If promoters of a company in liquidation procure mutation of company-owned immovable property into their own names, without any transfer instrument, without disclosed or valid consideration, and in circumstances showing that the asset has been taken out of the company estate to the detriment of creditors, the transaction attracts Section 531(1) of the Companies Act, 1956 as a fraudulent preference and is void

The **Bombay High Court** in the case of **Indage Vineyard Pvt Ltd vs Kotak Mahindra Bank [Official Liquidator Report No. 34 of 2025] dated June 25, 2026**, has held that where promoters of a company in liquidation procure mutation of company-owned immovable property into their own names, without any transfer instrument, without disclosed or valid consideration, and in circumstances showing that the asset has been taken out of the company estate to the detriment of creditors, the transaction attracts Section 531(1) of the Companies Act, 1956 as a fraudulent preference and is void.

The Court made it clear that even if the promoters later contend that there was "no valid transfer at all," that does not save the transaction. On the contrary, such a stance supports the conclusion that the mutation entries were illegal and required reversal. The Court treated the mutation-based transfer itself as sufficient interference with the company's title and with creditors' rights to justify nullification.

The Court observed that Section 531(1) creates a deeming fiction: a transfer made within six months before commencement of winding up can be treated as a fraudulent preference if it would have had that character in insolvency law. It emphasised that the purpose of the provision is to protect creditors, and that the assets of a company are not the assets of its shareholders or promoters.

The Court found several suspicious features in the transaction. There was no transfer deed, no disclosed consideration, no valuation of the property, and no disclosure of the amount allegedly owed by the company to the promoters. The promoters had claimed the property was transferred because they had lent money to the company, but the record did not reveal the quantum of debt or how it compared with the value of the land. The Court also noted that the shareholder resolution relied upon was itself questionable, including because Section 293(1)(a) would ordinarily apply to public companies and the resolution mentioned no value for the related party transfer.

The Court further observed that the promoters had effectively "helped themselves" to company property without stated consideration, thereby materially eroding the pool of assets available to creditors in liquidation. Their conduct in getting the land mutated in their names without any transfer instrument, and then attempting to sell it to third parties in 2023, showed that they had enjoyed and dealt with the property as their own, creating a real risk of putting the asset beyond the reach of creditors.

The Court held that the absence of consideration itself demonstrated absence of good faith, and that the only reasonable conclusion was that the promoters had sought to place the property beyond the reach of creditors. The Court also rejected the argument that, because there was no transfer instrument, there was no transfer to invalidate. It held that a transfer sought to be effected by mutation entries also falls within the mischief of Section 531(1), especially where those entries had the effect of securing title in favour of the promoters without lawful documentation.