

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
J. C. M. NO. 35 / 1988

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA No. 252/2016.

25.10.2018.

Mr. Munirur Rehman Official Liquidator.
Mr. Shahab Sarki Advocate for Objector / Applicant.
Mr. S. M. Ali Azam Advocate for KDA along with
Mr. Agha Abrar Additional Director (Land).

This application (**CMA No. 252/2016**) has been filed on behalf of the Objector / Applicant requesting this Court to de-attach property bearing House No. C-70, Block 9, Scheme No. 24, Gulshan-e-Iqbal, Karachi from captioned liquidation proceedings.

Learned Counsel for the Applicant submits that the property in question is owned by the present Applicant within its own rights on the basis of Indenture of Lease dated 25.3.1986, whereas, the company under liquidation was incorporated on 17.3.1986. He further submits that instant Petition was filed on 4.7.1988 and without ascertaining the ownership of the property in question, some directions have been given to the concerned authorities for attachment of the same. He further submits that FIA has also made one such application to the concerned Department; however, since the property was owned by the applicant even prior to the commencement of business operations of the company under liquidation, the same cannot be attached and for this necessary orders be passed. He has also referred to the report of the Official Liquidator in this regard.

On the other hand, learned Official Liquidator submits that the property in question was attached by FIA vide order dated 25.6.1988, whereas, at the same time it was confirmed that the property in

question is owned by the Applicant. He further submits that according to the record the lease deed was registered on 10.3.1986 and after going through the record of the company under liquidation it has not been proved that the property in question was ever owned by the company under liquidation and therefore, appropriate orders be passed.

On 16.10.2018 notice was repeated upon the Additional Director (Land) KDA, Civic Centre, Karachi and today he is in attendance along with his Counsel and also placed on record the original file for perusal of this Court along with comments which are taken on record. As per record of KDA the property belongs to the Applicant and pertains to the jurisdiction of Works Cooperative Housing Society, whereas, some correspondence was also made in the year 1988 by FIA regarding the property in question.

I have heard all the learned Counsel as well as learned Official Liquidator and perused the record. On perusal of the record of KDA and the response filed in Court today it reflects that the property in question was allotted to the Applicant namely Mrs. Nusrat Ara Rizvi W/o Syed Aftab Zaidi vide allotment Order No.R/268 dated 19.8.1980, and thereafter was leased out in favor of the said lady / allottee by KDA on 25.3.1986, whereas, it is still in the same name. Therefore, there remains no doubt that this property was in the name of the applicant since its allotment, even much prior to the incorporation of the company under liquidation. The Company was incorporated on 17.3.1986, whereas, the lease was executed by KDA on 25.3.1986, and it cannot be suggested that within a span of 8 days the Company had owned or purchased the property from the money it had borrowed from general public. Nonetheless, it is in the name of the applicant since its allotment. Whereas, nothing has been placed on record so as to suggest

that the property in question was ever registered / leased or owned by the company under liquidation. Merely for the fact that applicant had some relation with the promotor of the Company under liquidation, the property owned by her on the basis of an allotment much prior in time, would not become the property of the said Company. It further appears that the learned Official Liquidator in his report dated 14.9.1996 placed before the Court has given the same facts with the request to the Court to release / de-list the above property of the Objector from attachment. It further reflects from perusal of the original record of KDA that even the letter of FIA dated 28.6.1988 addressed to them clearly states that the property in question is in the name of the Applicant. Record further reflects that pursuant to issuance of notice to FIA on 7.11.2017 Inspector Rasheed Ahmed Shaikh FIA Commercial Bank Circle, Karachi had affected appearance and filed a statement on the same date wherein, it is stated that the record of the case has been destroyed due to fire in their office, hence, they are unable to assist the Court. Again on 24.4.2018 he was once again in attendance and filed another statement on the same date wherein the earlier stance was reiterated that due to fire the entire record has been destroyed. It further appears that on 30.1.1990 while issuing notices on CMA No.399/1990, this Court had passed orders for attachment of 8 properties listed in the application including the property which is subject matter of listed application. The said application was filed by the then Official Liquidator; however, thereafter the report dated 14.9.1996, states otherwise. Since then no one has turned up to pursue the matter in respect of the same and the property is still attached pursuant to the said order. Neither FIA has shown any interest to pursue their case in any manner, nor any other applicant nor claimant, is before the Court

in respect of the said property. On the other hand the applicant is suffering from day one. It further appears that earlier somewhere in 1988 the applicant has also filed its objections before the Court which were then referred to the Official Liquidator for recording of evidence and to file his report, but in the entire order sheet thereafter, there is nothing which could suggest that such exercise was carried out and completed in the manner as directed.

In view of hereinabove facts and circumstances of this case, I am of the view that firstly, for the reason that property was allotted directly by the Works Co-operative Housing Society in favour of the Applicant much prior to the incorporation and commencement of business of the company under liquidation, and secondly, failure upon FIA to bring on record any material so as to suggest that property in question was owned by the company under liquidation and lastly, for the fact that the Official Liquidator has also supported the case of the Applicant by giving his no objection, the listed application merits consideration and is accordingly allowed and as a result thereof, the order dated 30.1.1990 to the extent of the property in question stands recalled. KDA is directed to take note that property is no more under attachment and be de-listed from any such attachment, with further directions to convey this to Works Cooperative Housing Society., as earlier they had asked the Society not to effect transfer. Application stands allowed in the above terms.

J U D G E

ARSHAD/