

Estate Officer Ut Chandigarh And Ors vs M/S. Esys Information Technologies ... on 11 May, 2016

Equivalent citations: AIR 2016 SUPREME COURT 2834, AIR 2016 SC (CIVIL) 2057, (2016) 5 MAD LJ 498, 2016 (12) SCC 582, (2016) 3 RECCIVR 204, (2016) 5 SCALE 317, (2016) 4 ALL WC 3346

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Bench: Arun Mishra, V. Gopala Gowda

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3765 OF 2016

Estate Officer UT Chandigarh & Ors.
Appellants

..

Versus

M/s. Esys Information Technologies Pvt. Ltd.

.. Respondent

J U D G M E N T

Arun Mishra, J.

1. The appeal has been preferred by the Estate Officer, Union Territory of Chandigarh, aggrieved by the judgment and order passed by the High Court of Punjab & Haryana at Chandigarh thereby setting aside the orders passed by the Estate Officer, appellate and revisional authorities on 24.9.2008, 14.2.2011 and 14.12.2012 respectively, thereby resuming the plot which was allotted to the respondent. Facts in short indicate that in the year 2002, Chandigarh Administration notified the rules called Allotment of Small Campus Site in Chandigarh Information Services Park, Rules, 2002 (hereinafter referred to as 'the Rules'). Rule 9 of the Rules provided that transfer of the campus site by the allottee shall not be allowed for a period of 10 years from the date of allotment or till all dues are fully paid up whichever is later. Similar condition was incorporated in the allotment letter dated 1.6.2006 by which 6 acres of land was allotted to the respondents. It was necessary to make the construction within 3 years from the date of allotment.

2. On 2.1.2008 it came to the notice of the Director, Information Technology that the respondent company namely M/s. Esys Information Technologies Pvt. Ltd., Singapore had transferred a major portion of shares to other company namely, M/s. Esys Global Holdings, Dubai, without informing the appellant or seeking necessary permission as provided in Rule 9 and clause 15 of the allotment letter. Consequently, Director, IT, sought following clarifications from the respondent on 2.1.2008: (i) what is the business plan of the company for its activities; (ii) what are the business activities of

M/s. Esys Information Technologies Ltd. from the campus site;

(iii) what was the holding structure of the shareholding of the company at the time of making request for allotment; (iv) what was the holding structure of the company at the time of allotment; and (v) what is the shareholding structure of the company at present. Reply by the respondent was not satisfactory, as such show cause notice was issued on 18.1.2008 by the Estate Officer as to why due to violation of Rule 9 of the Rules and clause 15 of the allotment letter, action be not taken and allotment be cancelled and further why whole or part of the premium, EDC calculated till date of cancellation be not forfeited. The Estate Officer by order dated 24.9.2008 cancelled the allotment and ordered resumption of the site and ordered to forfeit 10% of the total premium, interest earned and other dues payable in respect of the site. Aggrieved by the same, the respondent preferred an appeal under section 10(1) of the Capital of Punjab (Development and Regulation) Act, 1952. The appeal was dismissed vide order dated 14.2.2011 passed by the Chief Administrative Officer, UT Chandigarh. The respondent preferred a revision before the Advisor to Administrator, UT Chandigarh. Same had been dismissed vide order dated 24.9.2008. It is pertinent to mention that the affidavit filed by Mr. Vikas Goel in the High Court of Singapore was placed on record and was referred to in the order passed by the revisional authority. Before the appellate authority, it was argued that the allottee company had transferred a major portion of shareholding changing its control to another company i.e. Esys Global Holdings, Dubai which in turn sold its stake to Teledata Informatics Ltd., a Chennai based company.

3. The High Court by the impugned judgment and order has allowed the writ petition. This Court while entertaining the special leave petition had passed an order on 16.7.2015 directing the respondent to file a counter affidavit containing certain information specified in the order. Following order was passed by this Court on 16.7.2015 :

“Heard.

Issue notice.

The respondent has appeared on caveat. The respondent-company shall file a counter affidavit within six weeks from today. Rajoinder affidavit, if any, be filed by the petitioner within two weeks thereafter. Counter affidavit shall apart from answering the averments and contentions raised in the special leave petition also specifically state whether the share- holding in the allottee company has been transferred to any other company and if so which is the consideration paid for such transfer. The affidavit shall further indicate whether the transferee of such holding has, in turn, further transferred the shares to Teledata Informatics Ltd., Chennai, if so, the consideration for such transfer shall also be indicated. Audited balance sheets of the allottee company from the year 2007 onwards and those of the transferee company, shall be filed along with the counter affidavit.

Status quo, as it exists today, shall be maintained by the parties, pending further orders from this Court.”

4. In short, in the counter affidavit of the respondent, the shareholding pattern has been given as on 1.6.2006, 31.3.2007, 3.5.2007 and it is not disputed that M/s. Esys Information Technologies Pvt. Ltd., Singapore had transferred 1,97,55,188 shares to Esys Global Holdings, Dubai owned by one Niraj Goel. It is further stated in the counter filed by the respondent that EZY Global Holding FZE, Dubai has not further transferred the shares to Teledata Informatics Ltd., Chennai. It is also stated that on 29.11.2006 a shareholder agreement was executed between Mr. Vikas Goel, M/s. Esys Information Technologies Pvt. Ltd. Singapore and M/s. Teledata Informatics Ltd., Chennai. This agreement could not be implemented due to the fraud perpetrated upon Mr. Goel and M/s. Esys Information Technologies Pte., Singapore by M/s. Teledata Informatics. Following are the cases pending inter se parties :

“(i) Vikas Goel and Rainforest v. Teledata Informatics and Others – Arbitration in SIAC Singapore.

(ii) Vikas Goel and Rainforest v. Ramachandran (Teledata CEO) and Others in New York.

(iii) Esys India v. Teledata – Perjury Application in Chennai.

(iv) Esys India v. Teledata – Winding up application in Chennai.

(v) Baytech and Teledata v. Vikas Goel and Rainforest – BVI.” In the counter affidavit, it is contended that Rule 9 has not been technically violated by the respondent. Though, the respondent’s shareholding pattern has undergone a change after allotment but it could not be a ground for the resumption of the allotment. Approximately one year out of three years has remained for raising the construction and before that order of resumption had been passed. The allotment was not speculative transaction. It was not intended to get unjust enrichment from the allotment at a concessional rate. The respondent fully satisfied the eligibility criteria. Office has been rented, furnishing cost has been incurred, Managers were relocated from Singapore and Delhi. Esys has relocated its key global functions to Chandigarh. There was delay of 5 to 6 months in handing over possession of the campus site. The respondent was entitled to mortgage the site for raising loan by way of trading security.

In this regard, permission was sought but was not given. The site was resumed on 24.9.2008 before the expiry of 3 years from the date of allotment.

5. Along with the rejoinder, the appellant has filed two affidavits filed by Mr. Vikas Goel in the High Court of Republic of Singapore in Suit No.854/2006/H. It is submitted that the holding company was the Singapore Company and Dubai and India based companies were its subsidiary companies. The allotment was made in favour of M/s. Esys Information Technologies. M/s. Esys, Singapore could not have transferred assets as per clause 15 of the allotment order for a period of ten years. The stake of Dubai company by virtue of 95% shares transfer has raised to 98%. M/s. Esys Global

Holdings Ltd., Dubai further sold these stakes to Teledata, a Chennai based company. Facts stated in Affidavit dated 2.7.2008 of Mr. Vikas Goel which was part of the record of the Estate Officer have been concealed in spite of the categorical order dated 16.7.2015 passed by this Court. The way in which the transaction has been made is a transfer which is not permissible as per rules and conditions of allotment letter. In fact there is transfer of plot from one company to the other company. The respondent is using the land for increasing valuation of assets and thereby improving financial worth. The holding company and its subsidiaries are two distinct legal entities. This Court should lift the veil so as to unearth mala fide, dishonest and fraudulent design of the respondent. Teledata is claiming to have acquired M/s. Esys Singapore and showing the plot in question as its asset.

6. It was submitted on behalf of the appellant that transfer without permission was not permissible as per Rule 9 and clause 15 of the allotment letter for ten years. It is not a case which is covered by Condition No.15- b of the allotment letter. It is not only a case of transfer to Dubai company but transfer of assets to Teledata, a Chennai based IT company. Affidavit of Mr. Vikas Goel mentions various facts though it was filed before the Estate Officer as well as the DIT Office. However, in spite of the direction issued by this Court the respondent has not filed it nor has stated the facts mentioned in the same in the counter affidavit and wrong averments have been made. Reliance has been placed by the appellant on certain portions of the affidavit of Mr. Vikas Goel indicating that there had been transfer of assets of subsidiary in India. The actual facts regarding transfer of shares to Teledata have been suppressed. Teledata had published unaudited results mentioning that Teledata along with its subsidiary is setting up a six acre TBO facility in Rajeev Gandhi Information Technology Park in Chandigarh. The affidavit filed by Mr. Vikas Goel in Singapore court indicates that he has signed an agreement to sell 51% stake to Teledata. Vikas Goel wanted to dupe Teledata and therefore surreptitiously transferred shares to Esys Global Holding, Dubai. It is a clear cut violation of the rules. Esys India had ceased its operations after 2010 as all its businesses were closed down and all the employees were laid off. The company has no business transaction, no employees, never deposited any PF nor filed sales-tax returns. It is a clear case of transfer of property. Transfer means transfer in any form whatsoever and howsoever styled. A prayer was made by respondent on 24.9.2007 to change the zoning plan. The prayer was declined on 25.10.2007 and a letter dated 25.10.2007 was issued. No construction had been made till the cancellation. No step had been taken to raise the construction also. Thus, their intention was never to start the construction.

7. It was submitted on behalf of the respondent that there is no violation of clause 15 of the allotment letter. The allottee remains the same. Clause 15 is not attracted as transfer of site is not to the other entity. It is not a case of allottee company being merged with other company or a case of split. The allottee company was subsidiary of M/s. Esys Singapore. The shares have been transferred to M/s. Ezy Global Holding, Dubai, company owned by Mr. Niraj Goel, brother of Mr. Vikas Goel. There is no occasion to lift the corporate veil in the instant case. There was no transfer of shares of the allottee by M/s. Ezy Dubai to M/s. Teledata, Chennai. The respondent is a reputed company and has not indulged in a speculative land deal.

8. Clause 15 of the allotment letter reads as follows :

“(a) The transfer of Campus Site by the allottee shall not be allowed for a period of 10 years from the date of allotment, or till all dues are full paid, whichever is later. In exceptional circumstances permission may be granted for transfer prior to expiry of this period, for reasons to be recorded in writing.

(b) In the event of the allottee company being merged with another company or in the event of a split of the allottee company or the setting up of a subsidiary by the allottee company, in accordance with statutory provisions and with the permission of the concerned regulatory authorities, the consequent substitution of name of the allottee may be allowed prior to the expiry of the period mentioned in sub-Para (a) above, for the reasons to be recorded in writing.

(c) In all cases of transfer or substitution the transferee, the new entity must satisfy in every respect of the conditions of eligibility for allotment of the site in question on the date of the application for transfer or substitution.

(d) Permission for transfer shall be subject to payment of transfer charges as determined from time to time.”

9. The appellant has relied upon the statement made in affidavit dated 2.7.2008 filed by Mr. Vikas Goel in the High Court of Singapore thus :

“16. As mentioned earlier, Esys Singapore’s bankers and creditors withdrew their credit lines and demanded payment within days of the SEC Announcement. While Esys Singapore was negotiating with its bankers and suppliers, Esys Singapore was at the same time considering the various means by which it could raise funds to pay its creditors. One option it considered was through the sale of its assets, including its inventory, account receivables and subsidiaries. Esys Singapore approached several parties for this purpose. However, due to the deep financial crisis which Esys Singapore was in at the time as a result of the SEC Announcement, the offers which Esys Singapore received were based on liquidation value, as far as the subsidiaries were concerned. Only Esys Global Holdings Ltd. was prepared to buy certain subsidiaries including Ascent Capital Limited (which owned Esys Latin America), Esys India, and Esys Distribution (Korea) Ltd., based on these subsidiaries’ book values/fair market value, without any pre-conditions.

17. This offer by Esys Global Holdings Limited represented the best opportunity for Esys Singapore to maximize the amount of funds it could raise at that time to pay its creditors. Esys, Singapore therefore agreed to sell certain subsidiaries to Esys Global Holdings at book value/fair market value, without pre-conditions. Further, at the time, Esys India, Esys Korea and Esys Latin America also had substantial amounts owing to their bankers and creditors. The sale of these subsidiaries to Esys Global Holdings Limited meant that these liabilities were transferred to the buyer, Esys Global Holdings Limited. The net liabilities of the Esys group were substantially

reduced upon the sale of these entities.

X X X X X

26. The Plaintiffs have alleged that I have divested my shares in Esys Singapore in order to dissipate my assets. This is not true. The transfer of my shares in Esys Singapore to Rainforest was to facilitate the investment of Teledata in Esys Singapore, in order to shore up the confidence of Esys Singapore's creditors in the wake of the SEC Announcement. I elaborate briefly on this below.

27. As a result of the SEC Announcement, Esys Singapore's creditors suffered a crisis of confidence in Esys Singapore's ability to meet its debts. The management of Esys Singapore decided that in order to rebuild the creditors confidence in Esys Singapore, a new investor would have to be found.

28. After extensive discussions with potential investors, Esys Singapore decided that Teledata's offer contained the best terms which Esys could secure in the aftermath of the SEC Announcement. To facilitate the investment of Teledata (which was and is currently listed on the Mumbai Stock Exchange), in late December, 2006, I transferred my 19,999,998 shares in Esys Singapore to Rainforest. In exchange, I received shares in Rainforest.

29. Teledata subscribed for new shares in Rainforest. In consideration, Teledata paid for the new shares in Rainforest and provided guarantees to Esys Singapore's creditors. On completion of the transaction, I owned 58,880,000 shares in Rainforest (representing 49% of Rainforest) and Teledata 61,120,000 shares in Rainforest (representing 51% of Rainforest).

30. As can be seen, the transfer of my shares in Esys Singapore was part of a package to secure a new investor in Esys Singapore. It was not carried out as a means to dissipate my assets. I will need additional time to elaborate on this in a substantive affidavit."

10. With respect to transaction with Teledata, following facts have also been mentioned in the affidavit dated 2.7.2008 of Mr. Vikas Goel :

"35. The Plaintiffs have sought to rely on the sale of Esys's assets, and on the transfer of my shares in Esys Singapore to show that Esys Singapore and I dissipated and will continue to dissipate our assets in the future. This is not true. Now that Esys Singapore is a subsidiary of Teledata, Esys Singapore has access to the resources of the Teledata group of companies. Given this, there is no need for Esys, or myself, to dissipate any of our assets. Indeed, Teledata has furnished numerous guarantees to Esys' suppliers. Copies of some of these guarantees are annexed as VG-20. The guarantees furnished by Teledata have enabled Esys Singapore to tide over a difficult period after the Plaintiff's SEC Announcement, which prompted a deep financial crisis for Esys Singapore.

36. It will also not be possible for any of Esys Singapore's assets to be dissipated as Teledata holds a charge over these assets. Teledata, being a public listed company, is

accountable to its shareholders for any disposal of the assets of its subsidiary, Esys Singapore. Copies of the charges in favour of Teledata are collectively annexed as VG-21. As this is publicly available information, it is surprising the Plaintiffs have chosen not to inform this Honourable Court of the existence of the charge created in favour of Teledata.”

11. In the affidavit dated 24.7.2008 filed in the High Court of Republic of Singapore in the same suit with respect to charge by Teledata Informatics Ltd., over the assets of M/s. Esys Singapore, it has been mentioned that general charge of Teledata remains. Following facts have been mentioned :

“10. I have at paragraphs 16-17 of my 2nd Affidavit referred to Esys Global Holdings Ptd (“Esys Dubai”) being prepared to buy certain of Esys Singapore’s subsidiaries at those subsidiaries’s book values/fair market value, without any pre-conditions. I expand on the circumstances of this offer below.

11. Esys Dubai was prepared to buy over Esys Singapore shares in its subsidiaries, and make a loan to Esys Singapore up to the total value of about USD48m. However, Esys Dubai could only buy the subsidiaries once those subsidiaries had been properly valued, and any regulatory approvals required for the transfer of those shares had been obtained.

x x x x x

19. Teledata essentially recommended the same kind of restructuring for Esys Singapore to deal with its financial situation, in that it recommended a holding company to hold 100% of the shareholding in Esys Singapore.

However, instead of proposing the issue of convertible bonds from the holding company like Credit Suisse, Teledata was prepared to invest directly in the holding company. Furthermore, Teledata was prepared to give Corporate Guarantees to Esys Singapore’s Suppliers and bankers, in return for a charge over Esys Singapore’s assets in order to keep Esys Singapore operating.

x x x x x

21. As part of the Teledata deal, and as previously set out in my 2nd Affidavit, I transferred all my shares in Esys Singapore and in Esys Holdings Pte Ltd (collectively referred to herein as “Consideration Shares”) to Rainforest, and received Rainforest shares in return. On completion of the transaction, as set out in paragraph 29 of my 2nd Affidavit, I owned 58,888,000 shares in Rainforest (representing 49% of Rainforest) and Teledata owned 61,120,000 shares in Rainforest (representing 51% of Rainforest).

22. Teledata paid valuable consideration to Rainforest to subscribe for its shares in Rainforest. All of Rainforest’s assets, including the subscription monies received from Teledata, and the Consideration Shares, are subject to the control of the Board of Rainforest, which is controlled by

Teledata as the majority shareholder. As minority shareholder of Rainforest, I am certainly in no position to dissipate its assets.”

12. A copy of Enterprise IT, 2008 has also been filed with rejoinder in which it has been reported that Teledata has acquired Esys.

13. In view of the aforesaid statement made in the affidavit of Mr. Vikas Goel, it is apparent that in spite of the clear direction made by this Court, the respondent has suppressed the facts with respect to its deal with M/s. Teledata Ltd. There is concealment of material facts by the respondent in spite of having been directed to disclose the full facts in the counter affidavit by specific order passed on 16.7.2015. It is apparent from the affidavit dated 2.7.2008 of Mr. Vikas Goel extracted above that in order to raise the fund to pay to its creditors, M/s. Esys Singapore considered its option to raise it through the sale of its assets and subsidiaries and M/s. Esys Global Holding Ltd. was prepared to buy subsidiaries including M/s. Esys India based on book value. It has been mentioned in para 17 that sale of its subsidiaries to M/s. Esys Global Holding meant that these liabilities were transferred to the buyer. Thus there is sale of assets and subsidiaries and the denial that there is no sale is incorrect statement. In the affidavit dated 24.7.2008 in paras 10 and 11, it is apparent that purchase by M/s. Esys Dubai of the assets of M/s. Esys Singapore and its subsidiaries after taking regulatory approvals which were required for transfer of shares. Thus, under the garb of transfer of shares, the respondents have completed the sale and is creating a screen to conceal this aspect. Deal with Teledata is also apparent from the aforesaid paras 19 to 21 of the affidavit of Mr. Vikas Goel. Unfortunately, the respondent has concealed the facts with respect to Teledata and has not come out with clean hands. It is also apparent that Teledata in its unaudited results has published that Teledata along with its subsidiary M/s. Esys Technologies is setting up a six acre TBO facility in Rajeev Gandhi Information Technology Park in Chandigarh.

14. In *Juggilal Kamlatpat v. Commissioner of Income-tax, U.P.* AIR 1969 SC 932, it has been laid down that the doctrine of lifting of corporate veil can be applied by court and it is entitled to lift the mask of corporate veil when it is used for perpetrating fraud or for evasion of tax. Corporate veil can also be lifted where promoters act in furtherance of their dishonest and fraudulent design as laid down in *Jai Narain Parasrampuria (Dead) & Ors. v. Pushpa Devi Saraf & Ors.* 2006 (7) SCC 756, *State of U.P. & Ors. v. Renusagar Power Co. & Ors.* AIR 1988 SC 1737. Lifting of the veil has been held to be permissible in *Life Insurance Corporation of India v. Escorts Ltd. & Ors.* AIR 1986 SC 1370. In the instant case task is made easy as such facts on lifting veil are writ large from affidavits of respondent filed in Singapore High Court.

15. It is apparent that M/s. Esys Singapore has entered in such transactions with Dubai company and it appears prima facie from the affidavit of Mr. Vikas Goel and there was a further right created in favour of Teledata though dispute with Teledata has to be decided in pending cases. The provisions of Rule 9 of the Rules and Clause 15 of the allotment letter have been clearly violated. Thus, we are of the considered opinion that the order passed by the High Court is not sustainable and resumption of the allotted land by the appellant was legal and proper. The respondent is guilty of suppressio veri and suggestio falsi and has violated order dated 16.7.2015 passed by this Court as to disclosure.

16. Resultantly, we have no hesitation in setting aside the order passed by the High Court. The appeal is allowed. Parties to bear their own costs.

.....J.
(V. Gopala Gowda)

New Delhi;
May 11, 2016.

.....J.
(Arun Mishra)

ITEM NO.1A-For Judgment COURT NO.9 SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 3765/2016

ESTATE OFFICER UT CHANDIGARH & ORS. Appellant(s)

VERSUS

M/S. ESYS INFORMATION TECHNOLOGIES PVT. LTD. Respondent(s)

Date : 11/05/2016 This appeal was called on for pronouncement of JUDGMENT today.

For Appellant(s) Mr. Chandra Prakash,Adv.

For Respondent(s) Mr. Tarun Gupta,Adv.

Hon'ble Mr. Justice Arun Mishra pronounced the judgment of the Bench comprising Hon'ble Mr. Justice V. Gopala Gowda and His Lordship The appeal is allowed in terms of the signed Reportable Judgment.

Pending application(s), if any, stand(s) disposed of.

(VINOD KR.JHA) (MALA KUMARI SHARMA)
COURT MASTER COURT MASTER
(Signed Reportable judgment is placed on the file)