IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.68 of 2008
IN
Civil Writ Jurisdiction Case No. 9696 of 2005

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1. The Bihar Industrial Area Development Authority through the Managing Director, 1st Floor, Udyog Bhawan, Gandhi Maidan, Patna
2. The Managing Director, Bihar Industrial Area Development Authority, 1st Floor, Udyog Bhawan, Gandhi Maidan, Patna
3. The Executive Director, North Bihar Industrial Area Development Authority, Bela Industrial State, Muzaffarpur

.... Appellants

Versus

1. Sri Amit Kumar, successor in interest as permitted assignee of M/s. Ganesh Engineering Company through its proprietor, Late Badri Mehrotra

.... Respondent 1st Set

2. The State of Bihar
3. The Industrial Development Commissioner, Industry Department, Govt. of Bihar, New Secretariat, Patna
4. The Director of industries, Industry Department, Govt. of Bihar, New Secretariat, Patna

…. …. Respondents 2nd Set.

with

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Letters Patent Appeal No. 125 of 2011
IN
Civil Writ Jurisdiction Case No. 4325 of 2009

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1. The Bihar Industrial Area Development Authority, Udyog Bhawan, East Ghandi Maidan, P.S. - Gandhi Maidan, Patna Through Its Managing Director
2. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maindan, P.S. - Gandhi Maidan, Patna
3. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Bela, Muzaffarpur
4. The Deveopment Officer, Bihar Industrial Area Development Authority, Regional Office, Bela, Muzaffarpur

.... Appellant/s

Versus

1. M/S Shankar Saw Mills, B-2, Industrial Area, Sitamarhi Thorugh Its Proprietor, Sukhdeo Paswan S/O Late Maru Paswan R/O Village - Bhawendra, P.O. And P.S. - Sitamarhi, Distt. - Sitamarhi

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 11823 of 2011

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M/S Savitri Hortioculture Pvt. Ltd. having its registered office at Gola Road, P.S.-

Town, Distt.- Samastipur

.... Petitioner

Versus

1. The State of Bihar through its Chief Secretary
2. Department of Industries, through its Principal Secretary, Govt. of Bihar, Patna
3. Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna through its Managing Director
4. Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna
5. Executive Director, Bihar Industrial Area Development Authority, Regional Office, Darbhanga

.... Respondents

with

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Civil Writ Jurisdiction Case No. 5553 of 2013

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1. M/S Hindustan Coca-Cola Beverages Pvt. Ltd., A Company Incorporated Under The Companies Act, 1956 Having Its Registered Office At 13 - Abul Fazal Road, Bengali Market, P.O.-New Delhi, P.S.- Bengali Market, City And District-New Delhi - 110001 Through Its Aauthorized Signatory, Mr. Ranjan Kumar, S/O Sri V.N. Singh, At Present Posted As Zonal Legal Manager In Hindustan Coca-Cola Beverages Private Ltd., At Its Bottling Plant At E-1, Industrial Area, P.O. And P.S.- Patliputra, District- Patna, Bihar

.... Petitioner

Versus

1. The State Of Bihar through its Chief Secretary
2. The Principle Secretary, Department of Industries, Govt. Of Bihar, Patna
3. Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna through its Managing Director
4. The Managing Director Bihar Industrial Area Development Authority, Udyog Bhaawan, Patna-800001
5. The Executive Director, Bihar Industrial Area Development Authority, Udyog Bhawan, Patna-800001
6. The Chief Accounts Officer, Bihar Industrial Area Development Authority, Udyog Bhawan, Patna-800001

.... Respondents

with

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Civil Writ Jurisdiction Case No. 5756 of 2009

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Dinesh Prasad, Son of Late Baleshwar Sah, Resident of Mathurapur, Samastipur, Police Station- Mathurapur, District- Samastipur

.... Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Department of Industry, Government of Bihar, Patna

2. The Bihar Industrial Area Development Authority through its Managing Director, Udyog Bhawan, East Gandhi Maidan, Patna-4
3. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Darbhanga

.... Respondents

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Appearance :
(In LPA No. 68 of 2008)

For the Appellant/s : Shri Lalit Kishore, Sr. Adv.
Shri Piyush Lall, Adv.
For the Respondent/s : Shri Jugal Kishore, Sr. Adv.
Shri Birendra Narayan Sharma, Adv.
Smt. Nutan Sahay, Adv.
Shri Virendra Prasad, Adv.

(In LPA No. 125 of 2011)

For the Appellant/s : Shri Lalit Kishore, Sr. Adv.
Shri Piyush Lall, Adv.
For the Respondent/s : Shri Jitendra Singh, Sr. Adv.
Shri Suraj Samdarshi, Adv.

(In CWJC No. 11823 of 2011)

For the Petitioner/s : Shri Jitendra Singh, Sr. Adv.
Shri Suraj Samdarshi, Adv.
For the Respondent/s : Shri Lalit Kishore, Sr. Adv.

(In CWJC No. 5553 of 2013)

For the Petitioner/s : Shri Jitendra Singh, Sr. Adv.
Shri Kumar Manish, Adv.
Shri Sanjeev Kumar, Adv.
For the Respondent/s : Shri Lalit Kishore, Sr. Adv.
Shri Yashraj Bardhan, Adv.
Shri Atal Bihar Pandey, Adv. AC to GP22

(In CWJC No. 5756 of 2009)

For the Petitioner/s : Shri Ranjan Kumar Singh, Adv.
For the Respondent/s : Shri Lalit Kishore, Sr. Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 11-05-2015

In this batch of Letters Patent Appeals similar orders passed in C.W.J.C. No.9696/05 and batch are challenged. The Bihar Industrial Area Development Authority and other agencies of the State are the appellants.

The appellant is an authority created under the Statute by the State of Bihar for the purpose of promoting industrial activity in the State. As part of its activity, the appellant has developed the land handed over to it by the Government as industrial areas, provided infrastructures and made the same into plots. The plots in the respective industrial estates or areas are allotted to the intending entrepreneurs, after verification of the activity, which they propose to undertake and their eligibility. The scheme framed by the appellant provides for levy of 30% of the value of the plot fixed by it, to be deposited by the allottee, in addition to the nominal rent that is required to be paid periodically. The leases are generally for a period of 90 years and documents are executed in this behalf.

Some of the allottees who either established industries, but the industries became sick, or where they were not able to establish the industries at all, negotiated with other agencies. Any arrangement between the original allottee, on the one hand, and the intending transferee, on the other hand, needs the permission of the appellant. One of the conditions stipulated by the appellant for according permission for such transfer of the activity or enterprise is that the transferee must pay 15% of the value of the land as reflected in the circle register at the relevant point of time.

The original allottees and/or the intending transferees filed writ petitions challenging the condition as regards the levy of 15% of circle rate. It was pleaded that not only the amount becomes punitive, but also the levy thereof is outside the powers of the appellant. Several legal and factual grounds are urged.

Writ petitions were opposed by the appellants. It was submitted that the appellant has the authority to stipulate the condition and, strictly speaking, the plot must come to the appellant in case the industry is not established or it has become sick. The levy was justified on other grounds also.

C.W.J.C. No.4325 of 2009 was allowed through order dated 26.8.2010. The memo dated 18.11.2003, through which the levy of 15% of the circle rate was made, was quashed. Directions were issued for completion of the formality of transfer of the leasehold rights without insisting on deposit of 15% of the circle rate. Similar orders were passed in other writ petitions. Hence, this batch of Appeals.

Shri Lalit Kishore, Principal Additional Advocate General, submits that though the appellant is a creature under the Statute, the transactions that take place between it and the entrepreneurs are purely contractual and commercial in nature and there is every justification for the appellant in imposing the condition. He submits that the condition has a dual purpose to serve, namely to discourage indiscriminate transfers for profit and to earn revenue for the appellant. He submits that the decision to levy the said amount was taken by the Board of Management in which the representative of the allottees of plots were also present. It is also pleaded that though the appellant is entitled to cancel the allotment and resume the land if the industry is not established or it has become sick, it has cooperated with the allotees in getting transfer of leasehold rights, by levying the reasonable amount.

Shri Jitendra Singh, learned Senior Counsel, on the other hand, submits that being an agency of the State, the appellant is required to act reasonably and fairly, and in proposing to levy the 15% of the circle rate, it is tending to become a commercial organization. He contends that the circle rates are only for the purpose of determining stamp duty and registration charges on sale deeds and since no sale or other transfer is contemplated, the appellant was not at all justified in levying the amount on that basis. Learned Senior Counsel further submits that the appellant has determined the cost of the land by taking into account, the various parameters and has levied 30% thereof from the original allottee and there is no basis for adopting any other yardstick, or for levy of 15% for according permission for such arrangement. Other grounds are also urged.

The only area of controversy is as to whether the appellant is entitled to levy 15% of the circle rate, as a condition precedent, for according permission to transfer of the leasehold rights. It is true that the appellant has the right to determine the extent and nature of levy of amount for allotting the plots to the entrepreneurs, or to accord permission for transfer of such rights. All such decisions, however, are required to be taken only with the objective of promoting industries. Hardly there exists any element of commerce in it. Obviously for that reason, the original allotment itself is made to the entrepreneurs not at the market value, but by levying a reasonably lower amount, which just represents 30% of the cost of the land and development charges. This is, obviously, because the ownership of the land continues to be with the appellant and what is granted to the entrepreneur is only the leasehold right, may be for a longer period.

Over the period, it emerged that while some of the allottees did not establish industries at all within the stipulated time, certain others who established them, were not able to run the same on healthy lines. In many such cases, the allottees thought it fit to enter into agreement with other intending industrialists. This is because they have already made considerable investment for establishment of the industries and they cannot part with that, in view of the fact that they are not the owners of the land.

To the extent the appellant has decided to levy certain amount, as a condition for according permission for transfer of the leasehold rights upon the allottees, there cannot be any dispute. Being the owner of the land and an agency created under a Statute, the appellant has every right to stipulate the condition. The only controversy is as to what should constitute the basis for determining such amount.

Had it been a case where the original allotment itself was made by levying certain amount which is referable to the circle rate, the attempt made by the appellant to levy a different amount, but on the same basis i.e. the circle rate, there could not have been any objection to that. It has already been mentioned that the appellant levied 30% of the cost of the land and development charges while making original allotment. Grant of permission to transfer such leasehold rights can be on the same basis or method, though the percentage may differ. Since the charges for initial allotment have already been levied, the levy of 15% i.e. half of what was levied at the time of allotment, can certainly be treated as reasonable. However, importing the criterion of circle rate, at this stage, does not appear to be appropriate, proper, or rational.

It is only after verifying the credibility and efficiency of the proposed transferee, that permission is accorded by the appellant for transfer. The pre-dominant purpose is to ensure that the land continues to be used for running of industries. Once that purpose is ensured, the element of commerce or profit cannot be brought into existence. The same basis that was taken into account, for determining the levy of 30% amount at the time of initial appointment needs to be adopted. In other words, what can be levied from the transferee of the leasehold rights from the writ petitioners is 15% of the cost of the land and development charges which we call, for the sake of convenience, as BIADA rate. The controversy be reduced to certain extent, by permitting the appellant to work out the rate, as on the date of permission, according to the same parameters and not with reference to the date of original allotment. However, there cannot be any justification to levy 15% of the circle rate. While in some writ petitions the Learned Single Judge took the view that no levy, whatever, can be made for permission of transfer, in other cases it was directed that the levy shall be on BIADA rates. We approve the second category.

We, therefore, partly allow L.P.A. No.68 of 2008 and modify the order directing that the appellant shall be entitled to levy 15% on the BIADA rate as existing on the date of according permission for transfer as a condition precedent. L.P.A. No.125 of 2011 is dismissed, and the writ petitions that have been clubbed with the appeals are allowed directing that the appellant shall be entitled to levy 15% the BIADA rate and not circle rate, for according permission for transfer of leasehold rights.

Before parting with the case, we make it clear that the transactions which have already become final shall not be re-opened on the basis of the adjudication undertaken in this batch of cases. We make this aspect more emphatic for the reason that the transactions are bilateral and contractual in nature and the transferees who have paid the amount of 15% on circle rate without challenging the same by filing writ petitions cannot be permitted to re-open the matter at this stage and they are precluded on the grounds of acknowledgement, acquiescence, laches or estoppel. The principle laid down by us would apply prospectively. So far as the amount, if any, paid by the parties herein at 15% of the circle rate is concerned, the appellant shall be under obligation to refund the differential amount, in easy installments, without interest, spread over a period of five years.

I.A. No.5856 of 2014

I.A. is filed with a prayer to bring Ms. Aryan Tobacco Industries through its proprietor Sri Amit Kumar as the successor in interest as permitted assignee of M/s. Ganesh Engineering Company through its proprietor, Late Badri Mehrotra instead of the successors and legal heirs of deceased respondent No.1 i.e. his widow Most. Sarita Mehrotra, son Abhishek Mehrotra and daughter Payal Mehrotra. Application is not opposed.

It is accordingly ordered.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

K.C.jha/-
A.F.R.

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