

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/COMPANY APPLICATION NO. 94 of 2017****In R/COMPANY PETITION NO. 133 of 2010****With
R/OFFICIAL LIQUIDATOR REPORT NO. 89 of 2019****With
R/COMPANY APPLICATION NO. 90 of 2018**

=====

KIRITKANT VADILAL SHETH

Versus

OFFICIAL LIQUIDATOR & 1 other(s)

=====

Appearance:

MR ABHISHEK M MEHTA(3469) for the Applicant(s) No. 1

MR AFTABHUSEN ANSARI(5320) for the Respondent(s) No. 1

MR NK MAJMUDAR(430) for the Respondent(s) No. 2

OFFICIAL LIQUIDATOR(16) for the Respondent(s) No. 1

=====

CORAM: HONOURABLE MS JUSTICE SONIA GOKANI**Date : 19/08/2019****ORAL ORDER**

1. The Official Liquidator is attached to the company in liquidation namely M/s. Jayant Paper Mills Ltd. This Court on 22.11.2010 in Company Petition No. 133 of 2010 appointed an Official Liquidator as a Provisional Liquidator of the company with a direction to exercise all the powers under the provisions of the Companies Act, 1956 (hereinafter referred to as 'the Act').

2. The Official Liquidator was appointed on 02.09.2011 as the liquidator of the said company. In the interregnum, it appears that the ex-

management had reported on 27.12.2010 to the Official Liquidator that there are 250 huts occupying portion of the land of the company at Block No. 82, Uttran, Taluka: Choryasi, District: Surat.

3. According to the Official Liquidator, the possession could not be taken on account of this encroachment. It is also the say of the Official Liquidator that he does not know the exact names and details of the encroachers. It will be necessary therefore to join the District Magistrate / Collector, Surat and the Surat Municipal Corporation as party respondents. Request is also made to join the Dakshin Gujarat Vij Company Ltd. as a party respondent. The prayers sought for in OLR 89 of 2019 are as follows:-

“(A) This Hon'ble Court may be pleased to permit the Official Liquidator to join (1) The District Magistrate / Collector, Surat (2) Surat Municipal Corporation, Surat (3) Dakshin Gujarat Vij Company Ltd., Chhaprabhatha Road, Amroli Surat as party respondents in present OLR.

(B) This Hon'ble Court may be pleased to issue Notice to all encroachers and pleased to direct all illegal occupants / chawls occupiers to vacant the premises which is illegally occupied by them and hand over vacant and peaceful possession to the office of the Official Liquidator.

(C) This Hon'ble Court may be pleased to direct the District Superintendent of Police, Surat and Police Inspector, Utran, Tal. Choryasi, Dist. Surat to provide police protection to the officials of Official Liquidator at the time of taking over possession of encroached land situated at Block

No. 82, Utran, Tal. Choryasi, Dist. Surat for vacating the same so as to ensure Law and Order situation at the site and also pleased to direct the District Magistrate / Collector, Surat to help and co-operate the Official Liquidator for removal encroachment in terms of Hon'ble High Court's order in this regard.

(D) This Hon'ble Court may be pleased to direct the Secured Creditor and worker's union to co-operate and assist the Official Liquidator in the process as stated at Prayer (B) and (C) above, so as to facilitate a joint effort for expedition.

(E) Such other and further orders and directions as this Hon'ble Court may consider just and appropriate in the matter may also be passed.”

4. This Court has heard learned advocate Mr. Aftabhusen Ansari appearing for the Official Liquidator. Learned advocate Mr. Vasavda who has appeared for the applicant Shri Chaganlal Jayarajbhai Patel in Company Application No. 90 of 2018 has offered to purchase 312 Sq. Mtrs of land where no pipeline project is executed.

5. Learned advocate Mr. Abhishek Mehta who has preferred Company Application No. 94 of 2017 has prayed to release the amount of 50,10,051/-towards the secured registered claim / dues of the workmen. For PF authority learned advocate Mr. S.J. Nayak appeared for Mr. N.K. Majmudar who is also heard.

6. This Court notices that the order of Provisional Liquidator to be

appointed for the company in liquidator is of dated 22.11.2010. On 27.12.2010 itself, the management had reported to the Official Liquidator that there are no guards deployed and encroachment on the land has to be possessed by the Official Liquidator. This having been made known to the Official Liquidator, it is quite shocking that, on the part of the Official Liquidator, no step has been taken from the year 2010 till date, to take possession of the assets of the company. It is for the first time, that the report has been tendered for impleading the Collector and other authorities and to get the details of the unauthorized occupants.

7. Considering the seriousness of the issue and also bearing in mind that once the order of appointment of Official Liquidator is passed by the Court making him in-charge of the assets including movable as well as immovable of the company in liquidation, Official Liquidator is required to act promptly, diligently, keeping in mind the interest of all secured, unsecured creditors, company and others. Official Liquidator is not expected to wait for more than 8 years to tender the report. No reasonable ground comes-forth also for not initiating any action against the hut-dwellers.

8. Expressing the displeasure over this conduct of the office of Official Liquidator, the request made by learned advocate for impleading Collector, Surat and Surat Municipal Corporation as a party respondent is

acceded to.

8.1. Let **Notice** be issued to both the authorities making it returnable on **16.09.2019**. On the returnable date, these authorities shall furnish the details of the encroachers with substantive documents within four weeks. Direct service is permitted. Over and above the regular mode, service of notice through speed post / RPAD is also permitted.

9. So far as Company Application No. 94 of 2017 is concerned, this application is preferred by the workmen for the dues of 50,10,051/-. The question has been raised with regard to sum of Rs. 17,35,043.23/- recovered by the PF Authority. According to learned advocate Mr. Mehta, the additional amount of Rs. 25,94,976/- has been asked for without explaining about the amount recovered of Rs. 17,35,043.23/-.

9.1. Learned advocate appearing for Mr. Majmudar ensures to furnish this detail in writing on the returnable date. The same shall be done on affidavit by the officer not below the rank of Class-I in the PF Authority.

10. So far as Company Application No. 90 of 2018 is concerned where the prayers sought for is of directing the Official Liquidator / Sale Committee to be set up for the auction price of the encroached land and to direct the respondent to auction 312 sq.mtrs of land where no pipeline project is executed.

10.1. In the opinion of this Court, this is a prematured application and also misconceived. The same deserves to be rejected at this stage keeping the right of the parties open in the future date to be proceeded and also permitting to participate at an appropriate stage of the proceedings.

11. In wake of order passed in Company Application No. 90 of 2018, the presence of respondent no.3 in OLR 89 of 2019 will not be necessary and it should be deleted from the party respondents.

12. Matter to appear on 16.09.2019.

(SONIA GOKANI, J)

Bhoomi