

SUPREME COURT OF INDIA

The A.P.I.I. Corporation Ltd.

Vs.

Team-Asia Lakhi Semiconductors Ltd.

C.A.No.10753 of 2013

(Anil R.Dave and Dipak Misra, JJ.)

29.11.2013

JUDGMENT

Anil R.Dave, J.

1. Leave granted.

2. Being aggrieved by the Judgment dated 14th March, 2011 delivered by the High Court of Judicature of Andhra Pradesh at Hyderabad in O.S.A.No.18 of 2008; this appeal has been filed by the Andhra Pradesh Industrial Infrastructure Corporation Ltd.

3. The circumstances in which the afore stated appeal has been filed are as under: The appellant is a Government Corporation which allots plots of land for the purpose of setting up industries to different persons. The plots are allotted on certain conditions and if the conditions are not fulfilled or if the entire payment is not made within the time stipulated, the allotment is cancelled and possession of the plot is taken back by the appellant. In pursuance of the afore stated activity of the appellant-Corporation, under a letter dated 31st August, 1988, the appellant-Corporation had allotted a plot to M/s. Team-Asia Lakhi Semiconductors Ltd. on conditions incorporated in the said letter.

“The allotment was made in pursuance of an application dated 20th August, 1988 submitted by the M/s. Team-Asia Lakhi Semiconductors Ltd. and the plot was valued at Rs.1,22,67,500/- and the said amount had been calculated at the rate of Rs.250/- per sq. meter. The said amount had to be paid to the appellant-Corporation within sixty days from the date of the receipt of the allotment order. It is an admitted fact that within the period prescribed, the entire price of the plot had not been paid by the said allottee to the appellant-Corporation and in the circumstances, as per clause 8 incorporated in the said letter, which reads as under, the amount paid by the afore-named company had been forfeited. "8. If payment as stipulated in condition (3) above is not made within 60 days of receipt of this allotment letter, this allotment letter shall stand cancelled and the EMD paid shall remain forfeited.”

4. After the Company had failed to make payment and the allotment was cancelled, a request was made by the Company to grant another plot at some reduced price and in pursuance of the said request; the appellant had addressed another letter dated 13th March, 2000 to the Company offering another plot. The Company again failed to comply with the conditions and therefore, the proposal with regard to allotment under the letter dated 13th March, 2000 also failed. Once again another plot was offered to the Company by the appellant under letter dated 3rd April, 2001 for Rs.80, 00,000/- but the said transaction also did not materialize. The aforesaid facts demonstrate the chequered history and the circumstances in which the Company could not make entire payment of the plot in question, which ultimately resulted into forfeiture of the amount paid and even possession of the plot in question was with the appellant though for a limited purpose, the Company was permitted to occupy the plot.

5. It is pertinent to note that the Company, because of its very poor financial conditions, was ordered to be wound up and the official liquidator, appointed by the Company Court wanted to take possession of the plot in question so that the said plot may be sold and out of the sale price, dues of the Company may be paid. When the appellant-Corporation came to know that the official liquidator was making an effort to dispose of the plot in question, believing the plot to be one of the assets of the Company in Liquidation, a Company Application No.474/2006 in the Company Petition No.178/2003 was filed by the appellant praying for taking possession of the plot in question as the plot was in unauthorized possession of the Company.

In the said proceedings, the official liquidator admitted the fact that the plot in question had not been transferred in the name of the Company. Ultimately, by an order dated 28th June, 2007 the Company application filed by the appellant had been dismissed by the High Court with a direction to the official liquidator to take appropriate steps to dispose of the plot in question.

6. Being aggrieved by the afore stated order passed in the Company application, the appellant had filed an appeal being O.S.A.No.20/2008 before the High Court contending that the plot in question had not been transferred to the Company and therefore, the official liquidator had no right or title in respect of the plot in question and therefore, he could not have taken any action for selling the same.

7. The said appeal filed by the appellant has also been dismissed by the High Court of A.P. and therefore, the present appeal has been filed by the appellant-Corporation.

8. The learned counsel for the appellant had submitted before this Court that the ownership right in the plot in question had not been transferred to the Company and therefore, the official liquidator had no right to deal with the said plot. The learned counsel had further submitted that it was an admitted fact that the entire amount of the sale price had not been paid to the appellant by the Company and therefore, the plot had not been transferred to the Company.

9. For the afore stated reasons, the learned counsel had submitted that the impugned order passed by the High Court requires to be quashed so that the appellant-Corporation can deal itself with the plot in the manner in which it likes, especially when the amount which

had been paid by the Company had already been forfeited because the Company had not fulfilled the conditions on which the plot had been allotted.

10. On the other hand, the learned counsel appearing for the official liquidator of the Company had submitted that as an order of winding up had already been passed and as the Company had paid substantial amount towards purchase price of the plot in question, the official liquidator was rightly permitted to dispose of the plot as the plot virtually belonged to the Company.

11. The learned counsel had tried to substantiate the reasons given by the learned Single Judge as well as by the Division Bench while deciding O.S.A.No.18 of 2008 in favour of the official liquidator and had submitted that the appeal should be dismissed.

12. We had heard the learned counsel and had also perused the relevant record which clearly shows that the ownership right in respect of the plot in question has not been transferred to the Company. It is an admitted fact that the Company, which is now in liquidation, had not paid the entire amount of the consideration and therefore, the ownership right in respect of the plot had not been transferred to the Company. According to the terms and conditions on which the plot was to be sold to the Company, the amount which had been paid by the Company had already been forfeited and the Company had no right of whatsoever type in the plot in question.

13. In the afore stated circumstances, in our opinion, the High Court was not justified in giving any right in respect of the plot in question to the official liquidator or the Company. It is pertinent to note that the ownership of the plot in question had not been transferred to the Company and a permissive possession given by the appellant to the Company for some limited purpose would not create any interest or right in favour of the Company. The plot would remain the property of the appellant-Corporation as the conditions on which the transfer was to take place had not been fulfilled.

14. In the afore stated circumstances, we are of the view that the High Court was in error while coming to the conclusion that the appellant had no right in the plot in question and therefore, the impugned judgment as well as the order passed in Company Application are quashed and set aside and it is held that the plot in question does not belong to the Company in liquidation and the official liquidator has no right to deal with the said plot or dispose of the said plot and it would be open to the appellant-Corporation to deal with or allot the said plot as per its own policy.

15. The impugned order as well as the order passed in Company Application are quashed. The appeal is, therefore, allowed with no order as to costs.