

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **19.07.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : A. Shirany Gomez
Vs
Aanandham Property Developers Pvt Ltd &
21 others

MAIN PETITION NUMBER : TCP/103/2016

(IA/MA) APPLICATION NUMBERS

Cont/03(CHE)/2022

ORDER

Present: Ld. Counsel Shri. Ashlin Christo for the Applicant.

None for the Respondent.

Vide separate order is pronounced in the Open Court,
Cont/03(CHE)/2022 is dismissed with no orders as to cost.

List TCP/103/2016 for hearing on **04.09.2024**.

Sd/-

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

(SANJIV JAIN)
MEMBER (JUDICIAL)

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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

Cont/03(CHE)/2022

In

TCP/103/(CHE)/2016

*(filed under section 425 of the Companies Act, 2013 r/w rules 11, 14 & 15 of
Nclt rules, 2016)*

A. Shirany Gomez

D/o S.A. Gomez,
No.31, First Street,
Bharathi Avenue,
Kottur, Chennai – 600085

.....Applicant

Versus

1. M/s. Anandham Property Developers Private Limited

Plot No. 1320, Door No. 33, Golden Colony,
Anna Nagar West Extension,
Padi, Chennai – 600 050

2. Ms. Komathi Rajan

Plot No. 897, Door No. 9, 10th Street.
Anna Nagar West, Chennai - 600040.

3. Ms. Kasthuri Palani

A 14, Madura garden,
15, P.H. ROAD, Maduravoyal,
Chennai - 600 095.

4. Mr. Palani Balasundaram

A 14, Maduragarden,
15, P.H. Road, Maduravoyal,
Chennai - 600 095.

5. Mr. R.S. Rajan

Plot No. 897, Door No. 9, 10th Street,
Anna Nagar West, Chennai - 600040.

6. S. Ganesan

S/o C. M. Santhana Krishnan
Plot No. 73, VGP Golden sea View Lay-out Part-II,
II Main Road, Palavakkam, Chennai –600019

7. A.R.Anandan

S/o Radhakrishnan
No. 67, Apparswamy Koil Street,
Thiruvotriyur, Chennai –600019

8 . Suresh Babu

Prop. of M/ s . Sai Associates
No. 21, Murugan Koil Road,
Kundrathur, Chennai -600069

9. SRO, Sunguarchathram

No. 790, Bangalore to Chennai Main Road,
(Opp. to Jain Finance),
Sunguvarchatram, Chennai –602106

10. SRO, Padappai

K. R. Puram, 2nd Street Vandaloor Walazabath Road,
Padappai, Chennai – 601301

....Respondents

Order pronounced on 19th July, 2024

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)

For Applicant : *Rohan Rajasekaran, Advocate*
For Respondent 2 & 5 : *Ms. Krithika, Advocate*
For Respondent No.
3,4,6 to 11, 13,16 to 22. : *Rupikaa Srinivasan*

ORDER

(Hearing through hybrid mode)

The present Application has been filed u/s. 425 of the Companies Act, 2013 read with Rules 11,14, & 15 of National Company Law Tribunal Rules, 2016 against the Respondents seeking inter-alia the following final reliefs;

A. Punishing Respondents 2 to 5 for contempt of the orders of Hon' ble CLB/ this Hon' ble Tribunal dated 03.09.2012;

B. Quashing the conveyance deeds and power of attorneys more particularly described in Para 8 of this Application and directing the 9th and 10th Respondents to restore the said immovable properties in favor of the 1st Respondent Company; and

C. For such further and other reliefs as this Hon' ble Tribunal may deem fit in the facts and circumstances of the case.

and Interim reliefs;

A. Restraining the Respondents 6 to 8 from further encumbering or alienating in any manner, the assets more specifically described in Para 8 of this Application, pending disposal of this Application;

B. Directing the 9th and 10th Respondents to refuse any further registration in respect of the assets more specifically described in Para 8 of this Application, pending disposal of this Application; and

C. For such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case .

2. The Applicant herein is the Petitioner in the Main Company Petition which was filed in the year 2012 u/s 397/398 read with 402 and 403 of the Companies Act, 1956, seeking final and interim reliefs in relation to Oppression and Mismanagement in the 1st Respondent Company.

3. It is stated that, the Applicant herein had been diluted from a 90% shareholder to be holding only 6% shares in the 1st Respondent Company. By doing so, the 2nd and 5th Respondents usurped complete control of the 1st Respondent Company and unlawfully alienated various assets of the 1st Respondent Company while diverting business and siphoning funds to the coffers of the 2nd and 5th Respondents.

4. It is stated that, when the main petition was filed by the Applicant before the Company Law Board (hereinafter, CLB), the CLB was pleased to pass the following order dated 03.09.2012:

"Heard the Learned counsel appearing for parties. Keeping in view apprehensions expressed by learned counsel for the petitioner, I hereby order to maintain status quo in respect of the shareholding pattern of the company as on to-day until further orders. The Company intimate to the petitioner in case of any alienation of immovable assets of the Company".

5. It is stated that, the respondents challenged every order passed by the CLB and kept prolonging the main petition. While things stood thus, the applicant received notice dated 04.02.2022 for the first time, stating that an EGM was proposed to be held on 26.02.2022. The agenda stated therein was to ratify all actions taken by the Company during the struck off period. It is further averred that, any business transacted during the said period would be void-ab-initio.

6. It is stated that the Petitioner sent a proxy for the meeting and was shocked to note the various resolutions passed therein whereby all the properties/immovable assets of the 1st Respondent Company were illegally sold by the 2nd and 5th Respondents back in the year 2017 itself,

without any intimation to the applicant herein and in disregard and in contempt of the orders of the CLB dated 03.09.2012.

7. It is stated that, the minutes of meeting dated 26.02.2022 states that the following conveyance deeds were executed in favour of various alleged creditors of the 1st Respondent in order to clear its liabilities:

i) Conveyance deed dated 27.10.2017 executed in favour of the 8th Respondent herein vide doc No. 2994/2017 on the file of SRO, Sunguwarchathram (9th Respondent) for 47,013 Sq.ft. (plot nos. 4 – 11,13,20,23,25,26,32-36,38,40,42-46) for an alleged consideration of Rs. 1,78,65,524;

ii) Conveyance deed dated 27.10.2017 executed in favour of the 7th Respondent herein vide doc No. 2996/2017 on the file of SRO, Sunguwarchathram(9th Respondent) for 12,565 sq.ft (plot Nos. 9,16,17,21,26,28 and shop) @ sogandy village, SRO Sunguwarchathiram for an alleged consideration of Rs. 52,02,750;

iii) Conveyance deed dated dated 27.10.2017 executed in favour of the 7th Respondent herein vide doc no.6377/2017 on the file of SRO, Padappai (10th Respondent) for 11790 Sq.ft (Plot No.1, 23 and shop site) in manimangalam village, for alleged consideration of Rs. 52,75,883.

8. It is stated that, the 7th and 8th Respondents are the shell entities and benamis of the 5th Respondent. The acts of the Respondents 2 to 5 in executing the conveyance deeds in favour of Respondents 7 and 8, without any intimation to the Applicant herein, would amount to a direct contempt of the orders of the Tribunal.

Reply filed by the 2nd Respondent

09. It is stated that, the above contempt application at the outset is not maintainable neither in law nor on facts and it is liable to be dismissed in limine. Further it is averred that, this contempt application is nothing but an utter abuse of process and deliberate attempt to derail the main issues.

10. It is stated that, in March 2014, Company Petition No. 134 of 2014 was filed by Sai Associates (8th Respondent herein) against the 1st Respondent Company to recover dues pending from the 1st Respondent company. Order dated 10.12.2014 was passed by the Hon'ble High court of Madras in Company Petition No.134 of 2014 where by the Company Petition was disposed of after recording the

memo of compromise jointly filed by Sai Associates (8th Respondent herein) and the 1st Respondent, whereby the 1st Respondent agreed to execute conveyance deeds in favour of Sai Associates with respect to the unsold immovable properties belonging to the 1st Respondent.

11. It is stated that, on 21.02.2017, the 7th Respondent preferred a Civil Suit No. 253 of 2017 before the Hon'ble High Court of Madras for recovery of money from 1st Respondent and 8th Respondent. Order dated 25.04.2017 was passed by the Hon'ble High Court of Madras in Civil Suit No. 253 of 2017 whereby Hon'ble High Court recorded the joint memo of compromise filed by the parties and consequently closed all the connected applications.

12. It is stated that pursuant to the compromise memo agreed upon between 1st Respondent, 7th and 8th Respondent, the following conveyance deeds were executed,

i) Conveyance deed dated 27.10.2017 executed in favour of the 8th Respondent herein vide doc No. 2994/2017 on the file of SRO, Sunguwarchathram (9th Respondent) for 47,013 Sq.ft. (plot nos. 4 –

11,13,20,23,25,26,32-36,38,40,42-46) for an alleged consideration of Rs. 1,78,65,524;

ii) Conveyance deed dated 27.10.2017 executed in favour of the 7th Respondent herein vide doc No. 2996/2017 on the file of SRO, Sunguwarchathiram(9th Respondent) for 12,565 sq.ft (plot Nos. 9,16,17,21,26,28 and shop) @ sogandy village, SRO Sunguwarchathiram for an alleged consideration of Rs. 52,02,750;

iii) Conveyance deed dated dated 27.10.2017 executed in favour of the 7th Respondent herein vide doc no.6377/2017 on the file of SRO, Padappai (10th Respondent) for 11790 Sq.ft (Plot No.1, 23 and shop site) in manimangalam village, for alleged consideration of Rs. 52,75,883.

13. It is stated that, the 1st Respondent name was struck off, for non-filing of returns, from the Register of Registrar of Companies in July, 2017 which the Company was not aware. After restoration of company and the DIN, the acts done during struck off period were ratified vide extra ordinary general meeting.

14. It is stated that, the conveyance was done as per the Hon'ble High Court order and the same was duly intimated to the

petitioner/Applicant about the alienation of assets in the extra ordinary general body meeting held on 26.02.2022. It is stated that, the contempt does not lie since the intimation was given to the Applicant vide the Extra Ordinary General meeting.

15. It is stated that, the order dated 03.09.2012 of CLB does not restrain the Respondents from the sale of the assets but it only directed to intimate the Petitioner if any.

Observations of this Tribunal:

16. We have heard Ld. Counsel for both the parties. We have also gone through the pleadings and records.

17. Petition TCP/103/2016(C.P No. 72/2012),which is pending before his Tribunal, was filed by the Applicant herein alleging oppression and mismanagement in the 1st Respondent Company. The Company Law Board passed an order dated 03.09.2012 as under:

"Heard the Learned counsel appearing for parties. Keeping in view apprehensions expressed by learned counsel for the petitioner, I hereby order to maintain status quo in respect of the shareholding pattern of the company as on to-day until further orders. The Company intimate

to the petitioner in case of any alienation of immovable assets of the Company”.

18. Subsequently, the 8th Respondent had filed Company Petition No.134 of 2014 before the Hon'ble High Court of Madras to recover dues against the 1st Respondent. The 1st Respondent entered into compromise and agreed to execute the conveyance deed in favour of 8th Respondent and the same was recorded in the order dated 10.12.2014 of the Hon'ble High Court of Madras. Afterwards, the 7th Respondent had filed Civil Suit No. 253 of 2017 against the 1st Respondent for recovery of money, wherein the 1st Respondent entered into compromise. The Hon'ble High Court of Madras recorded the joint memo of compromise and recorded it in order dated 25.04.2017.

19. We are of the considered opinion that the Company Law Board Order dated 03.09.2012 does not in any way restrict the 1st Respondent to alienate the immovable assets. It is the case of the Applicant that the company illegally alienated the properties without any intimation. Nevertheless, it is observed that the Conveyance of Properties to 7th and 8th Respondent is consequence of Compromise memo entered with

the 1st Respondent for the dues pending with the 7th and 8th Respondent.

20. It is the case of the Applicant that the 7th and 8th Respondents are shell entities and benamies of the 5th Respondent. However, the Applicant didn't adduce any evidence to that effect. Nevertheless, the Applicant is at the liberty to argue this contention in the **Main Petition TCP/103/2016**.

21. Thus, this Tribunal is of the view that the Respondent 2 to 5 have not violated the orders of the Company Law Board dated 03.09.2012. It is clear that, the Applicant was intimated about the alienation vide Extra General Meeting held on 26.02.2022. In consequence, this Tribunal **holds that there is no contempt established** and resultantly this Petition **Cont./03/CHE/2022** is **dismissed with no orders as to cost**.

22. List the Main Petition TCP/103/2016 for hearing on **04.09.2024**

-Sd-

VENKATARAMAN SUBRAMANIAM
Member (Technical)

-Sd-

SANJIV JAIN
Member (Judicial)

Kishore P