

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1459 of 2015

In

Civil Writ Jurisdiction Case No.7326 of 2011

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M/S Maa Durga Enterprises, a Proprietary Concern having its Cold Storage Unit at Industrial Area, P.O. & P.S.- Pandaul, District Madhubani through its Manager, Rajesh Ratan Jyoti, S/o Shri Shyama Nand Roy, Resident of Kutchary Road, P.S. and District- Begusarai

... .. Appellant

Versus

1. The Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, Patna through its Managing Director
2. The District Consumer Disputes Redressal Forum, Madhubani having its Office situated at Civil Court Campus, Madhubani through its Secretary
3. Bharat Narain Sah son of Fakir Sah, Resident of village and P.O. Jagta, P.O. Bisti, District- Madhubani

... .. Respondents

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With

Letters Patent Appeal No. 1476 of 2015

In

Civil Writ Jurisdiction Case No.7893 of 2011

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M/s Maa Durga Enterprises a Proprietary concern having its Cold Storage Unit at Industrial Area,P.o & P.s Pandaul, District Madhubani through its Manager, Rajesh Ratan Jyoti S/o Shri Shyama Nand Roy Resident of Kutchary Road, P.s and district Begusarai.

... .. Appellant

Versus

1. The Bihar Industrial Area Development Authority, Udyog Bhavan, Gandhi maidan ,Patna through its Managing Director.
2. The District Consumer Disputes Redressal forum, Madhubani having its Office Situated at Civil Court Campus, Madhubani through its secretary.
3. Gangadhar Sahu son of late Banalal Sahu resident of village and P.o. Zafara, P.s Bisti, District Madhubani.

... .. Respondents

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With

Letters Patent Appeal No. 1461 of 2015

In

Civil Writ Jurisdiction Case No.7069 of 2011

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M/S Maa Durga Enterprises, a Proprietary Concern having its Cold Storage Unit at Industrial Area, P.O. & P.S.- Pandaul, District Madhubani through its Manager, Rajesh Ratan Jyoti, S/o Shri Shyama Nand Roy, Resident of Kutchary Road, P.S. and District- Begusarai

... .. Appellant

Versus

1. The Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, Patna through its Managing Director



2. The District Consumer Disputes Redressal Forum, Madhubani having its Office situated at Civil Court Campus, Madhubani through its Secretary
3. Ashok Chaubey, son of Late Jadunandan Chaubey, resident of village-Kusmaul, P.O. Rampatti, P.S. Rajnagar, District Madhubani

... .. Respondents

With
Letters Patent Appeal No. 1530 of 2015
In
Civil Writ Jurisdiction Case No.7524 of 2011

M/s Maa Durga Enterprises, a Proprietary Concern having its Cold Storage Unit at Industrial Area, P.O & P.S: Pandaul, District Madhubani through its Manager, Rajesh Ratan Jyoti, S/o Shri Shyama Nand Roy, Resident of Kutchary Road, P.S. and District Begusarai.

... .. Appellant

Versus

1. The Bihar Industrial Area Development Authority, Udyog Bhavan, Bailey Road, Patna through its Managing Director
2. The District Consumer Disputes Redressal Forum, Madhubani having its situated at Civil Court Campus, Madhubani through its Secretary
3. Pradeep Kumar son of Sri Ramashish Singh, resident of Village Mainapatti, P.O. Maheshpura, P.S. Babubarhi, District Madhubani.

... .. Respondents

With
Letters Patent Appeal No. 1467 of 2015
In
Civil Writ Jurisdiction Case No.7068 of 2011

M/s Maa Durga Enterprises, a Proprietary Concern having its Cold Storage Unit at Industrial Area, P.O & P.S: Pandaul, District Madhubani through its Manager, Rajesh Ratan Jyoti, S/o Shri Shyama Nand Roy, Resident of Kutchary Road, P.S. and District Begusarai.

... .. Appellant

Versus

1. The Bihar Industrial Area Development Authority, Udyog Bhavan, Bailey Road, Patna through its Managing Director
2. The District Consumer Disputes Redressal Forum, Madhubani having its situated at Civil Court Campus, Madhubani through its Secretary
3. Krishna Kumar Singh son of Sri Baleshwar Singh resident of Village Kasma Marar, P.S. Khajauli, District Madhubani.

... .. Respondents

With
Letters Patent Appeal No. 1465 of 2015
In
Civil Writ Jurisdiction Case No.7116 of 2011

M/s Maa Durga Enterprises, a Proprietary concern having its Cold Storage Unit at Industria Area, P.O. & P.S.- Pandaul, District Madhubani through its



Manager, Rajesh Ratan Jyoti, S/o Shri Shyama Nand Roy, Resident of
Kutchary Road, P.S. and District- Begusarai

... .. Appellant

Versus

1. The Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, Patna through its Managing Director
2. The District Consumer Disputes Redressal Forum, Madhubani having its Office situated at Civil Court Campus, Madhubani through its Secretary
3. Raj Kumar Singh son of Navilal Singh, resident of village Madana P.O. Lalit Laxmipur, P.S.- Khajauli, District Madhubani

... .. Respondents

With

Letters Patent Appeal No. 1635 of 2015

In

Civil Writ Jurisdiction Case No.2265 of 2011

M/s Maa Durga Enterprises, a Proprietary Concern having its Cold Storage Unit at Industrial Area, P.O. & P.S. Pandaul, District Madhubani through its Manager, Rajesh Ratan Jyoti, S/o Shri Shyama Nand Roy, Resident of Kutchary Road, P.S. and District Begusarai.

... .. Appellant

Versus

1. The Bihar Industiral Area Development Authority, Udyog Bhavan, Gandhi Maidan, Patna through its Managing Director.
2. The District Consumer Disputes Redressal Forum, Madhubani having its office situated at Civil Court Campus, Madhubani through its Secretary.
3. Kamli Mahto, S/o Late Laddu Lal Mahto, Resident of Vill- Dodhiyari, P.O.- Ahilwara, P.S. Hassanpur Road, District Samastipur.
4. The State of Bihar.

... .. Respondents

Appearance :

(In all Letters Patent Appeals)

For the Appellant/s :	Mr. Alok Kumar Agrawal, Advocate Mr. Alok Kumar, Advocate Mrs. Priya Gupta, Advocate
For the Respondent BIADA:	Mr. Lalit Kishore, Senior Advocate Mrs. Binita Singh, Advocate
For the Respondent State:	Mr. Sita Ram Yadav, G.P.-16
For the Respondent No.3 (In LPA No.1530 of 2015) :	Mr. Bijay Bhushan Prasad, Advocate Mrs. Vandana Singh, Advocate Mr. Kedar Jha, Advocate
(In Other LPAs) :	Mr. Kumar Nikhil, Advocate Mr. Jyoti Prakash, Advocate Mr. Vishal Vikram Rana, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 21-11-2017

Heard learned Advocate General representing BIADA, learned counsel for the Cold Storage-appellants in the present appeal and learned counsel representing the farmers, who are private respondent No.3 in all these appeals.

2. The appellants in this batch of appeals are aggrieved by the judgment dated 10.07.2015, passed in C.W.J.C. No. No.7058 of 2011 and other analogous cases, by which a learned single Judge of this Court has been pleased to dismiss the writ applications preferred for setting aside the order passed by the learned District Consumer Forum in the various consumer complaints filed by the private respondent No. 3. The learned single Judge was of the opinion that the appellants have got statutory remedy of appeal under the Consumer Protection Act, 1986, and, therefore, they should prefer an appeal against the order passed by the learned District Consumer Forum. The writ applications were thus dismissed on the ground of availability of an alternative statutory remedy.

3. Learned counsel for the appellants at the outset submits that no doubt there is a provision under Section 15 of the Consumer Protection Act for an appeal from an order passed by



learned District Consumer Forum, but as it is well settled in law that an alternative remedy is not a bar to the maintainability of a writ application under Article 226 of the Constitution of India and that the plea of alternative remedy is not based on rule of law rather it is a rule of convenience. The learned single Judge could not appreciate that there was reason for the appellants to move directly under Article 226 of the Constitution of India in the present case. Learned counsel submits that this case has got its genesis in the earlier round of litigation which arose out of an illegal sealing of the cold storage owned by these appellants by the then Managing Director of BIADA. Learned counsel relied upon judgment of a learned single Judge of this Court rendered in C.W.J.C. No. 14312 of 2007 (M/s Maa Durga Enterprises Vs. The State of Bihar and others) reported in 2009 (2) PLJR 1000. In the said writ application, the illegal sealing of the cold storage by the Managing Director of BIADA came to be challenged by these appellants. A perusal of the facts stated in the said writ application which have been taken note of by the learned single Judge in the said writ application would clearly demonstrate that how despite the protest on behalf of the present appellant and their specific submission that there are 10000 bags of potatoes/potatoes seeds weighing 50 Kilogram each, totaling about 5000 quintals, the



sealing was affected without paying any heed to the request of the appellants. The learned single Judge of this Court dealt with the submissions advanced on behalf of the appellants who were the writ petitioners and the BIADA and finally in paragraph 21 of the said judgment, the learned single Judge concluded as follows :

“Thus, on these findings, it is established that petitioner was in lawful possession of the cold storage, which had been illegally and unlawfully locked and sealed by BIADA with about 10,000 bags of potatoes/potatoes seeds, therein, as per BIADA’s own report dated 04.11.2007 and on petitioner’s protest, orders of unsealing to save potatoes from rotting was passed on 6th and on 7th November the cold storage was unsealed. Thus, effectively from 2nd November to 7th November potatoes lay uncared for and consequentially rotted.”

4. Further having taken note of the findings and the established facts, the learned single Judge came to a conclusion that the petitioner suffered because of the actions of the officials of BIADA acting in violation and excess of the powers vested in such agency and that too without care and caution. BIADA was thus held liable to compensate the petitioner for their abuse of the power. Further the learned single Judge took note of a related issue regarding the damages caused to the farmers because of the illegal sealing and in paragraph 38 of the said judgment held as under :



“In my view, firstly, the facts justify awarding petitioner compensation to be paid by State to the extent of Rs. 1 lakh, and the payment should be made within one month from today. But, this certainly does not end the miseries of the petitioner, who is yet left to defend large number of cases before the District Consumer Forum, Madhubani. I, therefore, direct that in all such cases the petitioner would apply to the District Consumer Forum, Madhubani for adding BIADA as defendant-opposite party and in case the District Consumer Forum finds the petitioner liable to compensate the complainants therein, the compensation would be payable by BIADA, because, it was their action that brought about the situation. However, I direct that any compensation or damages that are paid by the State or by BIADA in these regards, they would be at liberty to recover the same from any Officer whom they may ultimately find responsible for initiating and perpetuating this wrong but payment of compensation would not await any such enquiry in regards individual responsibilities.”

5. Being aggrieved by the judgment of the learned single Judge, the State of Bihar preferred a Letters Patent Appeal giving rise to L.P.A. No. 1050 of 2009. Surprisingly, in the said appeal it was the contention of the State that it was the arbitrary action of the authorities of BIADA and for that reason the State could not have been saddled with the amount of compensation to be paid to the cold storage owners. In paragraph 4 of the judgment dated



30.03.2015 passed in L.P.A. No. 1050 of 2009, a coordinate Bench of this Court observed as under :

“4. BIADA being the statutory agency of the State and if any arbitrary action has been committed by the statutory agency of the State, in our opinion, learned Single Judge has rightly concluded that the compensation was payable to the cold storage owners from the coffers of the State. State is, however, at liberty to recover the amount of compensation paid either to the writ petitioner-cold storage or to the farmers from BIADA.”

6. Learned counsel for the appellants submits that in the above said background of the facts, which were evident from the records, the learned single Judge has not taken a correct view in dismissing the writ application in *limine* on the ground of availability of an alternative remedy. He further submits that relegating the parties to the Consumer Forums in appeal at this stage would only be a sheer harassment to the private respondents, who have yet to get their compensation for the damage caused to the potatoes which took place in the year 2007, even though 10 years have gone thereafter, they have yet to get the fruits of the order passed by the learned District Consumer Forum.

7. On the other hand Advocate General representing BIADA, who is the main contesting respondent in the present appeals, has a submission that once the learned single Judge has taken a view



that the parties should seek their remedy in appeal before the Consumer Forum, this Court sitting in the Division Bench, even if it may have a different opinion, may not impose its opinion upon the opinion recorded by the learned single Judge.

8. We are afraid that in the fact-situation of the present case, where, admittedly, the farmers, who are the private respondents in the appeals, have lost their potatoes in the year 2007 and are seeking compensation which has been allowed to them by the learned District Consumer Forum, relegating the parties once again in appeal and to follow the different provisions of revision and reviews provided under the Consumer Protection Act would not be just and proper. We accept the submission of the learned counsel representing the appellants that plea of alternative remedy is not a rule of law rather it is a rule of convenience and despite there being a provision of statutory appeal, maintainability of writ application under Article 226 of the Constitution of India would not be a bar.

9. We are, therefore, of the considered opinion that in the facts of the case, where it has got its genesis with the earlier round of litigation and the decisions rendered in those cases, have a direct bearing upon the decision in the present case relegating the parties to the provisions of appeal before the Consumer Forum



would not be justified. We, therefore, entertain the present appeal and heard the parties on the merits as well.

10. Learned counsel for the appellants submits that the learned District Consumer Forum has found that the potatoes which were kept by the farmers, who are private respondents in the present appeals, got damaged and has accepted the case of the farmers that they are entitled for compensation. It is a fact not controverted even in course of submissions at the Bar that prior to the sealing of the cold storage, the Managing Director of BIADA did not take any steps for making of an inventory and to find out quality and conditions of the potatoes which were lying in the cold storage and had been stored there prior to the date of sealing. The sealing continued for about a week and there is no denial of the fact that no care was taken by the Managing Director of 'BIADA' while sealing the premises of the cold storage to protect the potatoes which were in the nature of a perishable good. Any prudent person exercising his power while affecting the interest of the general public could have taken a prudent step by at least finding out the position and conditions of the goods which were stored there and should have taken appropriate measures to protect the goods and their quality during the sealing period. It is further contended that the cost, if any, incurred on that could have been



well accounted for against the cold storage, but, admittedly, in the present case the Managing Director of BIADA while ordering sealing of the cold storage did not take any such step and the cold storage was sealed in haste. Learned counsel already referred the decisions rendered by this Court in such circumstance.

11. At this stage, learned Advocate General while representing the interest of the BIADA takes a plea that the potatoes which were stored in the cold storage might have lost on their quality by the end of October, 2007, itself as some of the farmers did not get their potatoes back and have some complaint regarding deficiency in maintenance, but in our considered opinion that bald submission without there being any substance or evidence on the record cannot be appreciated by us at this stage.

12. The fact remains that potatoes were lying there in the cold storage which were sealed in haste on the order of the then Managing Director of BIADA and such sealing has already been held to be illegal and BIADA has been found liable to compensate for the consequences in earlier round of proceedings which have attained finality, the order passed by the learned District Consumer Forum cannot be founded fault with and the farmers, who are private respondents, are entitled for the compensation. The only issue that the learned District Consumer Forum has directed the



appellants to pay the compensation needs to be modified in the light of the earlier judgments of this Court and we do so by holding that it is BIADA who will be responsible to pay the compensation as per the direction of the learned District Consumer Forum and the liabilities flowing from the orders passed by the learned District Consumer Forum would be met by the BIADA and not by the appellants. The BIADA is, therefore, directed to satisfy the order passed by the learned District Consumer Forum in favour of the farmers in the present appeals within a period of two months from today.

13. The appeals are allowed to the extent indicated above.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

AFR/NAFR	A.F.R.
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