

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2011

**CORAM:**

THE HONOURABLE MR.JUSTICE VINOD K.SHARMA

Comp.Appeal No.24 2009

T. Vinayaka Perumal

... Appellant.

vs.

1. T.Balan

2. Ajeetha Balan

3. K.J.George

4. K.Sheeba George

5. M/s.Unicentre Agencies and  
Engineering Private Limited,  
Having its office at No.S-103,  
4th Main Road, Anna Nagar,  
Chennai\_x0016\_ 600 040.

6. G.George

7. Annamma George

8. Finney George

9. Bindu Finney George

... Respondents.

Prayer: Petition is under Section 10F r/w Sections 397, 398 and 402 of the Companies Act, 1956, to set aside the order dated 23.10.2008 in C.P.No.7 of 2004 on the file of Hon'ble Additioinal Principal Bench, Company Law Board, Chennai, insofar as it relates to setting aside the sale of the schedule properties in favour of the appellant herein and ordering restoration of 1.60 acres to 5th respondent herein.

For Petitioner : Mr.J.Ravi Kumar

For R1 to R4 : Mr.R.Varada Rajan

For R6 : Mr.V.John Acquinsas

For R5, R7 to R9 : NA

### **ORDER**

The appellant is the owner in possession of lands measuring 3 acres and 54 cents in S.No.428/4A1A and 47 cents in S.No.428/8A, totaling 4.01 acres at Gummidipoondi, as detailed in the schedule, attached to the grounds of appeal. The appellant purchased the property from Thiru G.George, 6th respondent, vide sale deed dated 05.01.2006, registered as Document No.48/2006 on the file of SRO Gummidipoondi.

2. The property purchased by the appellant was registered in the name of Thiru G.George, and was in uninterrupted possession of the property.

3. The appellant entered into agreement on 16.10.2006 to sell the schedule property to Mr.Mangilal on receipt of sale consideration. The sale deed was to be executed by the appellant in favour of Mr.Mangilal. The appellant received a notice from the Company Law Board in a proceeding under Sections 397 and 398 of the Companies Act, initiated by the respondents 1 to 4 against respondents 5 to 9, ordering the appellant to deal with the property only with liberty obtained from the Company law Board.

4. In obedience to the order passed by the Company Law Board, the sale deed was not executed in favour of Mr.Mangilal.

5. The respondents 1 to 4 filed Company Application No.171 of 2006 in C.P.No.7 of 2004 to set aside the sale, made by Thiru G.George in favour of the appellant, by claiming that the schedule property belonged to M/s.Unicentre Agencies and Engineering Private Limited, the 5th respondent, though it was registered in the name of 6th respondent. This was for the reason that a sum of Rs.1,00,000/- (Rupees One Lakh only), forming part of the sale consideration was paid by Thiru G.George from the funds of the company. Whereas a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) was paid by Thiru G.George.

6. The claim of the respondents 1 to 4 was that the lands to the extent of same proportion i.e. 1.60 acres out of 4.01 acres to be restored to the company.

7. The appellant claims that he was the bona fide purchaser for value without knowledge of any proceedings pending before the Company Law Board with regard to oppression and mismanagement by one group.

8. The case of the appellant is that sale of land owned by Thiru G.George has no connection with the business of the company. The case of the appellant, further is that the learned Company Law Board has erroneously held that sale by 6th respondent to the appellant was not approved by the shareholders or the Board of the company, as also that the Company Law Board, without giving any finding, with regard to the sale consideration, wrongly held that price was inadequate and not beneficial to the company. The jurisdiction of the Company Law Board to set aside the sale is also questioned.

9. The grounds of challenge by the appellant are that the Company Law Board failed to notice that the land in dispute stood in the name of individual and not in the name of company, so as to bring it within the ambit of mismanagement. The challenge is also on the ground that the learned Company Law Board exceeded the jurisdiction under Sections 402 and 403 of the Companies Act, to set aside the sale by the Director in individual capacity. The appellant also challenged the findings of the Company Law Board, that the sale by Thiru G.George in favour of the appellant was hit by lis pendence.

10. The questions of law raised in this appeal are;

i) Whether the Company Law Board is within its jurisdiction under Sections 402 and 403 of the Companies Act, 1956, to set aside the sale of immovable properties of an individual by such person in favour of the appellant?

ii) Whether the Company Law Board exceeded its jurisdiction in ordering restoration a portion of the subject property to the company and thereby wrongly assumed to itself the power of a Civil Court?

11. As already observed above, the respondents 1 to 4, who held 50% of the issued and paid up capital of M/s.Unicentre Agencies and Engineering Private Limited, filed petition under Sections 397 and 398 of the Companies Act, alleging acts of oppression and mismanagement by respondents 2 to 5. The relief claimed in the petition under Sections 397 and 398, reads as under:

a) to pass appropriate orders for the management, regulation and conduct of the affairs of the Company.

b) to supersede the present Board of Directors of the company and appoint an administrator to manage, regulate and conduct the affairs of the Company.

c) to surcharge the respondents 2 to 5 in accordance with Schedule XI of the Act on account of misappropriation and misapplication of the Company's funds; and

d) to restore in favour of the Company the immovable properties located at Gummidipoondi ("the properties") and purchased in the name of the second respondent out of the company's funds."

12. The only relief, granted by the Company Law Board to the respondents 1 to 4, reads as under:

"The properties have been purchased for a sum of Rs.2.50 lakhs, which was met by the Company to a tune of Rs.1 lakh, which works out to 40% of the total consideration of Rs.2.50 lakhs and the balance considerations was paid by the second respondent from and out of his resources. The Company would therefore be entitled for 40% of the total extent of the properties, registered in the name of the second respondent, accounting for 1.60 acres out of the total extent of 4.01 acres of land. The sale of properties having found to be irregular and oppressive must be set aside, in the paramount interest of the Company and its shareholders, upon which 1 acre and 60 cents of the land shall be restored to the Company, as put forth on behalf of the petitioners, in the course oral submissions, thereby enabling it to sell the said extent, namely, 1 acre and 60 cents, free of any encumbrances in accordance with law and deal with the sale process, as per the collective wisdom of the shareholders and the second respondent is at liberty to deal with the remaining properties amounting to 2 acres and 41 cents absolutely as he deems fit and proper. The statutory auditor will duly qualify the amounts to be brought in by the second respondent on account of Kuwait operations, for the period between 06.09.1991 and 05.11.1993 which will be credited to the account of the Company. The whole process shall be completed within six months, to be ensured by both parties. The Company after meeting all its existing liabilities, is at liberty to distribute the surplus amount among its shareholders in proportionate to their shareholding in the Company. The Company is not engaged in any business and therefore, the parties are free to resort to voluntary winding up, if they so desire, thereby bringing to an end the grievances in the affairs of the company. The company shall ensure statutory obligations and compliances till completion of the process of winding up of the Company in terms of this order. Ordered accordingly.

With the above directions, the company petition and the connected applications are disposed of. In view of this, the interim orders stand vacated. No order as to costs. Liberty to apply in the event of any difficulty in implementation of the order."

13. Learned counsel for the appellant, vehemently contended that the property under the ownership of the appellant was standing in the name of 6th respondent at the time of purchase, therefore, it was not open to the Company Law Board to question the sale in favour of the appellant, as the jurisdiction to set aside the sale made in favour of the third party could only be adjudicated in the Civil Court and not before the Company Law Board.

14. The contention of the learned counsel for the appellant was that even if the sale was hit by the principles of *lis pendens*, still the sale executed in favour of the appellant could have been set aside by the Civil Court and not by the Company Law Board. Therefore, the impugned part of the order granting relief to the respondent nos. 1 to 4 is patently without jurisdiction. Learned counsel for the

appellant also contended that the appellant was the bone fide purchaser for consideration without knowledge of pendency of the proceedings, therefore, sale in his favour could not be set aside even partly.

15. Though there is merit in the appeal, but the plea of bona fide purchaser is not available to the appellant, as the plea of bona fide purchaser cannot be raised in the case of lis pendense purchase.

16. There is force in the contention of the learned counsel for the appellant, that the sale in favour of the appellant could not be set aside by the Company Law Board, under the provisions of Sections 402 and 403 of the Companies Act. Under Section 402, the jurisdiction to set aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company, can be exercised in case of sale made within three months before the date of the application under Section 397 or 398, that too in case the property is standing in the name of the company. The power with the Company Law Board, therefore, is to the properties standing in the name of the company.

17. Admittedly, in this case, right from the date of purchase, the company never came in possession or in ownership of the property. Even under Section 403, only interim injunction can be granted.

18. The Company Law Board, under Section 402 can certainly set aside the sale, if the property was registered in the name of the company, but not otherwise, specially after enforcement of Benami Transaction Act.

19. This finding also finds support from the stand taken by the 6th respondent in this Court. The company in course of business had taken some loan from the bank, and to secure the loan, the property in dispute was mortgaged by way of collateral security by the 6th respondent, showing it as his own property. This mortgage was created on 10.05.1991, whereas, the petition under Section 397 & 398 was filed for the first time in 2004.

20. This fact is proved from the finding recorded in the Civil Suit filed by the State Bank of India, against the company as well as the respondents 1 to 4 (i.e. petitioners before the Company Law Board) and other Directors. The suit was filed in the year 1995, which clearly proved that respondents 1 to 4 had the knowledge of property, being in the name of 6th respondent. When the suit was filed in 1995, by the State Bank of India, it was the 6th respondent, who settled the suit and thereafter redeemed this property, by paying a sum of Rs.7,47,000/- (Rupees Seven Lakhs Forty Seven Thousand only). Even in the balance sheet, filed by the company in the year 1990, the property was not shown to be under ownership of the company. The balance sheet was duly signed by respondent nos.1 to 4.

21. It was also the case of the 6th respondent, that even if for the sake of argument, it is held that the Company Law Board could deal with the property, still the limitation prescribed is three months, prior to the filing of the petition. In this case, the property was purchased in the name of 6th respondent in 1989, therefore, the Company Law Board had no jurisdiction to deal with this property. The respondent nos.6,7, and 8, also supported the claim of the appellant in this appeal for the reason stated herein above.

22. Learned counsel appearing on behalf of the respondents 1 to 4 supported the finding of the Company Law Board, by referring to the Board resolution, vide which, the 2nd respondent was authorized to execute the sale deed with respect of the property on behalf of the company, and not in personal name. He also placed reliance of the annual report dated 04.10.1989, wherein, it was disclosed that 4 acres of land valued at Rs.3,00,000/- (Rupees Three Lakhs only) had been acquired near Gummidipoondi Industrial Area. It was on 11.04.1991, that the Board of Directors decided to mortgage the property in favour of State Bank of India in order to secure dues and guarantees. The 6th respondent was also authorized to execute the mortgage deed on behalf of the company. Reference was also made to the fax message dated 04.12.1993, wherein, the Company Secretary sent the fax message, that the land in dispute belonging to the company will be sold at minimum price of Rs.3 lakhs per acre, and amount paid to the company and other unsecured loans due to the various parties.

23. Learned counsel for the respondents 1 to 4 also referred to the reply submitted by the respondents 1 to 3 in company petitioner before the Company Law Board, wherein, it was stated that the 6th respondent had no intention to claim property as his own. Though it was proved that out of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only), Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) was paid from his own resources.

24. Learned counsel for the respondents 1 to 4 placed strong reliance, on the finding that the Company Law Board, which reads as under:

The present company petition has been filed on 04.02.2004, while the properties were sold during its pendency on 05.01.2006 by the second respondent in favour of TVP. This sale transaction has been challenged by the petitioners, as being hit by the provisions of Section 52 of the Transfer of Property Act, 1882, which is, however, resisted by the respondents as doctrine of 'lis pendens' which imposes a prohibition on transfer or otherwise dealing of any property during the pendency of a suit, however, on fulfilment of the conditions stipulated therein. In the light of the principles enunciated by the Madras High Court, with reference to Section 52 of TP Act in Narayana Venkatachalamiah vs. Putika Venkatiah and others (supra) that the Registrar or the Authority appointed by him under the Madras Act 6 of 1932 is a Court for the purpose of Section 52 of the Transfer of Property Act, the CLB being a permanent body, constituted under a statute, with the trappings of the Court and vested with judicial powers and functions in terms of Section 10(E) (4C) of the Act, cannot but be a Court for the purpose of Section 52 of the TP Act. Even otherwise, the principle of Section 52 is based on, as held by the Delhi High Court in Lov Raj Kumar vs. Major Daya Shankar \_x0016\_ AIR 1986 Delhi 364, justice equity and good conscience and therefore, the doctrine of 'lis pendens' would apply even where the TP Act, is inapplicable. The CLB exercises equity jurisdiction under Section 397/398, while bringing to an end the grievances complained of in the affairs of a company and it is a Court of equity as held by this Board in Arun Mehra vs. Durga Builders P.Ltd and others (supra) and it cannot, therefore, be argued that the principle of lis pendens is not applicable to the CLB proceedings. The object of doctrine of 'lis pendens' is (a) to thwart any attempts by the litigants to circumvent the jurisdiction of a Court, in which disputes in relation to properties are pending, thereby removing the subject matter of the litigation from the ambit of the Court's power or frustrating its decree, as held by the Supreme Court in Rajendar Singh and others vs. Santa Singh and others (supra); (b) to protect a property under litigation, and ) not to allow any litigant to give others any property under dispute causing prejudice to the opposite party, in the light of the decision in Chinnammal vs. Kuppusamy (supra), wherein the Court declared that the sale of the properties by the litigant to several others, during the pendency of the suit, is non-est in the eye of law. There is a statutory bar under Section 52 of the TP Act against alienation of any property involved in a proceeding, without the authority or the prior permission of

the Court, as laid down in *Dhanalakshmi and others vs. P.Mohan and others (supra)* and *G.Krishnamoorthy vs. Sukumar and 4 others (supra)*. The privy council held in *Puran Chand Nahatta vs. Monmothe Nath Mukherjee and others (supra)* that any purchaser of the property during the pendency of a suit, can enjoy the property subject to any order which may be passed by the Court in the pending suit. The doctrine of 'lis pendens', as elucidated by a number of decisions discussed hereabove would lead to an irreversible conclusion that the principle of Section 52 of the TP Act shall apply to the impugned sale transaction. Notwithstanding the applicability or otherwise of the doctrine of 'lis pendens', the CLB has power under Section 397(2) to make such order as it thinks fit with a view to bring to an end (a) the matters complained of under Section 397(1), and (b) prevent the matters complained or apprehended under Section 398(1) as held in *Manish Mohan Sharma vs. Ram Bahadur Thakur Ltd. (supra)* The jurisdiction of the CLB to grant appropriate relief under Section 397 of the Act is indisputably of wide amplitude and the CLB while exercising its discretion, not fettered by the terms of Section 402 of the Act, may grant any relief, which may be warranted, in a particular situation as held by the Supreme Court in *Kamal Kumar Dutta and another vs. Ruby General Hospital Ltd. and others (supra)*. The CLB, by virtue of Section 402 and 403 has authority to regulate the management of a company during the pendency of a company petition under Sections 397 and 398 as held in *B.R.Kundra and others vs. Motion Pictures Association and others and Chatterjee Petrochem (Mauritius) Co. and others vs. Halda Petrochemicals Ltd. and others (supra)* and thereby, the CLB is empowered to exercise jurisdiction in relation to the disputed sale transaction, being an event which has occurred subsequent to the present company petition. There is absolutely no doubt that the sale of properties during the pendency of the company petition without leave would frustrate and defeat the very object of the pending action initiated by the petitioners, seeking appropriate reliefs under Section 397 and 398. In the light of the principle of *lis pendens* as well as the unfettered powers enjoyed by the CLB, as reinforced and reiterated from time to time in a number of decisions discussed supra, the CLB is not powerless to go into the validity of the impugned sale transaction effected by the second respondent in favour of TVP and the further sale by TVP to Mangilal. It is on record that the properties comprising of 4.01 acres of land at Gummidipundi were purchased as early as on 15.05.1989 for a sum of Rs.2.50 lakhs. It was decided in terms of a fax communication dated 14.02.1993 of the second respondent to sell the properties at a price of Rs.3 lakhs per acre, which would amount to Rs.12 lakhs for the whole of properties. This would mean that the properties valued Rs.12 lakhs as at February 1993 were sold after a period of 13 years during the pendency of the company petition on 05.01.2006 only for an amount of Rs.2.80 lakhs, which is highly improbable, in view of the general increase in price of landed properties at the relevant time. I may point out that the purchaser, namely, TVP, who is none other than son of the power agent of the second respondent, has further effected sale of the properties for Rs.4.12 lakhs in favour of Mangilal, gaining Rs.1.32 lakhs within a very short span of time. The respondents did not choose to establish the current market value of the properties by production of any material, in the absence of which, the sale of entire properties for a meagre profit of Rs.30,000/- after a period of 17 years cannot be considered to be a bonafide transaction on the part of the second respondent or in the paramount interest or for the benefit of the Company. The action of the second respondent in sale of properties for Rs.2.80 lakhs to TVP, without either the consent of the Company and that too during the pendency of the company petition at a price not beneficial to the interests of the Company is not only contrary to law, but also burdensome and harsh with continuous and permanent adverse impact on the Company, notwithstanding the jurisdiction purforth by the respondents that the properties could not be sold for the past several years and that there was no buyer for the properties. If these acts of the respondents are not oppressive, I doubt very much, what else would constitute oppression in the affairs of the Company, within the meaning of Section 397 of the Act and therefore, the decision in *Needle Industries (India) Ltd and others vs. Needle Industries Newey (India) Holding Ltd and others (supra)* will not aid the respondents. The further sale of properties by TVP in favour of Mangilal, in gross contravention of the CLB order dated 27.11.2006 that ... .. "if the intended respondent (TVP) deals with the property described in the application, by way of creation or any change or encumbrance or sale, the same shall be done only with leave of this Bench" in my considered view, is not-est in the eye of law."

25. The contention of the learned counsel for the respondents 1 to 4, therefore, was that as regard to the ownership property was concerned, the same was admitted in the reply filed. Whereas the sale in favour of the appellant was set aside, particularly for the reason that sale was hit by the principles of lis pendense. Therefore, no ground is made out to challenge the impugned order.

26. In support of this contention, learned counsel for the respondents 1 to 4 placed reliance on the judgment of this Court in the case of Narayana Venkatachalamiah vs. Putika Venkatiah and others, AIR 1942 Madras 24, wherein, this Court was pleased to hold that the word "Court" in Section 52 of Transfer of Properties Act, is comprehensive enough to include the Registrar or the arbitrator appointed by him under the Madras Act. The contention of the learned counsel for the respondents 1 to 4, therefore, was that the Company Law Board would also be the "Court", and the principles of lis pendense will be applicable.

27. This contention cannot be disputed, but the question in this case is as to whether the Company Law Board can set aside the sale deed. The provisions of Section 52 of the Transfer of Properties Act was applied by this Court in a pending Civil suit, and not before the Registrar under the Madras Act. This judgment, therefore, has no application of the question in issue in this case.

28. Learned counsel for the respondents 1 to 4, thereafter, placed reliance on the judgment of the Hon'ble Supreme Court in the case of Kamal Kumar Dutta and another vs. Ruby General Hospital Ltd and others, (2006) 74 CLA 91 (SC) to contend that the Directors of a Company are in a position of trustee. They should conform to probity and their conduct should be above suspicions.

29. Reference on this judgment was placed to contend that the act of 6th respondent in getting the sale deed registered in his name, was the act of breach of trust, which could not be sustained in law, as he was acting as trustee on behalf of the company.

30. This proposition again cannot be disputed. In the present case, admittedly, sale deed was executed in favour of the 6th respondent in the year 1989, while purchasing the land on behalf of the company. The property was mortgaged by the 6th respondent in his individual capacity. The parties also came to know about the property being in the name of the 6th respondent, when the suit was filed and got settled by the 6th respondent, by redeeming the property. Therefore, it was not open to the company to challenge the sale, that too, in the Company Law Board, after lapse of 15 years. It seems that the object of moving the Company Law Board was, that the respondents 1 to 4 thought that the civil suit for claiming the property would not be competent, as the property not only was registered in the name of 6th respondent, but he acted as the absolute owner thereof throughout all these years, to the knowledge of the company and other Directors and members of the company.

31. Learned counsel for the respondents 1 to 4, thereafter, placed reliance on the judgment of the Hon'ble Delhi High Court in the case of Lov Raj Kumar vs. Dr.Major Daya Shanker and others AIR 1986 Delhi 364, to contend that even if the provisions of Section 52 of the Transfer of Property Act, are not applicable, still principle contained therein can be applied.



32. This contention of the respondents 1 to 4 deserves to be noticed to be rejected for the simple reason that the question in this case is not whether lis pendense would apply or not, but whether the sale in favour of the 6th respondent could be challenged after lapse of so many years, that too before the Company Law Board.

33. On asking, learned counsel for the respondents 1 to 4 was unable to read anything from the petition to show the date of knowledge with regard to registration of sale deed in favour of the 6th respondent in stead of the company. Rather documents on record show that the respondent nos. 1 to 4 were knowing that the property was in the name of the 6th respondent as back as 10th December, 1991, that the property was mortgaged by the 6th respondent in favour of the Bank by way of collateral security by proclaiming himself to be the true owner of the property.

34. Learned counsel for the respondents 1 to 4 has also placed reliance on the judgment of the Hon'ble Delhi High Court in the case of B.R.Kundra and others vs. Motion Pictures Association and others, (1978) Vol.48 Comp.Cases. 564 to contend that the Company Law Board is competent to deal with the situation arising from events occurring during pendency of petition to contend, that Court can take into the transfer qua property of the company in favour of the appellant, during proceedings.

35. There can be no dispute with the proposition of law, but the question in this case is whether the sale in favour of the appellant could be set aside, without setting aside the sale in favour of the 6th respondent and whether it fell within the jurisdiction of the Company Law Board. This is where the Company Law Board has gone wrong in granting relief to the respondent 1 to 4, by treating the transfer to be for the first time in favour of the appellant, by completely ignoring that registered sale deed was executed in favour of the 6th respondent in the year 1989 itself.

36. Learned counsel for the respondents 1 to 4 also referred to above the decision of the Company Law Board, Additional Principal Bench, Chennai, in the case of V.G.Coelho and another vs. Silver Cloud Estates (P) Ltd and others, to contend that delay and laches, on the part of a party, in approaching the Company Law Board does not bar its transaction, if it has not caused any prejudice to the respondents.

37. The reliance of this also is misconceived, firstly, for the reason that it is the decision of the Company Law Board, which is not binding and secondly for the reason that in the present case, the respondents 1 to 4 challenged the sale in favour of the 6th respondent after lapse of more than 15 years, which certainly causes prejudice to the 6th respondent, as well as the appellant.

38. The finding of the Company Law Board, therefore, cannot be sustained, as the reading of the impugned order shows that the learned Company Law Board proceeded on presumption, that the property of the company has been sold to the appellant, during the pendency of the proceedings, therefore, sale was hit by by the principles of 'lis pendense', which is fully wrong. The Company Law Board does not have jurisdiction to set aside the sale in favour of the 6th respondent, as under Section 402, limitation to deal with the property to transfer is regarding the sale made three months prior to filing of the company petition, or during the pendency of the proceedings.

39. The Company Law Board failed to notice that the material placed on record showed that the respondents 1 to 4 was estopped by their conduct to challenge the sale, as they permitted the 6th respondent to mortgage the property as collateral security by projecting him to be the owner. Even in the suit filed in the year 1995, the 6th respondent was shown to be the owner of the property mortgaged to the Bank, but no steps were taken by the respondents 1 to 4 to seek remedy of getting the sale set aside in favour of the 6th respondent.

40. The 6th respondent, being the registered owner, has sold the property to the appellant in his individual capacity, and not as Director of the company.

41. For the reasons stated above, this Company Appeal is allowed. The order passed by the Company Law Board is set aside. The petition, filed by the respondents 1 to 4 under Sections 397 and 398 of the Companies Act, is ordered to be dismissed. No costs.