

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/OFFICIAL LIQUIDATOR REPORT NO. 89 of 2019**

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OFFICIAL LIQUIDATOR OF M/S JAYANT PAPER MILLS LTD (IN LIQN)
Versus
KIRTIKANT VADILAL SHETH

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Appearance:

MR AFTABHUSEN ANSARI(5320) for the Applicant(s) No. 1
for the Respondent(s) No. 1,2
DELETED(20) for the Respondent(s) No. 3
MR CJ VIN(978) for the Respondent(s) No. 5
NOTICE SERVED BY DS(5) for the Respondent(s) No. 4
NOTICE SERVED(4) for the Respondent(s) No. 4

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 18/01/2022

ORAL ORDER

1. Heard learned Advocate Mr. Aftab Husen Ansari for the Official Liquidator and learned Advocate Mr. C.J. Vin for Respondent No.4.

2. Official Liquidator has filed Official Liquidator Report No. 89 of 2019 with a prayer to issue notice upon the encroachers upon the land situated at Block No.82, Village: Uttaran, Taluka: Choryasi, District: Surat, which is a property of the company in liquidation, M/s. Jayant Paper Mills Limited.

3. This Court (Coram: Ms. Sonia Gokani, J.) vide order dated 19th August, 2019 issued notice upon

the District Magistrate / Collector, Surat and the Municipal Commissioner, Surat to provide the details of the encroachers.

4. Following observations were made by this Court in its order dated 19th August, 2019:

"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 cooperate 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 hutdwellers.

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."

5. Company Application No. 94 of 2017 is filed by the workmen of the company in liquidation to recover the dues of Rs.50,10,051/-. A dispute is also raised with regard to the payment made to the Provident Fund authority and the further demand raised by the Provident Fund authority.

6. After the aforesaid order was passed by this Court, Official Liquidator filed further report stating that the Official Liquidator had convened a meeting of the Sale Committee on 11th September, 2019 to discuss and decide the course of action in the matter with regard to the land of the company in liquidation situated at Block No.82, Village: Uttaran, Taluka: Choryasi, District: Surat. Official Liquidator could not take the possession of the said land because of approximately 250 houses or huts are erected on the said land. A representative of the workers' union handed over a copy of the voter's card list of the hut occupants in the said meeting.

7. Therefore it was decided in the said meeting to issue a notice to the encroachers /

unauthorized occupants on the land bearing Block No.82, Village: Uttaran, Taluka: Choryasi, District: Surat, on the basis of the details submitted by the workers' union for vacating the land bearing Block No.82, Village:Uttaran, Taluka: Choryasi, District: Surat, of the company in liquidation. It was also decided to issue letter to the Superintendent of Police and Commissioner of Police for getting assistance to get the land vacated from illegally occupied by approximately 250 hut dwellers.

8. It was also decided in the said meeting to obtain Title Search Report of the said land through the panel advocate It was also proposed to send a letter to Sub-Registrar, Revenue Department and the Collector with a request to maintain status quo with regard to the land in question.

9. It appears that by letter dated 18th September, 2019, the Official Liquidator requested the Dakshin Gujarat Vij Company Limited (in brief, 'DGVCL') to provide the details of the names and addresses of the persons residing in Samata Nagar, situated on Block No.82, Village:Uttaran, Taluka: Choryasi, District: Surat, as per the record available with it.

10. DGVCL by letter dated 19th September, 2019 provided the list of the consumers in Samata Nagar.

11. The Official Liquidator by letter dated 15th October, 2019 requested the District Magistrate Surat and Sub-Registrar Surat to maintain the status quo with regard to the land in question.

12. By letter dated 15th October, 2019 the Official Liquidator requested the Collector, Mamlatdar, Talati and Municipal Commissioner and DGVCL to take suitable actions against illegal encroachers of the land bearing Block No.82, Village:Uttaran, Taluka: Choryasi, District: Surat.

13. Official Liquidator also issued a notice to 26 encroachers on 15th October, 2019 on the basis of the Voder's List submitted by the workers' union and names of the consumers in Samata Nagar submitted by DGVCL directing them to vacate the premises of the company in liquidation and to handover the peaceful and vacate possession of the land bearing Block No.82, Village:Uttaran, Taluka: Choryasi, District: Surat to the Official Liquidator.

14. It is submitted by the Official Liquidator

that out of 26 notices issued by him, 15 notices were served upon the illegal encroachers, as per the names and addresses provided in Paragraph-6 of the further report.

15. Official Liquidator by letter dated 15th October, 2019 sent a letter to Commissioner of Police with a request to ensure serving of notices to 26 illegal encroachers and occupants at the aforesaid land. The Commissioner of Police was also sent a reminder on 7th November, 2019 with a request to forward the status of service to the Official Liquidator.

16. Official Liquidator received a notice from the learned Advocate Mr. Aspi Kapadia from the 15 noticees on 31st December, 2019 stating that those 15 persons are staying at Block No.82, Village: Uttaran, Taluka: Choryasi, District: Surat, since 1970 onward and their predecessor also were residing there and they are having the possessory title by building residence on the land in question for more than 40 years and therefore they are having title by adverse possession.

17. Mr. Chaitanya Joshi, the panel advocate of the Official Liquidator, submitted Title Search Report dated 17th June, 2015 in respect of the property of the company in liquidation situated

at Block No.82, Village: Uttaran, Taluka: Choryasi, District: Surat, which revealed that in pursuance of the offers invited by IDBI Bank for Block No.82, Village: Uttaran, Taluka: Choryasi, District: Surat, the Sandesh Limited submitted its offer dated 16th January, 2004 and the same was accepted by the IDBI Bank in BIFR proceedings of the company in liquidation.

18. During the proceedings before the BIFR a registered Memorandum of Understanding was executed between the Sandesh Limited and one Mr. Chunibhai Haribhai Gajera on 16th September, 2004 to sale the land in question. It was pointed out in the Title Search report that the said transaction of sale of land was only in the nature of MOU and it does not have any legal sanctity. It further emerged that the company in liquidation failed to handover the peaceful and vacant possession of the land bearing Block No.82, Village: Uttaran, Taluka: Choryasi, District: Surat, to Sandesh Limited as the said land was encroached upon by various encroachers and the transaction was called off by repayment of amount by the company in liquidation.

19. The Title Search Report given by learned Advocate Mr. Chaitanya Joshi in Paragraph-6 of the said report pointed out that upon the

thorough scrutiny of the documents it appears that a portion of the land bearing Block No. 77, admeasuring 1,22,113 sq.mts and another land bearing Block No. 82 admeasuring 2124 sq.mts. is of the legal ownership of the company in liquidation and accordingly company in liquidation has a legal, valid, clear and marketable title over the said land.

20. In view of the above facts emerging from the record, following directions are issued to the office of the Official Liquidator:

(i) Official Liquidator is **directed** to join following authorities as party respondents in Official Liquidator Report No. 89 of 2019;

(a) Collector, Surat;

(b) Mamlatdar, Uttran;

(c) Talati-cum-Mantri, Uttaran;

(d) Municipal Commissioner, Surat;

(e) Dakshin Gujarat Vij Company Limited, Surat;

(ii) Official Liquidator is also **directed** to join all the 15 persons whose names are stated at Paragraph-6 of the further report as party respondents in Official Liquidator Report No. 89 of 2019;

(iii) Official Liquidator shall file appropriate draft amendment as per the aforesaid directions within the period of **one week** from today;

21. Stand over to **25th January, 2022**. To be listed on the top of the Board.

UMESH/-

(BHARGAV D. KARIA, J)