winding-up proceedings and subsequently in public interest proceedings, the Supreme Court which was seized of this matter, eventually transferred the proceedings to this Court.

20. The Committee's order noticed that despite the understanding of the parties, i.e. the applicant and GFIL, the lessee/applicant is in arrear to the extent of Rs. 72 lakhs. It is also contended that the Committee in its impugned order also notes that the alienation was contrary to the Supreme Court's order of 05.09.2006 which had declared that any transfer/sale or alienation of immovable properties or even physically parting with possession of such properties made on or after 23.11.1998 or any resolution sanctioning same shall be considered null and void and not considered binding upon it or its creditors. This Court has considered the submissions. The applicant urges that it is willing to purchase the property and enter bidding. Learned counsel for the Committee points out that in the previous order dated 03.10.2012, similar offer was made on behalf of very same applicant that a sum of Rs. 20 crores would be paid as consideration for the purchase of the same suit lands. The Court had directed the present applicant to deposit Rs. 50 lakhs on or before 08.10.2012 to disclose its bona fides. It is not in dispute that the said amount has not been paid. Even as on date, the sum of Rs. 72 lakhs determined by the Committee as payable by the applicant for its past use and occupation has not been deposited. Having regard to the orders of the Supreme Court dated 05.09.2006 which clearly stipulated the conditions on which validity of resolutions and alienations were to be determined, this Court is satisfied that the order of the Committee needs no interference. The Court also notices that in its order in C.M. Appl. 16844/2012 dated 22.01.2013, the Committee had been directed to put to sale the property which is subject matter of the present application. For these reasons, the applications are without merit. They are accordingly dismissed. In view of the above conclusions, the applicant is hereby directed to pay the said amount of Rs. 72 lakhs to the Committee within six weeks from today. The applicant shall also hand-over physical possession of the suit properties to the committee on or before the expiry of the said period of six weeks.