Ashok Kumar and Others Vs. Shingal Land and Finance Pvt. Ltd.

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Court : Delhi

Decided On : May-12-1994

Reported in : [1995]82CompCas430(Delhi)

Judge : P.K. Bahri, J.

Acts : Companies Act

Appeal No. : Company Application No. 2352 of 1986

Appellant : Ashok Kumar and Others

Respondent : Shingal Land and Finance Pvt. Ltd.

Advocate for Def. : Ms. Zubeda Begum, Adv.

Advocate for Pet/Ap. : P.R. Aggarwal, Adv

Judgement :

P.K. Bahri, J.

1. This application had been moved seeking an order of this court that the land measuring five bighas, nineteen bids was and three biswasi comprised in khasra Nos. 420, 421 and 464 is owned by the petitioners and is not one of the assets of the company in liquidation, namely Shinghal Land and Finance Pvt. Ltd.

2. The case set up by the petitioners in brief is that they have purchased the aforesaid land, vide registered sale deed executed on October 25, 1980, and registered on October 30, 1980, for a total consideration of Rs. 22,000 from the said company and Shri Roop Singh, the managing director of the said company had executed and got registered the sale deed in favor of the petitioners on receiving the consideration before the Sub-Registrar.

3. The official liquidator has filed a reply contesting this petition. It has been pleaded that no valid sale deed has been executed on behalf of the company in favor of the petitioners and thus the petitioners have not become the owners of the property in question.

4. It appears that in the English translation of the sale deed which was in Hindi language the name of the managing director was mentioned as 'Mr. Saroop Singh Singhal' while in fact in the sake deed the name of the managing director mentioned is Mr. Roop Singh Singhal and in the reply the official liquidator has taken the plea that there was no Mr. Saroop Singh working as managing director of the company at any time. Now, it is not in dispute before me that Mr. Roop Singh Singhal has been the managing director of the company at the relevant time. The correction was allowed to be made in the English translation regarding the name of the managing director vide my order dated May 3, 1994.

5. The official liquidator was appointed as provisional liquidator in Company Petition No. 27 of 1982. The winding up order was made in respect of the company petition quoted above on August 8, 1983. Obviously, it relates back to the date February 18, 1982, the presentation of the winding up petition. The evidence has been taken by way of affidavits to decide the question whether the petitioners are the owners of the land in question or not. It is indeed to dispute that a sale deed had been executed on behalf of the company by its managing director Mr. Roop Singh Singhal for selling the land in question in favor of the petitioners for a sale consideration of Rs. 22,000 although it is the case of the official liquidator that the sake consideration received by Mr. Roop Singh Singhal is not reflected in the account books of the company.

6. Be that as it may, in case the managing director of the company was legally entitled to sell the land of the company on behalf of the company then the sale made in favor of the petitioners has to be given effect to. It is true that in the sale deed there is no reference to any power given to the managing director on the basis of any resolution passed by the board of directors of the company. The minutes book of the company is not available with the official liquidator and there is no evidence brought on the record by the petitioners to prove that in fact any such resolution had been passed conferring any powers on the managing director to sell or dispose of the immovable property, i.e., the land, in question belonging to the company.

7. Learned counsel for the official liquidator has drawn my attention to section 537 of the Companies Act, which lays down that where any company is being wound up by or subject to the supervision of the court any sale held, without the leave of the court, of any of the properties or effects of the company after such commencement, shall be void.

8. This section would not apply to the facts of the present case because the sale deed in question had been executed and registered much before the presentation of the winding up petition. At any rate, in order to obtain any relied on the basis of the registered sale deed, the petitioners have to establish that the managing director, Mr. Roop Singh Singhal was legally authorised to sell the immovable property belonging to the company.

9. The petitioners have placed on record the certified copy of the memorandum of association of the said company, which records the objects of the company, one of which is to carry on in India or elsewhere the business of colonisation. The business of colonisation obviously requires purchasing and selling of the land and other immovable properties. A certified copy of the articles of association has also been placed on the record. Article 13 of the same lays down that the management of affairs of the company shall vest in the board of directors and the managing director shall carry on the management of affairs of the company on behalf of the board subject to the control, supervision and direction of the board of directors. A perusal of this article makes it evident that the managing director had been

authorised to carry on the management of and the affairs of the company on behalf of the board. Unless and until the board of directors had restrained the managing director from performing any particular act or function in the management of the business of the company, the vest powers given to the managing director to manage the affairs of the company would include disposing of and selling properties of the company. One of the businesses of the company being colonisation, the managing director, in my opinion, had the power to sell the land belonging to the company to any one for consideration. So it was not necessary that any specific resolution ought to have been passed by the board of directors to give power to the managing director for carrying out the business of the company.

10. It is mentioned in the affidavit of the official liquidator that it was not any business of the company to acquire and sell the land. There is no merit in this contention. In view of the specific object written down in the memorandum of association that the company is also to carry on the business of colonisation, it is not necessary that the company ought to have indulged in any vast business of colonisation before the managing director could get the power to carry on such business on behalf of the company. The petitioners, who are strangers to the company, could only see the memorandum of association and articles of association of the company in order to see whether a particular managing director as the power to transfer the land belonging to the company. A bare perusal of the relevant provisions quoted above culled out from the memorandum of association and articles of association makes it clear that it was one of the objects of the company to carry on the business of colonisation and the managing director was fully empowered to transact such business of the company. If that is so, while transacting such business the managing director had the power to sell and dispose of the immovable property of the company.

12. In Kamani Metallic Oxides Ltd. v. Kamani Tubes Ltd. [1984] 56 Comp Cas 19, the Bombay High Court, while construing the provisions of section 536 of the Companies Act, held that the interpretation of the provisions of section 536(2) would not leave bona fide dispositions of assets of the company open to challenge at the hands of the liquidator, in the event of the winding up order being passed.

Sometimes dispositions would be necessary in the interest of the company and thus in the ultimate interest of the creditors of the company during the pendency of the application for winding up. The company court must have jurisdiction to protect such transactions.

13. Be that as it may, in view of the fact that the sale deed in question was executed and registered much before the presentation of the winding up petition, there does not arise any question of this court exercising any discretion in the matter.

14. Having come to the conclusion that the managing director, Mr. Roop Singh Singhal, was competent to sell the land of the company, I allow this application and declare that the land in question has been validly sold to be petitioners and was not the asset of the company at the time of the presentation of the winding up petition. The application is thus disposed of.