

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/O.J.APPEAL NO. 54 of 2015
In R/COMPANY APPLICATION NO. 164 of 2010
With

CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2023
In R/O.J.APPEAL NO. 54 of 2015
With

CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2024
In CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2023
In R/O.J.APPEAL NO. 54 of 2015
With

CIVIL APPLICATION (FOR FIXING DATE OF HEARING) NO. 2 of 2023
In R/O.J.APPEAL NO. 54 of 2015

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PRAMODBHAI KANJIBHAI PATEL

Versus

OFFICIAL LIQUIDATOR OF M/S MINAL OIL AND AGRO INDUSTRIES & ORS.

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Appearance:

MR CHINMAY M GANDHI(3979) for the Appellant(s) No. 1
 MR ABHIJIT P JOSHI(1330) for the Opponent(s) No. 1
 NANA VATI ASSOCIATES(1375) for the Opponent(s) No. 4
 RAJ K VYAS(8559) for the Opponent(s) No. 3
 SINGHI & CO(2725) for the Opponent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE
and
HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 12/09/2024

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)

1. Civil Application (For Direction) No. 1 of 2023, Civil Application (For Direction) No. 1 of 2024 and Civil Application (For fixing date of hearing) No. 2 of 2023 are placed for hearing today wherein the prayers would read as under;

2. In Civil Application (For Direction) No. 1 of 2023, the applicant has prayed as under;

A. This Hon'ble Court may be pleased to admit and allow this application.

B. This Hon'ble Court may be pleased to direct the applicant to make DILR, Ahmedabad as party respondent in the main application and be further pleased to direct the said DILR, Ahmedabad to visit the site and identify exactly the land bearing Survey No.340/2 and 340/3 and thereafter to report to the Hon'ble Court as to whether or not there exists any superstructure thereon.

C. Such other and further orders as this Hon'ble Court may deem just, fit and expedient be passed in favour of the applicant.

D. Costs of this application be provided for to the applicant.

3. In Civil Application (For Direction) No. 1 of 2024, the applicant has prayed as under;

A. This Hon'ble Court may be pleased to admit and allow this application;

B. This Hon'ble Court may be pleased to permit the applicant to deposit a sum of Rs 31.70 lakhs before this Hon'ble Court, subject to the outcome of the aforesaid OJ CA No.1/2023 i.e. the amount shall remain in Fixed Deposit or in the account of the Hon'ble High Court and the same would be disbursed after the dispute about the valuation is decided.

C. This Hon'ble Court may be pleased to direct the Official Liquidator to handover the possession of the land bearing Survey No.340/2 and 340/3 together with the superstructure standing thereon to the applicant.

D. Such other and further orders as this Hon'ble Court may deem just, fit and expedient be passed in favour of the applicant.

E. Costs of this application be proved for to the applicant.

4. In Civil Application (For fixing date of hearing) No. 2 of 2023, the applicant has prayed as under;

A. This Hon'ble Court may be pleased to admit and allow this application;

B. This Hon'ble Court may be pleased to direct the registry of this Hon'ble Court to place the main O.J. Appeal No. 54 of 2015 arising from the order passed in Company Application No. 164/2010 for final hearing before the Hon'ble Court on any date that may be convenience to this Hon'ble Court, in the interest of justice.

C. Such other and further orders as this Hon'ble Court may deem just, fit and expedient be passed in favour of the applicant.

5. The main arguments of learned advocate for the applicant is for the two Civil Applications being Civil Application (For Direction) No. 1 of 2023 and Civil Application (For Direction) No. 1 of 2024. In these two applications, it is prayed that the two survey numbers being

Survey Nos. 340/2 and 340/3 of village Nandasan, Ta Kadi, District Mahesana which were declared to be part of the liquidation proceedings in the CAV judgment dated 30.10.2015 in Company Application No. 164 of 2010. In this regards, learned advocate for the applicant has submitted that the applicant disputes that the superstructure does not allegedly exist on survey Nos. 340/2 and 340/3, and therefore, the DILR may be ordered to undertake inspection and submit a report with regards to the existence of the superstructure. Learned advocate has prayed that once such report is placed on record and when it is evident that the superstructure exists only on Survey Nos. 340/1 and not on 340/2 and 340/3, and therefore, the land bearing survey Nos. 340/2 and 340/3 should be returned back to the applicant.

6. It is argued that in the order passed by this court dated 23.01.2018 in O.J. Appeal No. 54 of 2015, it is observed that Survey Nos. 340/2 and 340/3, the land part cannot be part of the liquidation and only to the extent of superstructure, the entitlement can be that of the Official Liquidator to claim. However, as the contention of the applicant is the superstructure is not on the aforesaid two survey numbers hence also the amount is also not required to be paid, however, as the directions given by an order dated 23.01.2018 in O.J.

Appeal No. 54 of 2015, the applicant is still ready and willing to deposit the amount arrived at by the Government approved valuer and after depositing such amount, the Survey Nos. 340/2 and 340/3 be returned to the applicant.

7. The Court has taken into consideration the observations made by the learned Single Judge in the impugned CAV judgment wherein in para 25, learned Single Judge has observed as under;

“25. Thus, in the facts and circumstances of the present case, this application is partly allowed. The Official Liquidator is hereby directed to handover the possession of the land bearing survey Nos. 167/1, 167/2, 168/1, 168/2, 169/1, 169/2, 170 and 171, situated at village Nandasan, Taluka: Kadi, District: Mehsana, to the applicant within a period of six weeks from the date of receipt of this order. However, so far as lands bearing survey nos. 340/2 and 340/3 with construction made thereon are concerned, as observed earlier, the same are in possession of respondent No.3 since 2004 and the present application is filed in the year 2010. In fact, as observed hereinabove, the applicant himself has constructed the quarters of workers in land bearing Survey Nos. 340/1 as well as survey nos. 340/2 and 340/3. Therefore, when the respondent No.3 had purchased the land bearing survey No.340/1 with superstructure thereon and when the superstructure made on survey nos. 340/2 and 340/3 is made in such a manner that it would be difficult to separate it, now the

applicant at this belated stage cannot claim and is not entitled to get back the possession of land bearing survey Nos. 340/2 and 340/3. Therefore, the relief prayed for in prayer clause (c) and (cc) of the Judges' Summons are not granted."

8. The court has, thereafter, taken into consideration the direction of this Court in OJ Appeal No. 54 of 2015 wherein in para 31 it is ordered as under;

31. On such basis, we pass the following order:

"1. The Official Liquidator shall have the cost of construction standing on lands bearing survey Nos. 340/2 and 340/3 assessed by a Government approved valuer. The construction is quite an old one. Value of such construction as on date therefore, shall have to be on the basis of the current cost of similar construction reduced by depreciation for the period between the completion of construction till date. We make it clear that the valuer shall not apply the rate of depreciation provided in the Income-tax Act which is entirely for different purpose but actual reduction in value of construction with passage of time.

2. Such report shall be placed before the Court on the next date of hearing. SO to 21.03.2018.

3. The appellant shall deposit an ad-hoc sum of Rs. 50,000/- with the Official Liquidator towards the possible cost of such valuation subject to adjustments in future latest by 5.2.2018."

9. The facts of the case would indicate that pursuant to the directions issued by this Court, government approved valuer

has undertaken the inspection of two survey numbers and has arrived at a figure for an amount of Rs. 31.70 lacs.

10. It is contended that at least the appointment of DILR may be considered as it will bring the current status on record. It is pertinent to observe that this contention of survey Nos. 340/2 and 340/3 were not in the possession of the company under liquidation was nowhere raised at any stage or at least at the stage when the Company Application was decided by the learned Single Judge as well as the decision of Division Bench of this court in OJ Appeal No. 54 of 2015.

11. An argument is advanced by the learned advocate for the applicant that considering the dilapidated condition of superstructures, such valuation is on the higher side and has counter the same by placing yet another valuation report of a private valuer.

11.1 The basic contention being that superstructure does not exist on survey Nos. 340/2 and 340/3, at this stage, cannot be gone into particularly when the government approved valuer has undertaken the inspection and has submitted the report to the Official Liquidator and through him to the court giving out the fact that the valuation carried out is of the superstructure which is also on Survey Nos. 340/2 and 340/3. As there is no other directions or observations made by this court either in

the impugned order or in the order passed subsequently in the applications filed by the applicant in connection with the return of Survey Nos. 340/2 and 340/3 to the applicant without there being final adjudication of the OJ Appeal filed by the appellant, the prayers of the applicant with regards to the return of the Survey Nos. 340/2 and 340/3 cannot be accepted at this stage. In so far as the prayer made for depositing the amount, the said is already clarified in order dated 23.01.2018 passed in OJ Appeal No. 54 of 2015, does not require any further clarification.

12. In view of the aforesaid, Civil Application (For Direction) No. 1 of 2023, Civil Application (For Direction) No. 1 of 2024 are rejected.

13. At this stage, prayer is made by learned advocate for the applicant to consider fixing of OJ Appeal. Considering the aforesaid, this court deems it fit to fix the OJ appeal in third week of October 2024 and accordingly, Civil Application (For fixing date of hearing) No. 2 of 2023 stands disposed of.

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

K. S. DARJI