
2008 eGLR_HC 10005803,2009 (90) SCL 1

Before the Hon'ble MR KAPUJ, JUSTICE

STATE BANK OF INDIA - APPLICANT(S) Vs. O.L.OF NEW GUJARAT SYNTHETICS LTD. AND 12 -
RESPONDENT(S)

COMPANY APPLICATION No: 280 of 2004 , Decided On: 05/12/2008

R.M.Desai, Ameer Yagnik, D.S.Vasavada, Nanavati Associates, Nitin Mehta

MR.JUSTICE K.A.PUJ

1. The applicant, State Bank of India, has taken out this Judges Summons making following prayers;

(A) The Liquidator of New Gujarat Synthetics Ltd. (In Ligu.), be directed to take possession of piece or parcel of land situate, lying and being at Mouje Dariapur Kazipur, City Taluka, bearing Final Plot No. 31 (Original Survey No. 416) of Town Planning Scheme No. 5 Ahmedabad admeasuring 12828 sq. yds. equivalent to 11501 sq. mts. together with constructions thereon which is in unauthorised and illegal occupation and possession of Respondent Nos. 4 to 13.

(B) It may be declared that Respondent Nos. 4 to 13 are in unauthorised and illegal occupation of land situate, lying and being at Mouje Dariapur Kazipur, City Taluka, bearing Final Plot No. 31 (Original Survey No. 416) of Town Planning Scheme No.5 Ahmedabad admeasuring 12818 sq. yds. equivalent to 11501 sq. mts. together with construction standing thereon.

(C) It may be declared that Respondent No. 4 to 13 are encroachers and trespassers on the land situate lying and being at Mouje Dariapur Kazipur, City Taluka, bearing Final Plot No. 31 (Original Survey No. 416) of Town Planning Scheme No.5 Ahmedabad admeasuring 12828 sq. yds. equivalent to 11501 sq. mts. Together with construction thereon and are liable to be evicted therefrom.

(D) It may be declared that the Respondent Nos. 4 to 13 have no right, title or interest to occupy the premises situate, lying and being at Mouje

Dariapur Kazipur, City Taluka, bearing Final Plot No. 31 (Original Survey No. 416) of Town Planning Scheme No. 5 Ahmedabad admeasuring 12828 sq. yds. equivalent 11501 sq. mts. together with construction thereon.

(E) Respondent Nos. 4 to 13 be called upon to establish their title and interest if any to the said land situate, lying and being at Mouje Dariapur Kazipur, City Taluka, bearing Final Plot No. 31 (Original Survey No. 416) of Town Planning Scheme No. 5 Ahmedabad admeasuring 12828 sq. yds. equivalent 11501 sq. mts. Together with construction thereon.

More or less similar prayers are made by the applicant of Company Application No. 312 of 2004 and hence narration of facts and entire discussion is confining to Company Application No. 280 of 2004.

2. This Court has issued notice on 23.8.2004 directing the respondents No. 4 to 13 to produce relevant documents establishing their legal title over the properties. The Official Liquidator was also directed to make proper and complete inquiry in the matter with regard to the issue raised by the applicant Bank in the present application and submit his detailed and exhaustive report on the record of this case. During the pendency of this application, several affidavits and counter affidavits were filed and along with which voluminous documents were filed by the parties. The Court has called for the records and proceedings of H.R.P. Suit No. 243 of 1994 and Execution Petition No. 172 of 1994. The Court has further called for the records and proceedings of H.R.P. Suit No. 152 of 1991.

3. The brief facts giving rise to the present application are that, New Gujarat Synthetics Ltd., (hereinafter referred to as NGSL for short) was a company incorporated and registered under Companies Act, 1956. By Indenture made on 29.4.1972 and registered with the Sub Registrar of Assurances under Serial No. 5701 on 29.4.1972, one Company, namely, New Asarava Manufacturing Co. Ltd., transferred its leasehold interest for Rs. 7 lacs being full purchase price of leasehold land, situated, lying and being at Mouje Dariapur Kazipur, City Taluka bearing Survey No. 34 Hissa No. A/1, Survey No. 20/1 bearing Survey No. 33 and Plot No. 423 of Survey No. 29 and Survey No. 419 together with the factory building and other structures on the said land for absolute use for the remaining unexpired term of the demise created by the Indenture of lease recited in the said Indenture subject to the payment of rent, performance and observance of all the covenants, conditions and stipulations contained in the respective lease deed recited in the said Indenture. Pursuant to the said Indenture, leasehold interest in respect of several piece and parcel of the land mentioned in the said Indenture including the land bearing Survey No. 416 vested in NGSL. The present application is more or less confining to the land bearing Survey No. 416 only which is now Final Plot No. 31 of Town Planning Scheme No. 5 of Dariapur Kazipur, Ahmedabad and as such reference to other survey numbers in details is not necessary.

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4. The applicant, State Bank of India, had sanctioned and granted financial assistance by way of several credit facilities to NGSL. Terms and conditions stipulated by the applicant Bank for sanction and grant of several credit facilities by way of financial assistance were that the amount due under respective financial assistance will inter alia be secured by mortgage of the lands bearing Survey No.34/1, 20/1, 33 and 416 situated, lying and being at Mouje Dariapur Kazipur, City Taluka, Ahmedabad.

5. By Memorandum dated 19.1.1983 and registered with the Sub Registrar of Assurances Ahmedabad under Serial No.12253 on 18.7.1987, NGSL by way of extension of equitable mortgage by deposit of title deeds by constructive delivery of the deeds and documents relating to leasehold piece of lands together with the building and other structure thereon created security on the immovable property to secure the amount due and payable by the Company in liquidation to the applicant Bank. As recorded in the said Memorandum though oral assent and consent was given on 18.1.1982 to hold and retain title deeds deposited on 13.10.1982 due to provision of the Urban Land (Ceiling & Regulation) Act, 1976 being applicable, permission was required for creating the mortgage and Memorandum though executed on 19.1.1983 was registered by the Sub Registrar of Assurances on 19.7.1987 after the Additional Collector granted permission under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976. The land bearing Survey No.416 was mortgaged to the applicant Bank as security for repayment and discharge of the sum of Rs.12,28,19,000/- together with interest thereon.

6. The NGSL was sanctioned additional financial assistance and to secure the said additional financial assistance to the extent of Rs.2,75,00,000/- it was declared by the Company on 18.6.1985 that the title deeds listed in first schedule to the Memorandum of extension of equitable mortgage were deposited by constructive delivery as security. Particulars of charge by creation of mortgage were filed with the Registrar of Companies, Gujarat and the charge by way of mortgage in respect of the land bearing Survey No.416 was registered with the Registrar of Companies, Gujarat.

7. It appears from the record that several winding up petitions were filed against NGSL for an order of winding up and in one of the petitions being Company Petition No.10 of 1986, this Court vide its order dated 1.9.1989, pursuant to the recommendations of the Board for Industrial Financial Reconstruction, directed that NGSL be wound up by and under supervision of this Court and the Official Liquidator attached to this Court was appointed as the Liquidator of the Company and he took the possession of the assets of the Company in liquidation. It, however, appears that the Official Liquidator had not taken the possession of the land bearing Survey No.416 (New Final Plot No.31 of Town Planning Scheme No.5 of Ahmedabad). This Court vide its order dated 12.3.1997 had constituted a sale committee

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consisting of secured creditors, Official Liquidator and Textile Labour Association for sale of the assets of the Company in liquidation and the Industrial Investment Bank of India (IIBI) the respondent No.2 herein was appointed as Chairman of the said Sale Committee. The applicant Bank was under the impression that the Final Plot No.31 which was included in the sale effected by the IIBI, was land bearing Survey No.416, being Final Plot No.31 of Town Planning Scheme No.5 of Dariapur-Kazipur. It was, however, found that it was not the correct position. The said land was not included and hence the applicant Bank started inquiry. The applicant Bank has also inquired from the Official Liquidator as to whether in the Statement of Affairs filed by the Ex-Directors of the Company in liquidation, the details of the property mortgaged, namely, land being Survey No.416 being Final Plot No.31 of Town Planning Scheme No.5 were furnished or not. The Official Liquidator gave reply to the effect that Survey Number 416 and/or Final Plot No.31 of the land was not indicated in the Statement of Affairs filed by the Ex-Directors of the Company. Even in the valuation report given by Batli Boy & Co., the land bearing Survey No.416 was not mentioned. The Balance-sheet for the year 1985-86 was filed with the Official Liquidator. On perusal of the said Balance-sheet it was noticed that the details of this Survey Number and/or Final Plot of the land were not mentioned therein.

8. On further inquiry with IIBI, the applicant Bank was informed that site was inspected by the Dy. General Manager of IIBI on 2.8.2003, wherein it was ascertained that the land consists of two parts divided by a public road. Building, plant and machinery installed in Survey No.34/1, 20/1 and 33 were taken possession by the Official Liquidator and sold by the sale committee and sale was sanctioned and approved by this Court. As regards land bearing Survey No.416 located on the other side of the road, it was observed during the visit that land is in possession of Shri Sandip Shah, Gujarat Steel Distribution Ltd., who has reported to have engaged private security. The IIBI also informed that the Company in liquidation had process house on the said land and the said process house was closed and later on it was transferred on the name of Aboo Investors and Dealers Ltd (hereinafter referred to as ADIL for short).

9. In view of these facts gathered by the applicant Bank, Officers of the applicant Bank visited the site at Final Plot No.31 of Town Planning Scheme No.5 and they were surprised to note that a big dome was constructed and adjacent to the dome a workshop for automobile repairing was constructed. The dome was housing a automobile showroom purported to be owned by Kataria Group. On further inquiry with the personnel in the showroom it was informed that Kataria Group had purchased the property in different names i.e. in the name of respondent Nos.5 to 13.

10. On behalf of the applicant Bank it was submitted before the Court by Mr.Roshan Desai, learned advocate, that as decided in the case of Himalaya Tools Ltd.,

Reported in 87 Company Cases 658, since the mortgage deed created, mortgagee

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becomes owner of the property and when it sells mortgaged properties, it is selling its own property. The mortgagor assigns his interest in favour of mortgagee and mortgagor has no right to sell the said property or deal with or dispose of, contrary to the right of mortgagee. The applicant Bank was not aware as to what are the rights under which the respondent No.4 i.e. Indumati Properties & Credit Pvt. Ltd., is claiming and what right if any respondent Nos.5 to 13 have in respect of the said land. It is submitted that right of the respondents No.4 to 13 are contrary to the provisions of Transfer of Property Act and contrary to the interest of State Bank of India as mortgagee. He has further submitted that once a mortgage is always a mortgage and mortgage runs with the land. The State Bank of India as a mortgagee is entitled to take possession from the mortgagor or third party in whose favour the mortgagor or any person may have assigned or sold the said property. Since occupation of Indumati Properties and Credit Pvt. Ltd., and respondents No.5 to 13 is contrary to the provisions of the law and without any title and without any right, State Bank of India is entitled to take possession of the said land. Mr.Desai further submitted that the particulars of charge by way of mortgage created by NGSL were filed with Registrar of Companies and hence the Official Liquidator is supposed to have taken the possession of land bearing Final Plot No.31 (Survey No.416) of Town Planning Scheme No.5. He has submitted that in Statement of Affairs, details of immovable properties are not furnished. The Official Liquidator has not taken proper care in ascertaining the details regarding properties of the Company in liquidation. He has, therefore, submitted that the possession of the properties in question over which the applicant Bank has created its charge, should be handed over to the applicant Bank.

11. On notice being issued, Ms.Amee Yajnik, learned advocate has filed her appearance on behalf of the Official Liquidator. A report is also filed by the Official Liquidator on 25.10.2004. It is stated therein that NGSL (in liquidation) was ordered to be wound up by this Court on 1.9.1989 and he was appointed as the Liquidator of the Company. It is further stated that the possession of the land being Final Plot No.31 (Survey No.416) of T.P. Scheme No.5 of Ahmedabad was not taken over by him since it neither came to his notice or knowledge in the ordinary course that the said land belongs to the Company nor anybody else whether the applicant Bank or other secured creditors or Textile Labour Association, or Ex-Directors of the Company specifically brought this fact to his notice. It is further stated that it has not been mentioned in the Statement of Affairs of the Company filed by the Ex-Directors of the Company. The balance-sheet of the Company also does not disclose this fact. It is further stated that he does not have any independent information, material or documents with him corroborating or contradicting the averments made by the applicant Bank in its application.

12. On notice being served on respondent No.4, Nanavati Associates filed their appearance and affidavit-in-reply is filed by Shri Pravinchandra Atmaram Shah, one of the Directors of the respondent No.4 Company. The respondent No.4 has raised several preliminary objections with regard to the maintainability of the application filed by the applicant Bank. Mr. K.S.Nanavati, learned Senior Counsel appearing for respondent No.4, submitted that the application suffers

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from the vice of suggestio falsi and suppressio veri in as much as the applicant has suppressed certain vital facts from this Court which would be clear from the facts narrated in the affidavit. The application is barred by law of limitation. The applicant Bank has no right or interest over the said land in question and, therefore, is not entitled to maintain the present application. Neither the applicant Bank as a mortgagee nor the NGSL (in liquidation) had any lease hold right or interest over the said property in question at least with effect from 10.9.1993, when the original lease in favour of NGSL (in liquidation) expired, which would be crystal clear from the facts and circumstances narrated in the affidavit. The application is, therefore, misconceived, baseless and devoid of merits and, therefore, is required to be rejected.

13. Mr.Nanavati has further submitted that an immovable property consisting of land admeasuring 4.23 Acres and 3 gunthas forming part of Town Planning Scheme No.5, Dariapur- Kazipur, Ahmedabad situated on Final Plot No.31 in the registration district and sub-district of Ahmedabad, was initially owned by a Trust, namely, Vrajraj Vallabhbhai Vaishnav Haveli Asarwa Bethak Trust. The said Trust had given the said land on lease to a company known as Ahmedabad Hitechhu Spinning and Manufacturing Co. Ltd., for a period of 99 years from 11.9.1894 for a yearly rent of Rs.585/-. Thus, the said company thereafter constructed various buildings, godowns, etc with regard to the process house for a textile mill and a textile mill was functioning on the said land. Subsequently, the said leasehold rights in the said land were transferred to M/s. Harivallabh Mulchand Mills Co. Ltd. Later on, the said company changed its name from Harivallabh Mulchand Mills Co. Ltd. to New Asarwa Manufacturing Co. Ltd. Thus, the New Asarwa Manufacturing Co. Ltd., become the assignee of the leasehold rights in the said property. Subsequently, with effect from 29.4.1972, the said New Asarwa Manufacturing Co. Ltd., transferred the leasehold rights in the said land to New Gujarat Cotton Mills Ltd., by an instrument dated 29.4.1972 for running the textile mill. This is evident in the records of rights by mutation Entry No. 7339 dated 24.5.1972. Subsequently, the New Gujarat Cotton Mills Ltd., was merged with New Gujarat Synthetic Ltd., as a result of which the leasehold rights stood transferred to NGSL. Thus, the said property was being enjoyed by NGSL as a lessee and a textile unit was being run by it on the said land which was popularly known as Unit-II of NGSL. Thereafter, by registered agreement dated 28.5.1984, the said NGSL transferred its leasehold rights in the said land to M/s. Aboo Investors and Dealers Ltd. A supplementary agreement was entered into by and between NGSL and AIDL.

14. He has further submitted that the transfer of lease hold right by NGSL to AIDL was pursuant to the "Corporate Re-organization" of NGSL, which was approved by State Bank of India. Thus, with effect from 1984, NGSL had no right, interest, much less any leasehold right/interest on the said land in question and the lease hold rights and interest in the said land were transferred to AIDL. This fact is also evident from the letter dated 24.9.1986 issued by the State Bank of India to NGSL and a letter dated 6.10.1986/5.11.1986 written by NGSL to State Bank of India. It is, therefore, contended that the State Bank of India has knowledge about such transfer of lease hold right by NGSL in favour of AIDL

right from the beginning i.e. 1984. Despite this fact, the State Bank of India had suppressed this fact in its present application and hence on this ground alone, the application is required to be rejected.

15. He has further submitted that a deed of conveyance dated 28.5.1986 was executed by and between NGSL and AIDL by which the said process house at Unit II situated in the land in question was conveyed and transferred to AIDL for the consideration agreed between the parties and specifically stated in the said conveyance deed. In view of the transfer of lease hold right in favour of AIDL in respect of the land in question, the said AIDL was paying yearly rent to the original land owners i.e. the said Trust.

16. He has further submitted that in September, 1989 the present respondent No.4 was registered under the provisions of the Companies Act, 1956 and having its registered office at Calcutta had made an offer to the said Trust for purchase of the property in question. Since the said property was owned by the public charitable trust, appropriate permissions by the Charity Commissioner, were also required to be obtained. On 22.12.1989, the Board of Trustees in its meeting passed a Resolution for sale of the said property to the respondent No.4 alongwith the encumbrances of lease for 99 years. Thereafter, on 12.1.1990, an advertisement was published in the newspaper, Gujarat Samachar by the said Trust inviting any objection by any person with regard to the sale of the said property and the application for permission to sell being made before the Charity Commissioner. At that time no objections were received. Neither the applicant Bank nor the Official Liquidator had raised any objection. Thereafter, on 6.3.1990 an order came to be passed in an application under Section 36 of the Bombay Public Trust Act by the Charity Commissioner, Ahmedabad granting permission for sale of the property in question. Pursuant to the said permission granted on 8.3.1990 the said Trust called upon the respondent No.4 to make the payment of agreed amount within 10 days. On 23.5.1990, the deed of conveyance by and between the said Trust and the respondent No.4 came to be executed by which the said property was conveyed to the respondent No.4. Thus, this property came to be owned by the respondent No.4 with effect from 23.5.1990. However, at the said time, AIDL was enjoying the said property as a tenant. Since the lease which was for a period of 99 years, expired on 10.9.1993, the respondent No.4 called upon AIDL to hand over the vacant and peaceful possession of the said land, by notice dated 10.11.1993. Since AIDL was not handing over back the vacant and peaceful possession of the land in question, respondent No.4 was constrained to file a suit in Ahmedabad Small Causes Court, being H.R.P. Suit No.243 of 1994. Pending the said suit before the Ahmedabad Small Causes Court, settlement was arrived at between the respondent No.4 and AIDL and a joint purshis for a decree was filed before the Ahmedabad Small Causes Court on 20.5.1994. Ultimately a decree in terms of joint purshis was passed by the Ahmedabad Small Causes Court and AIDL was required to hand over a vacant and peaceful possession of the land in question to the respondent No.4. However, despite the decree, AIDL did not hand over vacant and peaceful possession of the land to the respondent No.4 and, therefore, an Execution Petition No.192 of 1994 came to be filed by respondent No.4 in the Ahmedabad Small Causes Court. Ultimately, pursuant to the execution proceedings, the vacant and peaceful possession of the land was handed over by AIDL to

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respondent No.4. After the vacant and peaceful possession of the land in question was handed over to the respondent No.4, the respondent No.4 had conveyed the pieces and parcels of the land to respondents no.5 to 13 as per the conveyance deed executed by and between the respondent No.4 and the respondents No.5 to 13.

17. Thus, in view of the above facts, Mr.Nanavati has strongly urged before the Court that the property in question came to be owned by the respondent No.4 with effect from 23.5.1990 and after the expiry of the lease with effect from 10.9.1993, the possession of the said property was also vested with the respondent No.4. Thereafter, the pieces and parcels of the land in question were sold to respondents No.5 to 13 as per conveyance deed produced by the said respondents. It is, therefore, contended that the application made by the State Bank of India is absolutely devoid of merit and misconceived and the same deserves to be rejected at the very threshold in as much as the State Bank of India has no right or interest as a mortgagee as contended by it. With effect from 10.9.1993, when the lease period expired, the lease hold rights which were mortgaged to the State Bank of India by NGSL also came to an end and, therefore, the State Bank of India has no right or interest over the said property.

18. On notice being issued Mr.Nitin Mehta, learned advocate has filed his appearance on behalf of respondents No.5 to 13 and separate affidavits are filed by the respondents No.5 to 13. Mr.Pushpendra Kataria, partner of the M/s. Mutha Automobile, respondent No.5 has produced alongwith his affidavit relevant documents establishing the title over the land in question and raising the contention that the application filed by the applicant Bank is hopelessly barred by limitation. It is further stated that the respondent No.5 has purchased the land admeasuring 1112 sq. yards by deed of conveyance dated 7.4.1995 from the respondent No.4 for a valuable consideration at the prevailing market rates. Similarly Santosh Kataria, director of M/s.Kataria Transport Company Gujarat Pvt. Ltd., respondent No.6 herein has also filed his affidavit stating that the respondent No.6 has purchased the land admeasuring about 1113.85 sq. yards by deed of conveyance dated 7.4.1995 from the respondent No.4 for a valuable consideration at the prevailing market rates. Mr.Rajendra Kataria, director of M/s.Kataria Automobiles Ltd., respondent No.7 has also filed an affidavit stating therein that the respondent No.7 has purchased the land admeasuring 8618.05 sq. yards on different dates from the respondent No.4 for a valuable consideration at the prevailing market rates. Mr.Rohan Kataria, proprietor of M/s. Kataria Movers, respondent No.10 has also filed an affidavit stating therein that the respondent No.10 has purchased the land admeasuring 450 sq. yards by deed of conveyance dated 23.11.1995 from the respondent No.4 for a valuable consideration at the prevailing market rates. Mr. Rajendra Kataria, director of M/s. Rajendra Roadlines Pvt. Ltd., has also filed an affidavit stating therein that the respondent No.11 has purchased the land, admeasuring 450 sq. yards by deed of conveyance dated 23.11.1995 from the respondent No.4 for a valuable consideration at the prevailing market rates. Mr.Rajendra Kataria, karta of Rajendrakumar Rohankumar Kataria, HUF, respondent No.12, has also filed affidavit stating therein that the respondent No.12 has purchased the land admeasuring 376.63

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sq. yards from the respondent No.4 by deed of conveyance dated 20.12.1995 from the respondent No.4 for a valuable consideration at the prevailing market rates.

19. In response to the affidavits filed on behalf of the respondent Nos.4 to 13, the applicant - State Bank of India filed its affidavit-in-rejoinder on 21.07.2005 disputing facts stated and averments raised in the reply affidavits as well as raising several other issues. It is contended that erstwhile Directors of NGSL were the Directors of respondent No.4 Company and all records of NGSL which are not available with the Official Liquidator, were made available to the respondent No.4 Company. It is further contended that Memorandum of Deed of Conveyance dated 28.05.1986 executed by NGSL in favour of AIDL, whereby leasehold rights are transferred, has not been registered. It is further contended that NGSL was declared as Relief Undertaking during this period and hence, it could not dispose off its assets under the guise of corporate re-organisation. Though the registered office of NGSL and the property was situated at Ahmedabad, the document was executed at Mumbai. The consideration for transfer of this property was received by NGSL in the form of shares of AIDL, which has no value. Hence, the transfer was without consideration and was void. It is further contended that no resolution under Section 293 (1) (a) of the Companies Act has been passed by NGSL authorising the Board of Directors to transfer the leasehold rights and hence, no right was conferred on AIDL. It is further contended that deed of conveyance dated 28.05.1984 and handing over possession of the assets including the land in question by NGSL to AIDL was contrary to the mortgage created in favour of applicant Bank and contrary to the provisions of law and it was done without prior permission of the State Government. The said Conveyance Deed was, therefore, void and no right flowed thereunder. It is further contended that the Ex-Directors of NGSL who were also Directors of respondent No.4 Company, have committed fraud on public and misappropriated large sums of money and assets and have committed breach of several provisions of law. Dealing with the issue of limitation, it is contended that the application is preferred by the Bank for protection of its securities which are in possession and occupation of third party. As and when Debt Recovery Tribunal will pass a decree in favour of the Bank, the said security shall be sold through Recovery Officer. It is further contended that the period of limitation starts from the date of knowledge. It is, therefore, contended that the prayers made in the Judges Summons are required to be granted.

20. Since certain new issues were raised by the applicant Bank in its affidavit-in-rejoinder, the respondent Nos.5 to 13 filed their affidavit in sur-rejoinder on 27.07.2005. Mr.Mihir Thakore, learned Senior Counsel appearing for respondent Nos.5 to 13 inter alia contended that there is no valid mortgage in favour of applicant Bank of the leasehold rights of NGSL in the said property and even if the applicant Bank is presumed to be mortgagee, even then none of the reliefs prayed for can be granted for the following reasons :-

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(i) The applicant Banks claim that respondent Nos.5 to 13 are in unauthorised and illegal occupation is ex-facie untenable since the respondent Nos. 5 to 13 have purchased the property by validity executed conveyances from person owning and in possession of the said property and the applicant Bank is under no circumstances, a mortgagee with possession and consequently the applicant Bank can neither seek declaration that the respondents are in unauthorized occupation of the said property nor can seek direction that the Official Liquidator should take possession thereof.

(ii) The applicant Bank as the mortgagee can neither claim foreclosure nor possession of the property as at the highest, the applicant Bank is a simple mortgagee.

(iii) The claim of the applicant Bank even for declaration that respondent Nos.5 to 13 are in unauthorized occupation is hopelessly barred by the law of limitation.

(iv) The claim of the applicant Bank for sale of property, if filed, is also hopelessly barred by the limitation.

(v) Even otherwise, the applicant Bank admittedly claims that the mortgage in its favour is in respect of leasehold property for the balance period of lease which expired on 10.09.1993. The applicant Bank, therefore, cannot claim any right whatsoever as a mortgagee against the respondent Nos.5 to 13 who have acquired the rights of owner in possession after the expiry of the said lease.

21. On behalf of respondent No.4, an affidavit-in-sur-rejoinder is filed on 24.08.2005, wherein it is, inter alia, contended that the declaration of relief undertaking under the BRU Act by the State Government does not debar the Company from transferring its assets pursuant to the corporate re-organization. It is further contended that the registration of the Conveyance Deed at Mumbai is not illegal. It is permissible in law. This Conveyance Deed was validly executed and validly registered at Mumbai. There has been no challenge to such transfer and it is challenged at such a belated stage when the respondent No.4 paid huge consideration for purchase of the said property. The lease period expired on 10.09.1993 and, therefore, the leasehold rights no longer exist with effect from 10.09.1993 in favour of NGS L and in turn, in favour of its mortgagee, the applicant Bank. It is, therefore, contended that the present application is baseless, false and frivolous and deserves to be rejected.

22. Pursuant to the order passed by this Court on 13.09.2006 directing the Official Liquidator to the further detailed report, the Official Liquidator, after examining the

affidavit-in-reply, affidavit-in-rejoinder and affidavit-in-sur-rejoinder filed by the parties and after taking fresh inspection of the records of Registrar of Companies, filed further report on 18.09.2006, inter alia, contending that assignment of leasehold rights of the Company in the land in dispute in favour of AIDL was absolutely illegal and void since the Company had already mortgaged its leasehold rights in favour of the applicant Bank on 13.10.1981 and further on 19.01.1983. It is further stated in the report that if the land in dispute as a part of the process house were lawfully and legally transferred by NGSL to AIDL, it was the duty of NGSL under Section 138 of the Companies Act to inform the Registrar of Companies that the charge of the applicant Bank qua the land in dispute is satisfied since the charged assets were transferred to AIDL with the charge. It is further contended that as a part of this transaction, if valid, the land in dispute or the leasehold rights in respect of the land in dispute, came to be transferred to AIDL, the AIDL acquired the property along with the subsisting charge of the applicant Bank and then it was the statutory duty of AIDL to intimate the Registrar of Companies under Section 127 of the Companies Act to record that AIDL has acquired the property subject to the charge of the applicant Bank. With regard to the sale of ownership rights by the original owners of the land to the respondent No.4, it is contended that the said Conveyance Deed was executed on 23.05.1990 when the legal and valid mortgage in favour of the applicant Bank was subsisting. Neither the vendor nor the vendee had disclosed or ascertained with due diligence that the property is mortgaged with the applicant Bank. It is, therefore, contended that the original position as of 28.05.1984 is required to be restored.

23. In support of their rival contentions, learned counsels appearing for the parties have cited following judgments before the Court.

24. Mr.Desai in support of his submission that the sale deed whereby the lease hold rights are sold by the NGSL to AIDL is not registered and hence no rights are vested in the said AIDL, has relied on the decision of Calcutta High Court in the case of Ranjit Kumar Dutta Vs. Tapan Kumar Shaw and Anr, reported in AIR 1997 Calcutta 278, wherein it held that if the lease determined by efflux of time of 15 years then the question of extension or renewal for another 15 years will not arise. It will arise only if through the original registered deed of lease some rights flow and in exercise of such rights flowing from the original deed of lease the lessee is made entitled to opt for a further period. In such a case, therefore, it can be said that the lease does not determine finally and completely by efflux of the initial period of the lease. Therefore, in such a case of lease containing renewal or extension clause, the period does not remain limited to the initial period only but it breaks the limit to further flow for another term and the lease in such a case does not determine at the end of the initial period, if at that moment or before, option is exercised as per terms of the deed of lease. In the circumstance it cannot be said that the lease of immovable property determined by efflux of initial period of 15 years limited by the lease as the lease did not limit it to 15 years only. Exercise or non-exercise of the option by the lessee would not affect the fact that the lessor had conveyed the right for 30 years.

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25. Mr.Desai further submitted that the assets of the Company would include its shareholding in other Companies and, therefore, any arrangement by the Director to deal with such shares otherwise than in the ordinary course of business, that is sell of shares for buying of preference shareholders with the sale proceeds, would be void. For this purpose he relied on the decision of Patna High Court in the case of Nandkishore Bajoria and Anr. Vs. Gaya Sugar Mills Ltd., reported in AIR 1953 Patna 390, wherein it is held that an agreement between the company and director-debenture-holder, which agreement is later on ratified by a resolution of the company, whereby the shares held by the company in another company were to be sold, and the sale proceeds utilised for paying off the preference shareholders, and the appellants who were holders of a great number of preference shares, were to be trustees for purposes of carrying out the agreement, the agreement cannot be given effect to either by the directors or shareholders, either by alteration of the charter of the company or the Articles of Association, the purpose of the agreement being illegal. If the purpose is illegal then no trust is created by the memorandum of agreement or the resolution of the board of directors.

26. In support of Mr.Desais submission that decree obtained by the respondent No.4 is nullity as it is obtained by fraud. He relied on the decision of the Honble Supreme Court in the case of State of A.P. And Anr. Vs. T. Suryachandra Rao, reported in (2005) 6 SCC 149, wherein the land was surrendered by declarant by suppressing the fact that the same had already been acquired under Land Acquisition Act. Such surrender was accepted after an enquiry. However, subsequently the matter reopened by Tribunal and after verifying the land acquisition proceedings, notice issued to declarant respondent proposing to consider declaration of alternative land as surplus in lieu of the land earlier surrendered. Appeal against order of Tribunal dismissed by Appellate Tribunal. The High Court in revision took the view that Tribunal having accepted the surrender, after enquiry it was not open to it to take a different view. The Honble Supreme Court has held that High Courts approach is erroneous. Suppression of material fact or misrepresentation amounted to fraud. When the declarant clearly committed a fraud, Tribunal was not divested of its power to correct the error merely because an enquiry was made and hence the Tribunal was satisfied in modifying the earlier order varying it.

27. Mr.Desai further relied on the decision of the Honble Supreme Court in the case of Ram Chandra Singh Vs. Savitri Devi and Ors., reported in (2003) 8 SCC 319 wherein it is held that a judgment and decree has been obtained by practising fraud on the court, it is trite that the principles of res judicata shall not apply. It is further held that fraud as is well known vitiates every solemn act, Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by a representation which he willfully or recklessly causing him to

Consists in leading a man into damage by a representation which he willfully or recklessly causing him to

believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata.

28. Mr.Desai relied on the decision of the Full Bench of Bombay High Court in the case of Ratanlal Chandiprasad Jalan and others Vs. Raniram Darkhan and others, reported in AIR 1986 Bombay 184, for the proposition that a statutory tenant governed by the Bombay Rent Act retains transferable interest in the premises only if he had such transferable interest as a contractual tenant. It cannot be said that no statutory tenant is entitled to transfer his interest.

29. Mr.Desai further relied on the decision of the Honble Supreme Court in the case of Bhaiya Punjalal Bhagwanddin Vs. Dave Bhagwatprasad Prabhuprasad and others, reported in AIR 1963 SC 120, for the proposition that where a tenant is in possession under a lease from the landlord, he is not to be evicted for a cause which would give rise to a suit for recovery of possession under Section 12 if his tenancy has not been determined already. It follows that whenever a tenant acts in a way which would remove the bar on the landlords right to evict him, it is necessary for the landlord to serve him with a notice determining his tenancy and also serve him with a notice under Sub Section (2) of Section 12 of the Act.

30. Mr. Thakore relied on the decision of Honble Supreme Court in the case of Balkrishna Savalram Pujari Waghmare and others Vs. Shree Dhyaneswar Maharaj Sansthan and others, reported in AIR 1959 SC 798, for the proposition that where the wrongful act complained or amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of Section 23 of the Limitation Act in such a case.

31. Mr.Thakore further relied on the decision of the Honble Supreme Court in the case of Raja Ram Maize Products Vs. Industrial Court of M.P. and others, reported in (2001) 4 SCC 492 wherein it is held that when the workers demanded that they should be allowed to resume work and they were not allowed to resume work the cause of action was complete. In such a case the workers going on demanding each day to resume work would not arise at all. The question of demanding to allow to do work on refusal does not stand to reason.

32. Mr. Thakore further relied on the decision of Kirpa Ram Vs. Shriyans Prasad and others, reported in AIR 1951 Punjab and Shyamapada Chakraberty and others Vs. The Collector of Insurance Government of India and others, reported in AIR 1962 SC 1355, for the proposition that Section 86H of the Companies Act, 1913 puts a restriction on the powers of Directors in regard to disposing of the undertaking of a company, but it does not say that such a thing cannot be done. All it says is that it must be done with the consent of the company i.e. the shareholders.

33. Mr. Thakore further relied on the decision of this Court in the case of Navjibhai Dharsibhai & ors. Vs. State of Gujarat & ors, reported in (1994) 35(2) GLR 1168 for the proposition that an invalid transaction per se may be invalid but it will not be invalid unless it is decided or declared to be so. It has to be invalidated. An invalid transaction is equivalent to a voidable transaction and not a void transaction. A voidable transaction remains valid till it is avoided annulled or invalidated.

34. Mr. Thakore to countenance the plea of fraud raised by Mr. Desai relied on the decision of Honble Supreme Court in Gayatri Devi and others Vs. Shashi Pal Singh, reported in (2005) 5 SCC 527 wherein it is held that as a general proposition, the proposition that there was a fraud played upon the Court and the fraud unravels everything, right. But fraud must necessarily be pleaded and proved. In the entire history of litigation nothing was pleaded, much less proved. The Court cannot countenance the plea of fraud without any basis.

35. Mr. Thakore further relied on the decision of the Honble Supreme Court in State of Punjab and others Vs. Gurdevsigh, reported in (1991) 4 SCC 1 for the proposition that Article 113 of the Limitation Act prescribes a time limit of three years. According to the third column in Article 113, time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted.

36. Mr. Thakore submitted that on the expiry of the period of lease, the erstwhile tenant who continues in possession, in the absence of being a tenant holding over, has to be treated as a tenant at sufferance whose right of occupation arises not from the erstwhile contract which is dead and gone but which may arise under the general law of the land particularly against forcible re-entry by the ex-landlord or under any statutory law protecting the possession of statutory tenants under the relevant Rent Acts if applicable. He relied on the decision of Supreme Court in ~~Raptakos Brett & Co. Ltd. Vs. Ganesh Property, reported in (1998) 7 SCC 184~~ wherein after
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considering the earlier judgments of the Supreme Court in Ganga Dutt Mubarak Vs. Kartik Chandra Das, AIR 1961 SC 1067, M.C.Chockalingam Vs. Manickavasagam, (1974) 1 SCC 48 and R.V.Bhupal Prasad Vs. State of A.P. (1995) 5 SCC 698, it is held that on the expiry of the period of lease, the erstwhile lessee continues in possession because of the law of land, namely, that the original landlord cannot physically throw out such a erstwhile tenant by force. He must get his claim for possession adjudicated by a competent Court as per the relevant provisions of law. The status of an erstwhile tenant has to be treated as a tenant at sufferance akin to a trespasser having no independent right to continue in possession. The Court further considered the provisions of Section 111(a) of the Transfer of Property which say that a lease of immovable property determines by efflux of the time limited thereby, and provisions of Section 108(q) which say that on the determination of the lease, the lessee is bound to put the lessor into possession of the property, and held that on a conjoint reading of Section 108(q) read with Section 111(a) of the Transfer of Property Act, it becomes obvious that under the law, the erstwhile landlord is entitled to base his cause of action on the statutory obligation of the erstwhile lessee on determination of the lease to put the lessor in possession of the property. It is this statutory right of the lessor and the corresponding statutory obligation of the lessee that can be said to have been relied upon by the erstwhile landlord for getting peaceful possession from the erstwhile tenant.

37. Mr.Thakore further relied on the decision of Supreme Court in Kewal Chand Mimani Vs. S.K. Sen and others, reported in AIR 2001 SC 2569 for the proposition that there exists a differentiation between the lessee of a determined lease in possession and a lessee dispossessed. No right can be said to accrue in favour of the lessee admittedly dispossessed from the lease premises.

38. Mr. Thakore further relied on the decision of Supreme Court in Tirumala Tirupati Devasthanams Vs. K.M.Krishnaiah, reported in (1998) 3 SCC 331 in support of his submission that the applicant Banks application is hopelessly barred by period of limitation. In this case, Summary Suit for possession could not be filed within the limitation period of six months under Section 6 of the Specific Relief Act, 1963 by the dispossessed person. Even after expiry period of six months under Section 6 the dispossessed person can still file a suit for possession on the basis of prior possession i.e. suit based on possessory title. But in such a suit the defendant who dispossessed the plaintiff could defend himself by proving title and if he proved title, he could remain in possession. Since in the case before the Supreme Court title of the defendant was found to have not been extinguished and was subsisting in respect of the suit property, the dispossessed plaintiff, who had applied for possession after expiry of six months period from the date of dispossession prescribed in Section 6 would not be able to recover the possession and the defendant could remain and retain its possession.

39. Having heard the learned advocates appearing for the respective parties and having gone through the pleadings contained in the memo of applications,

affidavits and counter affidavits and having considered the various authorities cited before the Court by both the sides, the Court is of the view that the applicants are not entitled to any of the prayers made in the present applications. Having regard to the entire facts and circumstances of the case and having considered the correct legal position, the Court is further of the view that no direction can be issued to the Official Liquidator to take possession of the properties in question nor it can be held that the respondents Nos.4 to 13 are in unauthorized and illegal occupation and possession of the properties in question. The respondents Nos.4 to 13 cannot be considered as the encroachers or trespassers on the land in question nor they are required to be evicted there from. From the documents which are produced before the Court, it cannot be said that the respondents Nos.4 to 13 have no right, title or interest to occupy and to remain in possession of the properties in question as they have established their title and interest in the property.

40. Before the rival contentions raised before the Court are dealt with, it is necessary to enumerate certain undisputed facts, which are found on record. The Company in liquidation had got the lease hold right in the property in question on 29.4.1972. The lease hold right of the property was mortgaged with the applicant bank some time in 1981 and 1983. The Company in liquidation had entered into a registered agreement on 28.5.1984 transferring its lease hold rights in favour of AIDL. In principle approval was received from the applicant Bank and, thereafter, deed of conveyance was executed on 28.5.1986. The applicant bank had, therefore, knowledge about this transaction way back in 1986 and no dispute was ever raised by the applicant bank. The Company went into liquidation on 1.9.1989. The Official Liquidator was not aware about this property as by that time the lease hold rights in the property were transferred in favour of AIDL. The respondent No.4 Company was incorporated in September, 1989 and had made an offer to purchase the ownership right of the property in question before the owner of the said property. Since it was a public charity trust, necessary permission was obtained from the Charity Commissioner on 6.3.1990. Even before the Charity Commissioner was approached for grant of such permission, the trust had passed a Resolution for sale of property to respondent No.4 on 22.12.1989 and an advertisement was also published in the daily newspaper, namely, Gujarat Samachar inviting objections on 12.1.1990. Since no objection was received from any one including the Official Liquidator and the applicant Bank, deed of conveyance was executed by the trust on 25.5.1990.

41. Since the term of the lease expired in 1993, the respondent No.4 issued a notice to AIDL on 10.11.1993 to hand over the possession of the property in question. Admittedly, the lease hold rights were mortgaged with the applicant Bank for an unexpired period and hence on expiry of the said period in 1993 the respondent No.4 being the owner of the property had every right to ask for the possession of the property from the lessee i.e. AIDL. Since the possession was not given, the respondent No.4 filed H.R.P.Suit No.243 of 1994 before the Small Causes Court, Ahmedabad. In the said Suit, settlement was arrived at between the parties and joint purshis for a decree was filed on 20.5.1994 and ultimately a decree in terms of the said joint purshis was passed by the Court directing AIDL to hand over vacant

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and peaceful possession of the land in question. Despite this decree, the possession was not handed over and hence the respondent No.4 had filed Execution Petition No.192 of 1994 and ultimately pursuant to the said execution proceeding, vacant and peaceful possession was given to the respondent No.4 by AIDL. After getting vacant and peaceful possession of the properties in question, the same were sold by the respondent No.4 to respondents Nos.5 to 13 by executing separate sale deed. From these facts and on the basis of documents produced on record in support of all these transactions, it clearly appears to the Court that the respondents Nos.4 to 13 came to be in possession of the properties in question.

42. The respondent No.4 was put into possession of the property in question way back in 1994 and the present application is filed by the applicant in 2004 i.e. after the expiry of the period of 10 years. The respondent No.4 and, thereafter, respondents Nos.5 to 13 are totally the strangers to the proceedings between the applicant Bank and the Company in liquidation. They are the bonafide purchasers and purchased the properties after payment of consideration. Now the possession is sought to be taken away from the respondents Nos.4 to 13 after the expiry of the period of more than 10 years and that too by alleging the contention that the applicants were not aware about these transactions and that a fraud was committed not only on the applicant Bank but also on the Court. While raising this contention certain other issues were also raised by the applicant that the Company in liquidation had no power to transfer its lease hold rights as the same were already mortgaged with the Bank and that the said transfer was violative of provisions of Section 293(1)(a) of the Companies Act, 1956 and that the documents under which the said rights are transferred was unregistered document and that though the property was situated at Ahmedabad, the respondent Company was registered at Calcutta and that the applicant Bank was not joined as party in the suit filed before the Small Causes Court, Ahmedabad for taking possession of the properties in question. All these issues have been properly explained and answered by the respondents in their respective affidavits and all the doubts were cleared. The Court has at length discussed the rival contentions of the parties in the preceding paragraphs in light of the judgments cited by them in support of their respective contentions. The Court has not found any substance or merits in any of the contentions raised on behalf of the applicants.

43. No proper explanation has come forward as to why the proceedings were not initiated in time, especially when the applicant Bank was aware about transaction relating to transfer of lease hold right by the Company in liquidation to AIDL. The main defense raised by the respondents about the delayed action has remained unanswered. The half hearted attempt is made by the applicant by raising a plea of fraud. However, that plea is also not substantiated, much less it is proved. The respondents have observed all legal formalities. All actions were taken in accordance with law after obtaining appropriate orders from the concerned authorities and/or Courts. The respondents have neither committed any breach of provisions contained under Section 293(1)(a) of the Companies Act, 1956 nor they have taken any action in violation of any statutory provisions. The respondent No.4 have acquired the ownership and possessory rights of the property in question after following due process of law. The ownership rights

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are acquired from the owner of the property after getting permission from the Charity Commissioner and after issuance of public notice and after payment of adequate consideration to the original landlord. The lease hold rights and possession of the property in question were acquired from the lessee after obtaining necessary orders from the competent Court. The applicant Bank was not joined as party in the Suit before the Small Causes Court, Ahmedabad only because when the suit was filed, the lease period already came to an end. When the lessee has no right to retain the possession after the lease period is over and in absence of any covenant regarding renewal of lease in the lease deed the applicant Bank, being mortgagor, has no right after expiry of lease. Even if there is any dispute on this ground, the applicant Bank would have raised the said dispute at an appropriate time. When mortgage was created in favour of the applicant Bank it was a known fact that the mortgage was for an expiry period which come to an end in 1993. Despite this knowledge and despite this fact the applicant Bank has not taken any action. Any inaction on the part of the applicant Bank would not give rise to an allegation of fraud and to make a transaction as fraudulent transaction which otherwise appears to be quite genuine and bonafide transaction.

44. Taking overall view of the matter and considering the entire facts and circumstances of the case and considering the various authorities cited before the Court there is no matter of doubt or suspicion that the respondents Nos.4 to 13 are the lawful owners and are in legal possession of the properties in question and they cannot be deprived of such lawful rights and legal possession vested in them years back, by entertaining these applications after a considerable length of time and by permitting the applicants to raise the plea of fraud. The Court, therefore, rejects both these applications without any order as to costs.

Appeal dismissed

