

Smt. Jatan Golcha vs M/S Golcha Properties (P) Ltd on 16 December, 1970

Equivalent citations: 1971 AIR 374, 1971 SCR (3) 247, AIR 1971 SUPREME COURT 374

Author: A.N. Grover

Bench: A.N. Grover, J.C. Shah, K.S. Hegde

PETITIONER:

SMT. JATAN GOLCHA

Vs.

RESPONDENT:

M/S GOLCHA PROPERTIES (P) LTD.

DATE OF JUDGMENT:

16/12/1970

BENCH:

GROVER, A.N.

BENCH:

GROVER, A.N.

SHAH, J.C.

HEGDE, K.S.

CITATION:

1971 AIR 374

1971 SCR (3) 247

1970 SCC (3) 573

ACT:

Indian Companies Act (1 of 1956), ss. 457(1), 483 Company Judge's order-No notice to person holding rights in the property-Whether he has right to appeal.

Companies (Court) Rules, 1959 (Rajasthan High Court), rr. 103, 139-Scope of.

HEADNOTE:

The respondent-company holding leasehold rights in the appellant land went into liquidation. Accepting the official liquidator's report the company Judge (Rajasthan High Court) without hearing anyone or issuing notice to the appellant ordered auction of the lease hold right of the respondent company. The appellant sent a letter to the

Official Liquidator revoking the licence granted to the company and calling upon him to, deliver possession of the land. The Official Liquidator claimed that the company was entitled to a further period of lease under the agreement. Notice was issued in respect of the proposed auction sale. The appellant filed an appeal before the High Court. The High Court held that since the appellant had not appeared before the company Judge, she was not entitled to maintain the appeal, and further that the only remedy of the appellant was by way of a suit after obtaining leave of the Company Judge under s. 446 of the Indian Companies Act. In appeal to this Court,

HELD : The High Court was in error in not entertaining and deciding the appeal preferred by the appellant who was the owner of the land in which lease hold rights said to have been created by her in favour of the company in liquidation were sought to be sold.

An appeal lies under s. 483 of the Act from any order made or decision given in the matter of winding up of a company by the Court and it lies to the same, court to which, in the same manner in which, and subject to the same conditions under which appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction. Therefore an appeal was competent against the order of the company Judge. [249 D]

It is implicit in Rule 103 of the Company Court Rules that if the directions which have to be given by the Court would affect any person prejudicially he must be served with a notice of the summons under the general rule of natural justice and that no order should be made affecting the rights of a party without affording a proper opportunity to it to represent its case. .[250 A]

Further, the Official Liquidator as well as the, learned company Judge were bound by the rules of natural justice to issue a notice to the appellant and hear her before making the order appealed against. If there was default on their part in not following the correct procedure the appellant could not be deprived of her right to get her grievance redressed by filing an appeal. [250 C]

248

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1104 of 1970. Appeal by special leave from the judgment and order dated April 9, 1970, of the Rajasthan High Court in D. B. Civil Special Appeal No. 126 of 1970.

M. C. Chagla, F. S. Nariman, P. N. Tiwari and O. C. Malher, for the appellant.

M. C. Setalvad and B. P. Maheshwari, for the respondent. The Judgment of the Court was delivered by Grover, J. This is an appeal from a judgment of the Rajasthan High Court holding that the appellant was not entitled to file an appeal against the order of the Company Judge directing sale of lease hold rights of the Golcha Properties (P) Ltd. (in liquidation) in the land belonging to the appellant.

The facts briefly are that on November 5, 1960 an agreement was entered into between the appellant and the respondent company allowing Golcha Properties (P) Ltd. to construct a cinema theatre within three years from the issue of the 'No Objection Certificate' on land measuring 42,900 sq. feet at Bhagwandas Road, Jaipur belonging to the appellant. The Company deposited a sum of Rs. 5 lakhs by way of security. In October 1963 No Objection Certificate is stated to have been issued for construction of a cinema theatre. In 1966 a petition for winding up of the company was filed in the Rajasthan High Court. On May 10, 1968 an order for winding up of the company was made and a liquidator was appointed' On July 11, 1969 the Official Liquidator made a report to the Company-Judge for sale of the lease-hold rights of the company in the land belonging to the appellant and the structures standing on it. It appears that the Official, Liquidator made a report under S. 457 of the Indian Companies Act 1956 to obtain the necessary orders for sale. On July 21, 1969 the Company Judge without hearing any one or issuing notice to the appellant ordered that the lease- hold rights and the structures be auctioned as proposed by the Official Liquidator On October 3, 1969 the appellant's attorney sent a letter to the Official Liquidator stating that the licence granted to the company under, an. agreement dated- November 5, 1960 stood revoked and called upon him to deliver possession of the land and also pay compensation amounting to Rs. 10, lakhs. On February 9, 1970 the Official Liquidator sent a reply claiming that the company was entitled to a lease for 20 years under the agreement. On March 14, 1970 a notice was issued in a newspaper (Times of India) in respect of the proposed auction sale ,of lease- hold rights which was to take place on April 14, 1970.

According to the appellant she enquired from the Official Liquidator under whose authority the, property was being sold to which no reply was sent by the Official Liquidator. On April 3, 1970 the appellant applied for a certified copy of the order dated July 21, 1969 after taking inspection of the record in the High Court. The certified copy was sent on April 24, 1970. On the same date the appellant filed an appeal before the High Court. The High Court- rejected that application summarily but recorded short order.

In the order of the High Court reference has been made to Rule 139 of the Companies (Court) Rules 1959 and it has been pointed out that since the appellant had not appeared before the Company Judge she was not entitled to maintain the appeal. It was conceded that no notice had ever been sent to her either by the Official Liquidator or the Company Judge before the order appealed against relating to appellant's property was made. The High Court was of the view that the only remedy of the appellant was by way of a suit after obtaining leave of the Company Judge under s. 446 of the Act. Now an appeal lies under s. 483 of the Act from any order made or decision given in the matter of finding up of a company by the court and it lies to the same court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction. There can be no manner of doubt that an appeal

was competent against the order made by the Company Judge on July 21, 1969 in view of the terms of s. 483. The only question is whether because the Official Liquidator failed to discharge his duties properly by having a notice issued to the appellant, whose rights were directly affected by the order proposed to be made, the appellant was debarred from filing the appeal. In our opinion apart from Rule 139 to which reference has been made by the High Court the Official Liquidator as well as the learned Company Judge were bound by the rules of natural justice to issue a notice to the appellant and hear her before making the order appealed against. If there was default on their part in not following the correct procedure it is wholly incomprehensible how the appellant could be deprived of her right to get her grievance redressed by filing an appeal against the order which had been made in her absence and without her knowledge. It would be a travesty of justice if a party is driven to file a suit which would involve long and cumbersome procedure when an order has been made directly affecting that party and redress can be had by filing an appeal which is permitted by law. It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate court and such leave should be granted if he would be prejudicially affected by the judgment.

Rule 103 of the Companies (Court) Rules provide for taking out summons for directions not only with reference to the settlement of the list of contributories and the list of creditors but also the exercise by the Official Liquidator of all or any of the powers under s. 457(1) and any other matter requiring directions of the court. The exercise of the power under s. 457 (1) (c) of the Act to sell the immovable and movable property of the Company by public auction or private contract would certainly fall within the ambit of the Rule. That Rule expressly provides for issuing of a notice of the summons to the petitioner on whose petition the order for winding up was made. It is implicit that if the directions which have to be given by the court would affect any person prejudicially he must be served with a notice of the summons under the general rule of natural justice and that no order should be made affecting the rights of a party without affording a proper opportunity to it to represent its case. The High Court was thus clearly in error in not entertaining and deciding the appeal preferred by the appellant who was the owner of the land in which leasehold rights said to have been created by her in favour of the Company in liquidation were sought to be sold. The appeal is allowed and the order of the High Court is set aside. The case is remanded to the High Court for disposing of the appeal in accordance with law. Costs shall abide the event.

Y.P.
allowed.

Appeal