

Ramakrishna Hela Vs. Official Liquidator

Ramakrishna Hela Vs. Official Liquidator

SooperKanoon Citation : sooperkanoon.com/870747

Court : Kolkata

Decided On : Sep-10-1999

Reported in : (1999)2CALLT640(HC),1999(2)CHN812

Judge : Ruma Pal, J.

Acts : [Contempt of Courts Act, 1971](#) - Section 3

Appeal No. : Constitutional Writ Jurisdiction C.R. No. 30399 (W) of 1997 with W.P. No. 15663 (W) of 1998

Appellant : Ramakrishna Hela;swapan Kumar Chakraborty and ors.

Respondent : Official Liquidator;union of India

Advocate for Def. : Mr. A. Sarkar, Adv.;Mr. Sk. Kasim Ali and ;Mr. Ramkrishna Saha, Advs.

Advocate for Pet/Ap. : Mr. Sarojit Sen and ;Mr. Ranjit Kr. Ray, Advs.

Judgement :

R. Pal, J.

The first application which is disposed of by this Judgment is a Contempt application. The second application is a writ application filed by twelve persons challenging the order passed by this court in an earlier contempt application. Both

the applications deal with land which belonged to a company known as Bengal porcelain Company Pvt. Ltd. (referred to as the company). The writ petitioners claim to be purchasers of the land and are referred to in this Judgment as the twelve purchasers.

2. The company is now in liquidation. In the course of liquidation, the assets of the company were put up for sale. The sale was advertised. Sree Ram Construction (SRC) offered to purchase the factory and the land of the company at Rs.96 lacs. SRC is the sole proprietary concern of one Dilip Kumar Deb. He was personally present in court and undertook to the court to restart the business and employ the permanent employees/workmen of the company who were on the roll of the company as on the date of the winding up. He also undertook that if the land beyond the factory land were sold, the sale proceeds would be utilized for renovation and expansion of the company, the Advocate on behalf of Dilip Deb also undertook that the terms and conditions of the order would be abided by him. In view of these undertaking, the offer of SRC was accepted by an order passed by me on 3rd July, 1992. Ten percent of the purchase price was to be paid on or before 17th July 1992. The balance was to be paid in 10 equal Instalments (except for the last), the first instalment being payable on 10th August, 1992. Thus the entire purchase was to have been paid within two and an half years from the date of payment of the first Instalment, viz by 31th August 1994. SRC undertook to furnish a Revolving Bank Guarantee covering one instalment which was to be kept renewed until the entire purchase price was paid. The bank guarantee was to contain a clause that if the bank guarantee was not renewed, the bank would forthwith deposit the guaranteed amount with the official Liquidator SRC was to keep the Official Liquidator notified about the renewals of the bank guarantee.

3. It was made clear in the order dated 31th July, 1992 that only upon making payment of the entire purchase price, the Official Liquidator would execute a conveyance in favour of SRC or its nominee or nominees. The order also provided that in default of SRC either depositing 10% of the purchase price or furnishing the bank guarantee of keeping the same renewed or making payment of any Instalment or any portion thereof, the sale would not be proceeded with and the money already deposited would be forfeited. On the basis of the payment of the

first instalment and furnishing of the bank guarantee, SRC was to be allowed to enter into possession of the company's land but was restrained from disposing of or encumbering or removing any of the assets of the company except after obtaining prior leave of the court. Further directions were given for payment out of the purchase price which are not relevant for the purpose of these applications. What is relevant for the purpose of this Judgment is that portion of the order dated 3rd July 1992 by which it was ordered:

' that the said Official Liquidator shall be entitled to ask for police help as may be necessary in making over possession of the assets of the said company to the said Sree Ram Construction and / or its nominee or nominees in terms of this order. And it is further ordered that the Superintendent of police, Twenty four paragon (North) and O.C. Belgharla P.S. shall render such police help as may be required by the said Official Liquidator at the cost of the said Sree Ram Construction and/ or its nominee or nominees. And it is further ordered that in making over the possession the said Official Liquidator shall take necessary steps to evict the trespassers from the factory premises as stated by the said workers and the said Shree Ram Construction. '

4. The object of the order expressly was to revive the company's business. In fact the sale was effected of the company as a going concern. But as will transpire from the narration of facts. Dilip Deb utilised this order to act as a broker to sell of the company's lands possibly at a profit and has violated each of the conditions subject to which his offer was accepted.

5. SRC defaulted in payment of its dues . Time was extended to put in the Instalments by K. Ganguly J. on 2nd July, 1993 even though the purchase price was far from being paid fully on 5th October 1993 SRC made an application for sale of the land outside the factory, permission was sought to negotiate with purchasers ostensibly on the ground of expansion of the business of the company. The application was resisted by the workers because the factory was not running at all. A.N. Ray J. was of the prima facie view that:

'If any sale of the excess land is held today, then the sale must be perfected by a combined conveyance of the Official Liquidator and Mr. Sinha's clients (viz. SRC)

because full payment of the purchase price has not been made. Moreover, if any sale of the excess land is made in the above manner, and further moneys are received, the same cannot in any manner reduce the liability of Mr. Sinha's client to complete sale by paying the balance of the unpaid purchase price'.

6. The court, however, gave liberty to the parties to find out purchasers who would be willing to abide by the conditions laid down.

7. On 25th November, 1993 the following order was passed by A.N, Ray-J :

'The O/L will sell along with the client of Mr. Maharaj Sinha, (the purchasers of the company, property), six blghas out of the sixteen and half blghas of land mentioned in the petition to the best purchasers available. As the purchase is complete accepting (sic) (excepting?) for payment of the purchase price, the principally Interested parties are thepurchasers and the workers. They are agreed before me that the sale would be conducted by the O/L without going into the necessity of publishing advertisements or incurring further costs.

The purchasers will offer themselves before the O/L with their best offers and it is clarified that the United Bank of India will be also at liberty to purchasers before the O/L or even offer to buy the six blghas themselves.

The O/L will tentatively accept the highest bid or bids and this application will stand over for 16 weeks when such acceptance of offers by the O/L will be considered for confirmation.

The O/L will be at liberty to accept plot-wise purchasers for the said six blghas of land also.

The O/L need not engage any valuer but shall forward the report of how the best available purchase was fixed by him.'

8. A Master Plan was prepared delineating various plots. SRC proposed names of several purchasers to the Official Liquidators. The twelve purchasers offered to purchase 12 plots for Rs. 22,30,550/-. On 23rd December. 1993 their offer was accepted and confirmed by Ray J. Directions were also given for payment of 10

percent of Rs. 22,30,550/- to the Official Liquidator. The purchasers were to make payment of the balance 90 percent within a month subject to demarcation of the plots. Upon such demarcation, the Official Liquidator was directed to hand over the respective areas to the purchasers and also to deliver possession to them. The demarcation was to take place in the presence of the parties concerned and the workers if they felt it necessary. After demarcation and making over of possession, the Official Liquidator was directed to execute deeds of conveyances in favour of the purchasers. As far as the balance portion of six blghas was concerned, the Official Liquidator was directed to continue to seek purchasers in terms of the earlier orders passed by the court.

9. According to the twelve purchasers, pursuant to the order dated 25th November, 1993, the Official Liquidator executed conveyances in respect of plots of land belonging to the company. It is also their case that from January, 1994 the Official Liquidator made over physical possession of some of the plots of land and many of them had their names mutated with the local Municipality and also erected buildings in the plots of land purchased by them.

10. On 7th April, 1995, Ram Kripal Hela and his seven brothers (referred to hereafter as the Helas) filed a writ application (C.O. No. 4337 (W) of 1995 referred to as Hela's writ petition) against various officers of the Schedule Caste and Schedule Tribe Welfare Department and Dilip Deb seeking protection from eviction from the quarters occupied by them in the Company's factory premises. However purporting to act on the basis of the order passed by me on 3rd July, 1992, the Helas were forcibly evicted from their quarters by the Official Liquidator and Dilip Deb with police help rendered by the local police station. The Official Liquidator was added as a party to Helas' writ petition. By a Judgment and order dated 25th September, 1996. Helas' writ petition was allowed. It was found and the Official Liquidator admitted at the hearing that the Helas were earlier in possession of a portion of the Company's premises. The Official Liquidator's report and the affidavit of the Officer in Charge of the concerned police station were in effect that the Helas were residing inside the factory of the company before they were evicted and that after the Helas were evicted, possession was handed over to Dilip Deb by the Official Liquidator on 19th April, 1995. The petitioners have also

produced some proof of their possession. In any case there was no Inquiry of any type held by the Official Liquidator as to whether the Helas were Indeed trespassers as were covered by the order dated 3.7.92 or not. This court held that the Official Liquidator acted in excess of the powers conferred on him by the order dated 3rd July. 1992 and had Illegally evicted the Helas.

11. It was noted that till the hearing of Helas petition in 1996 that Dilip Deb had not paid the entire purchase price which he had undertaken to pay. In allowing Helas petition it was said :

'The writ application is accordingly allowed by directing the Official Liquidator to restore the possession of the petitioners at they had enjoyed prior to their eviction within a week from date. This order however will not prevent the petitioner from being evicted but strictly in accordance with law. The petitioners will be paid a sum of Rs. 5000/- by the Official Liquidator from the funds of the company in his hands and Rs. 5000/- by the purchasers by way of costs.'

12. According to the Official Liquidator, several attempts were made by him to comply with the order dated 25th September, 1996 including writing of several letters to Dilip Deb. On 22nd January. 1997, the Official Liquidator went to the factory premises of the company to retake possession of the disputed land. Dilip Deb refused to hand over possession on the ground that an appeal against the order dated 25th September. 1996 was pending. The Official Liquidator then filed a letter for directions before the Company Court on 14th February, 1997 asking for SRC to hand over possession of the disputed land. Notice of this application could not be served on Dilip Deb till April. 1998. On 26th June, 1998 an order was passed by the Company Court directing the Official Liquidator to take symbolic possession of the disputed land. An injunction was also passed restraining the 12 purchasers of the plots from parting with possession, disposing or encumbering the plots of which they claimed to be in possession.

13. Symbolic possession of the land was taken by the Official Liquidator on 9th July, 1998 according to the identification by the erstwhile workers of the company. However, on 20th July, 1998, the Helas Identified a different spot as the land they had occupied. The land so Identified by them covered parts of Plot Nos. 70, 51

and 50 and two roads. The Official Liquidator was resisted by the plot holders from taking possession of the land so Identified by the Helas.

14. In the meanwhile, on 28th August, 1997, the Helas filed the contempt application which is being disposed of by this Judgment against the Official Liquidator and Dilip Deb for violating the order dated 25th September, 1996. Being prima facie satisfied that contempt had been committed by Dilip Deb a Rule was Issued against him on 19th December, 1997. Repeated attempts to serve him with a copy of the rule were unsuccessful. Ultimately, on 1st July, 1998, the Officer in Charge, Belghoria Police Station was directed to produce Dilip Deb in court on 15th July, 1998. Dilip Deb then appeared voluntarily but did not signify his willingness to comply with the order of court.

15. The Official Liquidator was accordingly directed to carry out the order dated 25th September, 1995 within a week with police help. The Official Liquidator could not carry out the order being resisted by the plot holders as already noted.

16. On 21st August, 1998 an Injunction was Issued restraining Dilip Deb from in any way dealing with the company's assets till further orders. Hearing was concluded and the matter was reserved for Judgment.

17. On 26th August, 1998 the twelve purchasers filed the writ application which is the second matter being disposed of by this judgment, against inter alia, the Official Liquidator, Dilip Deb and the Helas, challenging the order passed by me on 25th September, 1996 and seeking to restrain the Official Liquidator and the Helas from acting on the basis thereof. In the body of the writ petition there is no reference to the order dated 25th September, 1996. The grounds pertain to the order dated 15th July, 1998 passed on the contempt application filed by the Helas.

18. The matter was specially assigned to me on 3rd September, 1998. After service was effected on the Helas in February, 1999 directions were given for filing of affidavits and the contempt application was directed to be re-listed for hearing along with the writ petition.

19. Dilip Deb did not choose to appear at the hearing. He was directed, by an order dated 7th May, 1999 to be personally present. Dilip Deb appeared on 21st May, 1999. He stated before me on oath that the appeal preferred by him from the order dated 25th September, 1996 had been dismissed in 1997. An order was passed on that day, inter alia, to the following effect :

'(3) The Official Liquidator shall inspect the factory premises in order to ascertain whether the factory has, in fact, been running in terms of the order of sale by Shrireme Construction and whether the ex-employee of the Company (In liquidation) have been re-employed.

(4) Mr. Dilip Deb who is personally present in court today shall produce before this court on, 11th June, 1999 all documents pertaining to the running of the Company as undertaken by him and his Advocate in the order of sale dated 3rd July, 1992, Register of Workers, electricity bills, telephone bills, if any, ESI and Provident Fund returns, if any, Sales Tax Returns, if any, audited balance sheet, if any, and any other documents relevant to the question of the company may establish the claim of Sri Dilip Deb that the company is open and running and that the ex-employees of the company (in liquidation) have been re-employed.

(5) Sri Dilip Deb will also produce before this court all particulars of the appeal alleged to have been filed from the order of this court disposing of the writ petition filed on 25th September, 1996 and the order of dismissal of the appeal.'

20. The Official Liquidator submitted a report that the factory was not functioning. An attendance register was produced in which it was shown that out of 256 workers of the company 65 workers and 3 office staff were allegedly re-employed and even they had not been paid any salary for more than seven months. No documents whatsoever were produced before the court by Dilip Deb. Apart from this and apart from violating the undertakings given to court by Dilip Deb as recorded in the order of sale dated 3rd July, 1992. Dilip Deb had also not paid the costs of Rs. 5000/- in terms of the order dated 25th September, 1996 to the Helas.

21. On 11th June, 1999 Dilip Deb was directed to make payment of Rs. 5000/- to the Helas within a week. On 18th June, 1999, the costs were paid by Dilip Deb to

the Helas 'with objection'.

22. Before considering the submission on the merits of the respective parties, the submission of the Helas on the maintainability of the writ petition is considered. According to the twelve purchasers, the writ application was really an application for review of the order dated 25th September, 1996.

23. As the writ application is framed, it is doubtful that the court could have entertained it. However, the Intention of the twelve purchasers was in effect to pray for a review of the order dated 25th September, 1996. The order dated 15th July, 1998 was in furtherance of the order dated 25th September, 1996. If the earlier order falls, the order passed on the basis of such earlier order must also fall.

24. In a somewhat similar factual situation, in *Shivdeo Singh v. State of Punjab*, AIR 1963 SC 1909, the Supreme Court said :

'The other contention of Mr. Gopal Singh pertains to the second order of Khosla J., which in effect, reviews his prior order. Learned counsel contends that Article 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla J., was without Jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of Justice or to correct grave palpable errors committed by it. Here the previous order of Khosla J., affected the Interest of the persons who were not made parties to the proceeding before him. It was at their Instance and for giving them a hearing that Khosla J., entertained the second petition. In doing so, he merely did what the principles of natural Justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their Interests were sought to be affected by the decision of the High Court that the second application entertained by Khosla J.'

25. In view of the clear pronouncement of law it must be held that the writ petitioners are entitled to pray for the reliefs claimed.

26. On merits, given the facts of the case especially the several orders passed by the Company Court, the right of the twelve purchasers to retain possession of the plots of land purchased by them cannot perhaps be questioned, let alone be affected particularly in the writ proceeding filed by the Hetas. Had these facts been before the court when the order dated 25th September, 1996 was passed, the court would not have directed possession to be restored to the Hetas since it would mean interfering with the duly acquired rights of the twelve purchasers. The writ application must therefore be allowed to the extent that it is declared that the order dated 25th September, 1996 will not affect the rights of the twelve purchasers in respect of the plots of land purchased by them.

27. If the Hetas are content with the plot identified by the workers of the company on 9th July, 1998, the Official Liquidator will put them in possession of that plot provided this does not infringe the rights of any one who may have purchased that plot and in whose favour a conveyance may have been executed. The Hetas will be entitled to remain in possession of such plot until their right to continue in possession is decided in a properly constituted proceeding for their eviction.

28. Doubtless the 'villain of the piece' is Dilip Deb. He has made no effort to comply with any order of court till now, but has taken full advantage of those very orders. He has acted in violation of the order dated 3rd September, 1992 while reaping the benefits thereof. Despite A.N. Ray J's order dated 5th October, 1993 (quoted above) he obtained an order from B.L. Jain J. on 10th January, 1995 that the amount received by the Official Liquidator by purchase of (the plots should be adjusted against the sale price. The proceeds of the 'excess land' were to be used for the company's business and not for paying Dilip Deb's business and not for paying Dilip Deb's liability to court. Even then the balance amount of the promised consideration of Rs. 96 lakhs is yet to be paid by Dilip Deb. The offer of Rs. 96 lakhs was accepted only because Dilip Deb had not only agreed to pay the entire purchase price by 1994 but also because he would re-employ all the workers and recommence business. He and his Advocate bound themselves by undertakings

which they have not fulfilled.

29. Dilip Deb has forfeited his rights to the company's assets. He had violated each of the conditions subject to which the sale in his favour was directed under the order dated 3rd July 1992. The matter must be drawn to the attention of the Company Court by the Official Liquidator for appropriate direction for resale of that portion of the company's assets not already sold to plot holders.

30. Dilip Deb had with full knowledge that the writ application of the Helas was pending not only dispossessed them but been a party to the sale of plots during the pendency of the proceeding to at least two of the twelve purchasers. His refusal to comply with the order dated 25th September, 1996 is explained by him by saying that he did not understand its meaning. The order was clear. He refused to hand over possession to the Official Liquidator on 22nd January, 1997 on the ground that an appeal from the order dated 25th September, 1996 was pending. No particulars of the alleged appeal nor any document in connection with it have been produced despite a specific direction by the court. It is doubtful whether there was any appeal. In any event, there was no stay and his refusal was a deliberate and wilful violation of the order dated 25th September, 1996. His failure to make payment of the costs of Rs. 5000/- was not sought to be rectified even where the court directed him to comply in the present contempt proceedings. He paid ultimately but 'with objection'.

31. I have in the circumstances no hesitation in holding Dilip Deb the respondent No.2 in the contempt proceedings guilty of contempt. The Rule Nisi is accordingly made absolute. He is fined Rs. 2000/- to be paid within two weeks. In default he will undergo simple imprisonment for 2 (two) weeks. He will pay another Rs. 5000/- to the Helas by way of cost of this application within the aforesaid period. The Injunction passed against him on 21st August, 1998 is also confirmed.

Let xerox plain copies of this order duly countersigned by the Assistant Registrar (court) be made available to the learned Advocates appearing on behalf of the parties on usual undertakings.

32. Rule made absolute

