

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOCHI BENCH**

**IA (C/Act)/171/KOB/2023**

**IN**

**CP (C/Act)/07/KOB/2023**

*(Under Rules 11, 32 and 113 of the NCLT Rules 2016 read with Order I Rule 10(2) of the Civil Procedure Code, 1908)*

***Memo of Parties***

**Mr Ajayan P.V**

Puliyanthundathul House,  
Vijayapuram Village, Parampuzha P.O,  
Kottayam- 686004

**...Applicant**

Versus

**1. M/s Mangalam Publications (India) Private Limited,**

Mangalam Complex, P.B.No.3,  
S.H. Mount P.O, Kottayam- 686006

**2. Mr. Sajan Varghese**

Mangalapally House,  
Vadavathoor P.O., Kalathipady  
Kottayam- 686010

**3. Mr. Sabu Varghese**

Mangalapally House,  
Ancheril, Gandhinagar P.O.  
Kottayam- 686016

**4. Dr. Saji Varghese**

Mangalapally house,

Kumaranalloor P.O., Kottayam-686016

- 5. Mr. Biju Varghese**  
Mangalappally House,  
Devalokam P.O., Kottayam - 686004
- 6. Registrar of Companies, Kerala**  
BMC Road, Thrikkakara P.O.,  
Ernakulam- 682021, Kerala
- 7. Ms Toshima Biju Varghese**  
Mangalappally House,  
Devalokam P.O., Kottayam -686004
- 8. Ms Ciya Varghese**  
Mangalappally House,  
Devalokam P.O, Kottayam - 686004
- 9. Ms Cinara Varghese**  
Mangalappally House,  
Devalokam P.O, Kottayam - 686004

**...Respondents**

***In the matter of:***

Toshiba Biju Varghese & others : Applicants

Versus

Mangalam Publications (India) : Respondents  
Private Limited

**Order delivered on: 02.07.2024**

**Coram:**

**Hon'ble Member (Technical)**

**Shri. Shyam Babu Gautam**

**Hon'ble Member (Judicial)**

**TMT. (Retd.) Justice T Krishna Valli**

***Appearances:***

For the Applicant : Mr. Ameerul Millath, Advocate

For the Respondents No 7 -9 : Mr. Saji Issac K J, Advocate

For the Respondents No 1 -4 : Mr Ashok B Shenoy, Senior Advocate

**ORDER**

**Per: Coram**

1. The present application is filed by the Applicant/ Respondent No 6 in the main Company Petition, Mr Ajayan P.V under Rules 11, 32 and 113 of the NCLT Rules, 2016 read with Order I Rule 10 (2) of the Civil Procedure Code, 1908 against the Respondents herein for the following reliefs;

*a. To first hear and pass appropriate orders on this IA with respect to striking off the name of Applicant herein/Respondent No.6 in the Company Petition of CP (C/Act)/07/KOB/2023, as no sustainable relief has been sought against him, also considering the fact that the sale deed has already been registered as Document No. 877/1/2023 dated 5th April, 2023, and hence the*

*relief sought to terminate Annexure A3 and A4 sale agreements referred to in the Main Petition has become infructuous.*

- b. To order that the said Company Petition No. CP (C/Act)/07/KOB/2023 filed by the close family members of Shri Biju Varghese (5th Respondent herein) to the extent of including the Applicant herein as Respondent No. 6 in the petition is an act of fraud by the Petitioners for reasons stated in the IA, as the said 5th Respondent was a signatory to the two sale agreements and his family members who are shareholders were aware of the acts of the said 5th Respondent.*
- c. To impose exemplary costs as provided under Rule 113 of the NCLT Rules, 2016, for unnecessarily including the Applicant herein as Respondent No. 6 in the CP (C/Act)/07/KOB/2023 filed by the family members of Shri Biju Varghese, Director of the company, as proxies when he was actually a signatory to the two sale agreements executed on 01.10.2022 and 05.01.2023, and as such, it is a clear case of fraudulent, frivolous, and vexatious proceedings against the Applicant.*
- d. To grant further time to the Respondents in CP (C/Act)/07/KOB/2023 to file their reply in case this Hon'ble Tribunal comes to a finding that the above Company Petition is maintainable against the Applicant herein/Respondent No.6 in its present form.*

2. The Applicant herein is a purchaser of immovable property from the 1st Respondent company. The 2nd Respondent is the Managing Director of the 1st Respondent company. The 3rd, 4th, and 5th Respondents are also directors of the 1st Respondent company.
3. The 2nd, 3rd, 4th, and 5th Respondents are the sons of Late Shri M.C. Varghese. The 7th Respondent is the legally wedded wife of the 5th Respondent and holds 0.33% shares in the 1st Respondent company. The 8th and 9th Respondents are the daughters of the 5th Respondent and hold 0.183% and 0.175% shares in the 1st Respondent company, respectively. Collectively, the 7th, 8th, and 9th Respondents hold 0.68% shares in the 1st Respondent company.
4. The Applicant entered into an Agreement for Sale with the 1st Respondent company on 01.10.2022, registered as Document Number 2006/1/2022 before the Sub Registrar, Kottayam. The Applicant is the first party, and the 1st Respondent company, represented by its Managing Director Shri Sajan Varghese, and Mangalam Homes & Resorts Private Limited, represented by its Managing Director Shri Sajan Varghese, are the second parties. Mr. Sajan Varghese, Mr. Sabu Varghese, Mr. Saji Varghese, Mr. Biju Varghese, and Ms. Claramma Varghese were the third parties to the Agreement for Sale.
5. The properties scheduled as Item No.1 (47.20 Ares) and Item No.2 (9.20 Ares) belong to the 1st Respondent. Item No.1 and Item No.2 are adjacent properties. Item No.3 belongs to M/s Mangalam Homes

- & Resorts Private Limited. The properties were offered for sale with buildings and improvements for a total consideration of Rs.15,60,00,000/- which the Applicant accepted. An advance of Rs.1,00,00,000/- was transferred to the second party through RTGS as per the agreement.
6. A second sale agreement, Document No.15/2/2023 dated 05.01.2023, was registered with the Sub-Registrar, Kottayam, extending the period for payment of the balance consideration and execution of the sale deed to 30.06.2023. All other terms remained the same.
  7. The 5th Respondent is privy to the agreements and has signed them. However, the 5th Respondent, through the 7th, 8th, and 9th Respondents, has challenged the sale, committed fraud and abused the judicial process. The Applicant argues that the company petition stems from a family dispute and should not involve a bona fide purchaser.
  8. The Union Bank of India issued a letter on 19.09.2022, detailing the documents of the 1st Respondent company taken as security for a loan. The bank, on 11.01.2023, informed the Managing Director of the 1st Respondent that they had sanctioned the release of the collateral property against a payment of Rs. 6.10 crores from the sale proceeds. The sale proceeds cleared the dues of the secured creditors, and the Applicant stepped into the shoes of the secured creditor by the law of subrogation.

9. An Extraordinary General Meeting on 29.03.2023, approved the sale of the properties with a 75.29% majority. Despite the 5th Respondent and his family voting against it, the Special Resolution was passed. The actual sale deed was executed on 05.04.2023. Thus, the Applicant submits that the relief sought in the Main Petition has become moot, and the Applicant should be removed from the party array as they are a bona fide purchaser who has fulfilled all obligations.
10. Respondents No 7 to 9 filed a reply stating that the representation of Mangalam Publications (India) Private Limited in the Company Petition is led by Mr. Sajan Varghese, who serves as Managing Director and is also a Director of Mangalam Global Media (P) Limited. The last Annual General Meeting of Mangalam Global Media (P) Limited was held on 29.09.2018, and the Balance Sheet date is 31.03.2018, as per Ministry of Corporate Affairs records. Due to non-filing of financial statements for over three consecutive years, Mr. Saji Varghese, Mr. Sabu Varghese, and Mr. Sajan Varghese, as Directors of Mangalam Global Media (P) Limited, have been disqualified under Section 164(2) of the Companies Act, 2013. Consequently, the office of Managing Director/Director of Mangalam Publications (India) Private Limited held by Mr. Sajan Varghese became vacant upon disqualification. This disqualification is acknowledged by Mangalam Publications (India) Private Limited.
11. The 1st Respondent in the Company Petition is represented by Mr Sajan Varghese, who was disqualified under Section 164(2) of the

Companies Act, 2013 at the time of the Annexure A1 sale agreement. Directors 2 to 4 of the 1st Respondent were also disqualified under the same section on the date of the Annexure A1 sale agreement, rendering Annexure A1 and A2 void ab initio.

12. The Company Petition concerns oppression and mismanagement of the 1st Respondent company and is not related to family matters. The 1st Respondent company is a distinct legal entity. Evidence of oppression and mismanagement is apparent from the sale of the 1st Respondent's property by disqualified directors in collusion with the Applicant. The sale occurred without receiving the full sale consideration as stated in the Sale Deed, only rectified after respondents demanded details. The collusion between the Applicant, the former Managing Director, and disqualified directors (2nd to 4th respondents) in selling the property after disqualification under Section 164(2) of the Companies Act, 2013, and without full payment as stated, constitutes fraud and abuse of judicial process.
13. Allegations regarding an Extraordinary General Meeting of the 1st respondent are false, as the meeting was improperly convened by a disqualified Managing Director/Director. Claims regarding family partition were intentionally made by the former Managing Director with the 3rd and 4th Respondents. The Applicant acknowledges that the 5th respondent and other shareholders voted against the Special Resolution, indicating the majority decision was influenced by disqualified directors and their families.



14. Respondents have filed for amendment of the Company Petition upon learning of the sale after its filing. The sale is contested, and respondents seek cancellation of the Sale Deed. Awareness of the disqualification of directors' 2nd to 4th was recently acquired. Sale Deed No. 877 of 2023 of Kottayam Sub Registry, executed by disqualified directors, is deemed void ab initio.
15. The Applicant herein, not a shareholder of the 1st Respondent Company, falsely claims all payments were made before executing the Sale Deed, contradicting Annexure A6. The Applicant colluded with disqualified directors (2nd to 4th respondents), attempting undue enrichment at the expense of the 1st respondent. Disqualified directors and their families exploit their majority to exploit the assets of the 1st respondent in collusion with the Applicant.
16. The Applicant is not entitled to the reliefs sought, having colluded with disqualified directors in a bargain sale of the 1st Respondent's property. Therefore, the Applicant remains a necessary party and cannot be removed from the proceedings. Fraudulent concealment of material facts and non-payment of sale consideration by the Applicant, former Managing Director, and disqualified directors warrants their inclusion in the litigation.
17. We have heard the learned counsel for the Applicant and the Respondents and has gone through the materials on record. The Applicant argues that he is a bona fide purchaser who has fulfilled his obligations, asserting that the main dispute in the company

petition is a family matter and should not involve him. Therefore, he seeks to have his name struck off from the Company Petition. On the other hand, Respondents No. 7 to 9 contend that the sale agreements were executed by disqualified directors, making the Applicant a necessary party to the proceedings.

18. On going through the contentions, it is to be found whether the Applicant/ Respondent No 6 is required for the effective adjudication of the main Company Petition.
19. The Hon'ble Supreme Court in *Udit Narain Singh Malpaharia v. Addl. Member, Board of Revenue, Bihar AIR 1963 SC 786* held as under:

*"7. To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively'; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."*

*"A tribunal, therefore, exercising a judicial or quasi-judicial act cannot decide against the rights of one party without giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void."*

*9. The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As we have seen, a tribunal or authority performs a judicial or quasi-judicial act after*

*hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari, the defeated party seeks for the quashing of the order issued by the tribunal in favour of the successful party. How can the High Court vacate the said order without the successful party being before it? Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party. In addition, there may be parties who may be described as proper parties, that is parties whose presence is not necessary for making an effective order but whose presence may facilitate the settling of all the questions that may be involved in the controversy. The question of making such a person as a party to a writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding may apply for the impleading of such a party or such a party may suo motu approach the court for being impleaded therein."*

20. The Hon'ble Supreme Court in *Gurmit Singh Bhatia v. Kiran Kant Robinson* (2020) 13 SCC 773 has laid down two questions for determining the question of whether a particular party is a necessary party to a proceeding:

*(i) there must be a right to some relief against such party in respect of the matter involved in the proceeding in question; and*

*(ii) it should not be possible to pass an effective decree in absence of such a party.*

21. In view of the above, a "necessary party" is an individual who must be included in the case because, without their presence, the court cannot issue an effective order. In contrast, a "proper party" is someone who, although not essential to the case, would help the court fully, effectively, and adequately resolve all matters in dispute, though he need not be a person in favour of or against whom the decree is to be made.
22. The core issue of the Company Petition revolves around the validity of the sale agreements executed by the allegedly disqualified directors. The Hon'ble Supreme Court has emphasized in various cases that the bona fide purchaser doctrine safeguards those who obtain property in good faith and for valuable consideration. However, at this preliminary stage, even in the absence of any documentary evidence to prove the allegations of fraud against the Applicant herein, the contention of the Applicant/Respondent No 6, that he is a bonafide purchaser in the sale vide sale deed executed on 05.04.2023 and that authorisation of directors are valid matters pendente lite.
23. It is also emphasized that no relief has been claimed against the Applicant in the Company Petition, accordingly we find that the Applicant does not fall within the category of necessary parties, be we are of the view that the Applicant is a proper party whose presence is essential for a complete and final decision on the issues involved in the Company Petition.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

*IA(C/Act)/171/KOB/2023 in CP(C/Act)/07/KOB/2023  
In re Mangalam Publications (India) Private Limited*

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24. The Applicant/ Respondent No 6 is hereby directed to file his reply within 3 weeks from the date of this order.
25. This Application IA(C/Act)/171/KOB/2023 is hereby **dismissed** and disposed of accordingly.
26. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and to take necessary steps.
27. Let the certified copy of the order be issued upon compliance with requisite formalities.
28. File be consigned to records.

**Sd/-**  
**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

**Sd/-**  
**T KRISHNA VALLI**  
**(MEMBER JUDICIAL)**

Signed on this the 2<sup>nd</sup> day of July, 2024.

Krishna /LRA