

**IN THE HIGH COURT OF KARNATAKA, BANGALORE**

**DATED THIS THE 28<sup>TH</sup> DAY OF FEBRUARY, 2013**

**B E F O R E**

**THE HON'BLE MR.JUSTICE ARAVIND KUMAR**

**C.A.NO.41/2013**

**&**

**C.A.NO.1016/2012**

**IN**

**COMPANY PETITION 112/1994**

**C.A.NO.41/2013:**

**BETWEEN:**

Smt.Kamakshi  
Aged 55 years,  
Wife of late S.Kumar  
Residing at Flat No.84/A  
MNPM Ld., SIHS Colony,  
Belagola, S.R.Taluk,  
Mandya District.

..Applicant

(By Sri.B.V.Raman, Advocate)

**AND:**

Mandya National Paper Mills Ltd.,  
The Official Liquidator  
Bangalore,  
Corporate Bhavan,  
26 & 27, 12<sup>th</sup> Floor,  
Raheja Towers,  
M.G.Road,

Bangalore – 560 001.

..Respondent

(By Sri.K.S.Mahadevan, Advocate for Official Liquidator)

This company application is filed under Section 446(2)(d) and Section 518(1)(4) of Companies Act read with Rule 9 of Companies (Court) Rules praying for regularization of the occupancy/ownership rights of the applicant in respect of Quarters No.84/A situated in SIHS Colony, Belagola, Srirangapatna Taluk, Mandya District etc.

**C.A.1016/2012:**

**BETWEEN:**

Mr.Puttaraju  
S/o Jawaregowda  
Aged about 57 years,  
R/at: Quarters No.84/A  
MNPM Housing Colony,  
Belagula -571 606  
Mandya District.

..Applicant

(By Sri.K.A.Prakash, Advocate for M/s.Legal Services Inc)

**AND:**

The Mandya National Paper Mills Ltd.,  
(in liquidation)  
A Company registered under the  
Companies Act, 1956 having its  
Regd. office and Mills at

Belagula – 571 606  
Represented by Official Liquidator  
High Court of Karnataka  
12<sup>th</sup> Floor,  
Raheja Towers,  
M.G.Road,  
Bangalore – 560 001.

..Respondent

(By Sri.K.S.Mahadevan, Advocate for Official Liquidator)

This company application is filed under Rules 6 and 9 of the Companies (Court) Rules, 1959 read with Section 151 of the Code of Civil Procedure, 1908 praying to direct the respondent official liquidator to execute the sale deed in favour of the above applicant after receiving the sale consideration amount of ₹12,500/- in line with the order dated 16.07.2004 passed by this Hon'ble Court in Company Application Nos.12/2002 and connected matters.

These Company Applications coming on for Orders, this day the Court made the following:

### **ORDER**

Applicant in C.A.41/2013 is seeking for regularization of occupation of ownership rights in respect of quarter/Flat No.84/A situated at Belagola, Srirangapatna Taluk, Mandya District and applicant in C.A.1016/2012 is seeking for a direction to the official liquidator to execute sale deed after receiving sale

consideration of ₹12,500/- in respect of the very same quarter/Flat.

2. I have heard the learned advocates appearing for the applicants namely Sriyuths B.V.Raman and K.A.Prakash and Sri.K.S.Mahadevan, learned counsel appearing for official liquidator. Perused the contents of both the applications as also reply statements filed by official liquidator in both the applications.

3. Learned counsel appearing for applicant in C.A.1016/2012 seeks for execution of sale deed in respect of quarter/Flat No.84/A on the ground that he is in occupation of the said quarters and he being ex-employee of the company (in liquidation) is entitled for the relief by virtue of order passed by this court in similar circumstances in C.A.12/2002 dated 16.07.2004. In support of his submission he has filed identity card issued by the company and acknowledgement issued by the company (in

liquidation) accepting his application for VRS. Learned counsel has also filed a memo today in court enclosing four documents which includes the identity card issued by Election Commission, letter of house allotment dated 16.10.1992 indicating quarters No.41/A having been allotted to the applicant and service certificate along with affidavit of the applicant.

4. Learned counsel appearing for applicant in C.A.41/2013 in support of the prayer made in the application would contend that husband of the applicant was working as a Boiler Attendant since the year 1981-82 and he married the applicant in the year 1982 and was living with her in the quarters in question i.e., quarters 84/A and on 21.01.1993 he left for work as usual and never returned home and his whereabouts are not known. It is also stated that the company (in liquidation) was intimated about this fact on 23.03.1993 and applicant suspected that he was kidnapped. It is

also stated that the quarters in question was allotted to the applicant's husband as he was a eligible employee to be allotted quarters by the management and to substantiate the claim made in the application that husband of the applicant was an employee of the company (in liquidation) and was residing in the said address, documents like pass book of State Bank of Mysore and postal acknowledgement received by applicant dated 02.05.2011, registration certificate for allotment of LPG Cylinder have been produced amongst other documents. Affidavits of the neighbours Smt.Gowramma, Sri.M.N.Kaveriyappa, Sri.Ravikumar and Smt.Puttamma are also filed.

5. Official liquidator has filed reply statement to both applications. A memo has been filed by the official liquidator on 19.02.2013 enclosing Mahazar drawn on 21.07.2001 as Annexure-A which would indicate the name of the employee and quarters allotted to each of

the employees. At Sl.No.39 of Annexure- 4 to Annexure-A name of the applicant's husband (C.A.41/2013) is found and a perusal of the said Mahazar along with pass book issued by State Bank of Mysore produced along with application would indicate that the token number of ex-employee is one and the same namely T.No.447. Said Mahazar would also indicate that said employee was dismissed. This mahazar drawn on 21-7-2001 would indicate that possession of quarter No.84/A along with other quarters as mentioned in Annexure-4 was not taken by Official Liquidator on account of occupants objecting to same.

6. It is not in dispute that the said employee namely husband of applicant in C.A.41/2013 was last seen on 21.01.1993 and as such a suit was filed by his wife after a period of seven years in O.S.125/2009 for a decree of declaration that her husband Sri.S.Kumar be declared as dead and his death to be declared as civil

death. Competent Civil Court on adjudication of the claim by its Judgment and decree dated 02.11.2009 decreed the suit, copy of which is at Annexure-5 to the application C.A.No.41/2013. Affidavits of the neighbours as noted hereinabove would also indicate that said quarter in question was originally allotted to Sri.S.Kumar and applicant being his wife was residing in the said quarters. Though it is contended by the applicant in C.A.No.1016/2012 that she is not residing in the said address and she is residing along with her daughter in Bangalore though at first blush looks to be accepted, same would not hold water for the reason that she is aged about 56 years and visiting her only daughter who is a resident of Bangalore not only for the purpose of seeing her daughter but also to get medical treatment as claimed in the application cannot be construed as unusual. This is also fortified by the statement of neighbours who have filed affidavits confirming that she is residing in said quarters. As such



the contention of Sri.K.A.Prakash, learned counsel appearing for applicant in C.A.No.1016/2012 cannot be accepted.

7. Though Sri.K.A.Prakash, learned counsel appearing for applicant in C.A.1016/2012 would contend that quarters in question be ordered to be registered in the name of applicant by Official Liquidator on the ground that applicant is in occupation of the same I am not inclined to accept said submission for reasons more than one, namely applicant Sri.Puttaraju was undisputedly allotted quarters No.41/A in the same colony by the company (in liquidation) as per Allotment letter dated 16.10.1992 produced today along with Memo. As to whether the said quarters was vacated and possession handed over to the company (in liquidation) or not is not forthcoming from the records. Except self serving testimony of the applicant that he vacated the quarters and shifted to quarters 84/A no

other acceptable material is placed on record. As to when quarter No.84/A was allotted to him is not forthcoming from records and applicant has failed to establish this fact. Further official liquidator in the memo filed on 19.02.2013 as already noticed herein above has appended the Mahazar drawn on 21.07.2001 at Annexure-A which would indicate that the quarters in question was allotted to Sri.S.Kumar, token No.447 namely husband of applicant in C.A.41/2013. In that view of the matter prayer made by the applicant in C.A.41/2013 deserves to be accepted and prayer of the applicant in C.A.No.1016/2013 deserves to be rejected.

Hence, for the reasons aforesaid following order is passed:

**ORDER**

1. C.A.41/2013 is hereby allowed.
2. Official Liquidator is directed to receive consideration amount of ₹12,500/- from the applicant in

C.A.No.41/2013 which shall be paid by her within 30 days from the date of receipt of copy of this order and on receipt of such consideration amount official liquidator shall execute sale deed in favour of applicant in C.A.41/2013 in respect of quarters No.84/A within 30 days thereafter from the date of receipt of amount.

3. C.A.1016/2012 is hereby dismissed and dismissal of this application would not come in the way of applicant seeking for directions to the official liquidator in respect of quarters 41/A which is said to have been allotted to the applicant and in the event such application is made same would be considered by this Court on its merits and in accordance with law after notice to Official Liquidator.

**Sd/-  
JUDGE**

SBN