Dinesh Mittal and ors. Vs. Triveni Infrastructure Development Company Ltd.

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SooperKanoon Citation : sooperkanoon.com/1136200

Court : Delhi

Decided On : Apr-01-2014

Judge : R.V. Easwar

Appellant : Dinesh Mittal and ors.

Respondent : Triveni Infrastructure Development Company Ltd.

Judgement :

$~1 * IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

25. h March, 2013 Date of decision:

1. t April, 2014 % + CO. APPL. No.256/2013 (Also numbered as CO. APPL. No.240/2013) IN CO. PET. No.39/2009 DINESH MITTAL & ORS. Through: ..... Petitioner Mr. Sanjay S. Chhabra, Advocate for ex-director. versus TRIVENI INFRASTRUCTURE DEVELOPMENT COMPANY LTD. ..... Respondent Through: Mr. Ashish Makhija, Advocate for OL. Mr. P. Nagesh, Advocate for applicant. CORAM: HONBLE MR. JUSTICE R.V.EASWAR R. V. EASWAR, J.: CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) 1. This is an application filed by M/s. Sanchar Nest Sahkari Awas Samiti Ltd., which is a registered society bearing registration No.4302 of 22.07.2009 for carrying out the objective of identifying and constructing flats for its members, who are serving and retired employees of the CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) Government of India and the public sector undertaking including

BSNL. The following are the prayers in the application:

In the circumstances mentioned above, it is most respectfully prayed that this Honble Court may be pleased to: (a) Direct the release of 32,135 sq. yds. of lands which does not belong to the company in liquidation from the attachment to enable the applicant to have the sale deed executed in respect of 32,135 sq. yds. of land of Khasra Numbers 961, 924, 933, 934, 931, 925, 907, 908, 906, 938, 939, 941, 949, 948, 955, 947, 952, 953, 943, 929, 900 at Vill. Mehrauli, Pargana Dasna, Tehsil and District Ghaziabad. In the alternative (b) Direct the release of the 9000 sq. yds. Of lands in Khasra No.924, 906, 943, 929, 961, 931, 925, 907, 939 and 941 at Vill. Mehrauli, Pargana Dasna, Tehsil and District Ghaziabad from attachment as the said partial of lands do not belong either to the company in liquidation or to the associate companies of the respondent company; and (c) Pass any order or orders as this Honble Court may deem fit and proper in the facts and circumstances of the present case;

2. Before I take up the rival contentions, it is necessary to give a brief introduction to the events which led to the filing of the application. On 01.12.2009 a memorandum of understanding was entered into between the applicant on the one hand and three companies, of which the company now in liquidation (M/s. Triveni Infrastructure Development Company CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) Ltd.) is one, on the other. This MoU was for the purchase by the applicant of certain lands in Ghaziabad. The total extent of the land was 64,518.96 sq. yds. This MoU was, however, cancelled on 25.03.2010. On 26.04.2010, another MoU was entered into between the applicant, 3 companies and another company by name M/s. Rewari Developers Pvt. Ltd. in respect of 32,835.97 sq. yds. of land. In its order passed on 25.05.2010 it was directed by this Court that the applicant should pay the directors for the land who in turn will deposit the monies in the Court. In W.P. (Crl.) 390/2010 this Court noted that out of the sum of Rs.4,39,34,306/- payable towards 9000 sq. yds. of land, an amount of Rs.1,25,00,000/- was deposited with the Registrar General and the balance of Rs.3,14,34,306/- was released directly to the investors who were part of the 380 investors verified by the Economic Offences Wing. This amounted to about 27.40% of the total price for the land.

3. In the meantime, it would appear that an auction sale of the land was ordered by this Court and pursuant to the same an auction was conducted. By that time, the applicant had deposited a total amount of Rs.8,32,34,307/- in Court. On 27.07.2011 the learned Company Judge noted that the applicant had successfully bid for the property for Rs.23.10 crores in respect of 27455.80 sq. mtrs. of land located in Ghaziabad on CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) as is where is and whatever basis. In this order, the learned Company Judge recorded that: (a) The applicant had paid Rs.8.32 crores; (b) The applicant had undertaken to pay the balance within a period of 4 months directly to the designated bank account; (c) If the balance is not deposited within the stipulated period, 10% of the bid amount i.e. Rs.2.31 crores shall be forfeited; and (d) Upon the balance being paid, the sale deed would be executed and possession would be handed over by the company to the applicant.

4. C.A. No.2375/2011 was then filed by the applicant before the learned Company Judge seeking return of the amount of Rs.8.32 crores with interest at 24% per annum on the ground that the company (M/s. Triveni Infrastructure Development Ltd.) did not have the title to the land to be sold to the applicant. The Court, however, held that the applicant should forthwith deposit the balance sale consideration with the Court since that was the last day for payment of the balance; it even offered to the applicant that the balance will be kept in a fixed deposit receipt (FDR) CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) in the name of the Registrar General of the Delhi High Court initially for a period of 2 months during which period the application would be decided. It was also put to the applicant that the amount kept in the FDR would be appropriated only after actual, physical and vacant possession of the land is given to the applicant in the presence of a Local Commissioner appointed by the Court. These suggestions were, however, not acceptable to the applicant whose representative refused to accept the said offer on the ground that the applicant has taken a commercial decision not to go ahead with the purchase of the property. In the light of this stand taken by the applicant, the learned Company Judge cancelled the applicants bid and the sale and ordered fresh auction notice to be issued by the company.

5. On 19.12.2011 the learned Company Judge noted that in response to the re-auction notice no bid has been received for the Ghaziabad property.

6. In the meantime, it would appear that the applicant had taken the order passed by the learned Company Judge in Co. Appl. No.2375/2011 in appeal before the Division Bench in Company Appeal No.78/2011. In paragraph 4 of the order passed by the Appellate Court on 21.02.2012, it CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) has been recorded that the appellant (applicant), though initially urged that the property should not be reauctioned, but later on confirmed that the appellant is not interested in purchase. Accordingly the said argument was not pressed. The Division Bench left the question of refund of the amount of Rs.8.32 crores undecided, noting that the issue was still at large and gave liberty to the applicant to urge before the learned Company Judge that it was not at fault and, therefore, would be entitled to the refund. The Division Bench further observed that if such a plea is raised the learned Company Judge would deal with it in accordance with law.

7. Thereafter, on 22.03.2012 the learned Company Judge noted that the company in liquidation had not made a full disclosure of its liabilities to the income tax department and that while conducting the auction, it came to its knowledge that various owners/ farmers who had entered into agreements to sell with the company had not only rescinded the agreements due to non-payment of full consideration but had also obtained decrees in their favour from competent Civil Courts and the fact that the agreements to sell the lands in favour of the company in liquidation had been set-aside by the Civil Court had not been disclosed to the Court by the erstwhile director. The learned Company Judge CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) further noted that these were the reasons for the bidders resiling from their offers. This Court, therefore, held that the former management of the company in liquidation had entered into agreements for purchase of valuable lands but has either not fully paid the owners of the land or was not in possession of the lands so that there could be development.

8. In the same order the learned Company Judge appointed the official liquidator as provisional liquidator of the company, but directed him not to take possession of the properties of the company before 21.04.2012 so as to facilitate the filing of a viable revival scheme.

9. On 06.08.2012 in Crl. M.A. No.13829/2012 in W.P.(Crl.) No.390/2010 filed by the applicant, it was claimed that the property in question (Ghaziabad land) did not belong to the company and, therefore, was not the subject matter of the liquidation before this Court. It was further claimed that some Khasras should be released from attachment and the applicant should be allowed to execute the sale deeds for the amount of Rs.8.32 crores.

10. On 24.10.2012 the learned Company Judge admitted the winding- up petition and directed advertisement of the admission of the petition in the newspapers on 28.01.2013; the provisional liquidator was directed to CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) take charge of all the properties and the bank accounts of the company. A committee was appointed to sell the properties of the company at Faridabad, Ghaziabad and Daruhera.

11. On 06.05.2013 the learned Company Judge of this Court passed an order in the present application in which he noted the submission that the farmers who were owners of the land in Ghaziabad comprising 6000 to 7000 sq. yds. of land have approached the Civil Court in Ghaziabad and obtained decrees in their favour. After noting this submission, the learned Company Judge, in an attempt to ascertain whether in fact there was a settlement arrived at by the farmers with the applicant, directed that by the next date of hearing i.e. 24.05.2013, the applicant will file affidavits of each individual farmer stating that they have settled their disputes with the applicant and unconditionally undertake not to seek execution of the decrees in their favour. It was further directed that the copies of the decrees passed in their favour shall be enclosed with the affidavits of each farmer. In the subsequent order passed on 24.05.2013, it was clarified by the applicant that it was subsequently ascertained from the concerned Civil Courts in the Ghaziabad that the suits filed by the farmers were pending and no decree has been passed. CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) 12. In the

above background of the facts, the learned counsel for the applicant contended that neither the company or its ex-management nor the official liquidator has raised any valid or substantial objection against the application. He contended that the applicant cannot be left high and dry after paying a huge amount of Rs.8.23 crores; it has to either get the money back or get the land. It is pointed out that the ex-management is adopting shifting stands which will be clear from their reply in C.A. No.2375/2011. It is also contended that in any case 9000 sq. yds. out of 32135 sq. yds. can be sold to the applicant as per the alternative prayer made in the application.

13. Opposing the application, the learned senior counsel appearing for the ex-management pointed out that the applicant, though has been repeatedly claiming that the lands are under attachment, has not been able to show any attachment order. He pointed out that the attachment made on November, 2009 was by the police, under Section 102 of the Criminal Procedure Code, 1973. He further pointed out that from clause 2 of the second MoU entered into on 26.04.2010, it would be clear that the applicant was aware of the liabilities of the company. It is submitted that in its order passed on 19.12.2011 the learned Company Judge had in fact rejected the prayer of the applicant for sale of 9000 sq. yds. When the CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) land was put for auction, the applicant successfully bid for the same for Rs.23.10 crores but ultimately could not deposit the amount with the Court. On 28.11.2011 the applicant appeared in Court and made a statement that it had taken a commercial decision not to go ahead with the purchase of the property. The matter, therefore, came to an end on that day when the applicant backed out from the deal. The notice issued on that day in C.A. No.2375/2011 was only a limited notice, confined to the question whether the applicant was entitled to the refund of Rs.8.32 crores. That application is still pending but for that limited purpose. In the appeal filed against the order passed by the Company Judge in C.A. No.2375/2011, the Division Bench also recorded that the applicant was no longer interested in buying the property. It is contended that in these circumstances where the applicants repeated attempts to buy the property were not successful and when the applicant itself stated that it was no longer interested in buying the property, it cannot be permitted to file another application (i.e. the present one) seeking the same relief.

According to the learned senior counsel, the application is bogey and is prompted by dishonest motives and, therefore is liable to be dismissed.

14. Mr. Makhija, the learned counsel appearing for the OL also opposed the application. His objections were: CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) (a) The application does not mention the details of the attachment on the lands and does not adduce any proof of any attachment in force; (b) The Company in liquidation owns only 610 sq. yds. out of 32835 sq. yds.; the other lands belonged to other companies who have not been made parties in the present application and thus the application is itself defective; (c) That on the date of the first MoU (i.e. 01.12.2009) no liquidation proceedings were pending against the company and no winding-up order had been passed and thus the agreement was a private agreement; (d) In the various Khasra numbers noted in the fresh MoU dated 26.04.2010, only Khasra No.961 belongs to the company, the extent of which is 610 sq. yds.; (e) Even in respect of this land of 610 sq. yds. the applicant had paid only Rs.15 lakhs by cheque No.989609 dated 27.01.2010 in favour of the company and all other payments, even as per the application, were made to other companies and entities, and therefore in respect of the balance, the applicant has to stand in the CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) queue in the liquidation proceedings; (f) Several other payments mentioned in the list of payments furnished in the application were also made before the company went into liquidation and even in respect of these amounts, the applicant has to wait in the queue; (g) When orders were passed by the learned Company Judge on 03.05.2011 it was noted that the board resolutions of 3 other companies namely RMS Group and Resorts Pvt. Ltd., Chahat Garments Ltd. and Rawat Developers (P) Ltd. authorising the OL to proceed with the sale were directed to be furnished and this was only because the company owned only 610 sq. yds. and the rest of the lands in Ghaziabad were owned by those three companies; (h) Eventually on 28.11.2011, the applicant made a categorical statement before this Court that it has taken a commercial decision not to go ahead with the purchase of the property.

15. Mr. Makhija submitted that in the light of the above objections, the prayers made in the application cannot be granted. He further contended that the applicant

had made the same prayers in Crl. M.A. No.13829/2012 in W.P. (Crl.) No.390/2010 which were all dismissed. The applicant thus CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) has made repetitive prayers resulting in waste of judicial time. The application is thus frivolous and should be dismissed with heavy costs.

16. The learned counsel for the applicant in his reply pointed out that even from the reply filed by the OL it would be clear that he was fully aware of the payments made to the investors. As to the attachment, he points out that even as per the companys C.M. No.8419/2010 in W.P.(Crl.) No.390/2010 there were notices attaching immoveable properties of the company which had allegedly disrupted the business of the company. It is contended that in the light of this admission, it is not open to the company or to the OL to now contend that the attachments were not proved.

17. I have carefully considered the rival contentions in the light of the material placed on record. It seems to me that the application cannot be accepted. The applicant does not have any right to compel the company to sell the land at Ghaziabad to it. It is a different matter that the company was initially willing to sell the land under the first MoU, but that was cancelled. The contract thus came to an end. The fresh MoU also came to an end. Eventually the learned Company Judge ordered the sale of the Ghaziabad land on 03.05.2011. Since there was no stay on the CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) auction, though prayed for by the applicant in C.A. No.863/2010, the auction went ahead. The applicant successfully bid for the property for Rs.23.10 crores. It prayed for 4 months time to deposit the money which was granted by this Court. This Court also made it clear in its order dated 27.07.2011 that if the amount is not paid in time, 10% of the bid amount will stand forfeited. Nevertheless the applicant did not pay the bid amount but approached the Court on 26.11.2011, which was last day for deposit of the amount and categorically informed the Court that it had taken a commercial decision not to buy the land. This was recorded by the learned Company Judge in his order passed on 28.11.2011. This order was taken up in appeal to the Division Bench in Company Appeal No.78/2011 but even in the appellate court there was no change in the applicants position and accordingly the

appeal was dismissed. The appellate court also clarified that so far as the refund of the amount of Rs.8.32 crores already paid by the applicant is concerned partly by deposit in this Court and partly by payment to the directors of the company and the investors directly the appellate court observed that this a matter which has to be pursued by the applicant in C.A. No.2375/2011 in which limited notice was issued. The order passed by the appellate court has become final. The matter thus came to an end CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) with the passing of the order by the appellate court.

18. Despite the matter having attained finality, the applicant would again appear to have revived its attempt in 2013 but could not adduce sufficient evidence in support of the plea that it had arrived at settlements with the farmers who had disputes with the company. The applicant had earlier made a statement before the learned Company Judge that the farmers had obtained decrees against the company from the Civil Court at Ghaziabad but later resiled from the statement, admitting that it was incorrectly made. At this, the learned Company Judge had directed the applicant to file affidavits from the farmers along with the settlement documents. This direction remains to be complied with and thus there is no evidence to show that the applicant had reached settlements with the farmers.

19. In the aforesaid circumstances, I find no reason to allow the application. In addition, I also find that the OL who is the custodia legis of the companys property has taken valid objections. The most important of these objections is that the company has no means of proving that it owns anything more than 610 sq. yds. of land in Ghaziabad; it has no evidence to prove its title except to the extent of 610 CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) sq. yds. nor is it in possession of any land in Ghaziabad in excess of 610 sq. yds. He has rightly pointed out that this Court has already been made aware of the fact that other lands are owned by three other companies from whom there is no authorisation in favour of the company in liquidation to dispose of their lands. In this situation, when the company has no title to the lands, except to the extent of 610 sq. yds., I am unable to understand how it can sell those lands to the applicant. In fact, it was for this very reason (i.e., defective title of the company) that the applicant had earlier taken a commercial decision not to purchase the land

and expressed the same in categorical terms before this Court. In the order passed by the learned Company Judge on 28.11.2011 it is found recorded as follows:

At this stage, Mr. J.K. Mishra, Vice President of applicant Society states that the applicant is not willing to go ahead with purchase of the auctioned property. He states that as title of the land is in dispute, the applicant is unlikely to get possession of the land offered for sale by this Court....

. The learned Company Judge even suggested that the sale consideration if paid by the applicant would be kept in fixed deposit to be appropriated only after actual, physical, vacant possession of the land in question is given to the applicant in the presence of a Court appointed Local CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) Commissioner. But Mr. J.K. Mishra refused to accept the offer made by the Court on the ground that the applicant had taken a commercial decision not to go ahead with the purchase of the property. This order actually puts an end to the entire controversy which cannot be revived again, more so when there is no evidence to show that the applicant had reached settlements with the farmers.

20. It may be true that the applicant has paid Rs.8.32 crores but has neither got the money back nor any land in Ghaziabad; again, as rightly pointed out on behalf of the OL, the MoUs were entered into much prior to the winding-up order which was passed on 24.10.2012 and if the applicant wants the money back, it has to wait in the queue. After the passing of the winding-up order, the OL will have to take possession of the assets of the company which includes the 610 sq. yds. Of land in Ghaziabad. He being the custodian of the properties and assets of the company cannot give up that right. Even from this angle, it would not be proper for the company court to direct the sale of the property to the applicant.

21. I find that the objections raised by the OL are sound. Though the OL is one with the company in liquidation in objecting to the sale of the CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) lands in Ghaziabad to the applicant, the motives impelling him to do so are quite different from those of the company. The OL has to fulfil his role as custodian of the property and assets

of the company and has to keep the interests of the contributories, creditors and investors in view. So far as the company is concerned, the ex-management is interested in opposing the application for different reasons; but for the purpose of disposal of the application before me they are irrelevant. The predominant consideration of the company court has to be the protection of the various stake holders, creditors, etc. or the company.

22. In this behalf I may refer to the order passed by the Division Bench of this Court on 11.07.2013. In paragraph 13 of this order, the Division Bench has observed as follows:

13. The flat buyers who are unsecured creditors are facing considerable hardship and suffering because their money is stuck, the project has stopped midway and they may have also taken interest bearing loans. Our primary interest and concern is to protect, help and secure them. We clarify the status quo order should not mean that the Company Judge cannot and should not proceed in accordance with law. It only means and states that at the first instance attempt should be made to sell the two property at Faridabad and only in case of any impediment or difficulty or in case payments cannot be made or are delayed, further steps could be taken. Proceedings have not been stayed and the Company Judge is entitled to and can pass appropriate and required orders.

CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013) 23. The aforesaid observations highlight two aspects. First, that the primary interest of the company court should be to protect and secure the interests of the flat buyers and the unsecured creditors. Second, that there is no stay on the sale of the Ghaziabad lands placed by the Division Bench. What has been stated by the Division Bench is only that the Faridabad properties should be first sold. This has been further clarified that the Company Judge is entitled to pass appropriate and required orders. I therefore accept the contention of the learned counsel for the applicant that there is no stay on the sale of the Ghaziabad property by the Division Bench, but the sale can only be made under the auspices of the OL. In view of the above discussion, the application stands dismissed, with the clarification that I have not expressed any opinion on the applicants right to obtain

refund of the sum of Rs.8.32 crores which is pending adjudication in the Company Court in C.A. No.2375/2011 in which limited notice has been issued. (R.V. EASWAR) JUDGE APRIL1 2014 hs CO. APPL. No.256/2013 (also numbered as CO. APPL. No.240/2013)