

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23729 of 2013

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Rishiraj Rice Mill, a Partnership Firm, Block No. B-6 & B-7,
Industrial Area, Bettiah, Dist. West Champaran through its
partner Shashi Kumar Motani, Son of Ram Gopal Motani,
Resident of Lal Bazar Chowk, Bettiah, Distt. - West
Champaran.

... .. Petitioner

Versus

1. The State of Bihar through its Chief Secretary.
2. The Principal Secretary, Department of Industry, Government
of Bihar, Patna
3. Bihar Industrial Area Development Authority, Bidyut Bhawan,
East Gandhi Maidan through its Managing Director.
4. Managing Director, Bihar Industrial Area Development
Authority.
5. The Executive Director, Bihar Industrial Area Development
Authroity, Regioal Office Bela Muzaffarpur

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Suraj Samdarshi, Advocate
For the State	:	Mr.Rakesh Ranjan, AC to GP22
For BIADA	:	Mr. Yashraj Bardhan, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 04-02-2019

Heard learned counsel for the parties.

2. This writ application has been preferred
questioning the Memo No. 2086 dated 18.12.2012, issued
by the respondent Executive Director, Bihar Industrial Area
Development Authority (in short 'BIADA') whereby he has
called upon the petitioner to pay a sum of Rs.



13,36,596.04 as transfer fee @ 15% of the prevailing circle rate of the land in question. The petitioner *inter alia* also prayed for a direction to the respondent authorities to grant permanent registration certificate to the petitioner which is not being issued on account of the dispute as a result of which the petitioner is being prevented from getting the incentives promised by the State Government under its industrial policy.

3. It further appears that during pendency of the writ application one Interlocutory Application being I.A. No. 3529/2018 has been filed by the petitioner. By filing the said Interlocutory Application, the petitioner has prayed for a direction to the respondent authorities particularly respondent nos. 3 to 5 to incorporate the 'change in management' in furtherance of the request made by the petitioner wherein the fresh deed of partnership has been executed on 24.05.2011 between the petitioner namely, Sushil Kumar Motani and Meena Motani having their respective shares of 50% each.

4. It is not in dispute that the original allottee



of the land measuring One Acre of industrial plot are rishiraj Rice Mill with one Shashi Devei Rajgarhia having 50% share and Rishi Rajgarhia and Ashish Kumar Rajgarhia having 25% each.

5. It further appears that the dispute with regard to chargeability of 50% at the circle rate towards transfer fee in case of change of management was questioned by several similarly situated persons who came before this court in CWJC No. 9696/2005 and other analogous matters. The learned Single Judge allowed the writ application by quashing the levy of 15% of the transfer fee at the circle rate. A direction was issued to the 'BIADA' to complete the formalities of the transfer of the leasehold lands without insisting on deposit of 15% of the circle rate. 'BIADA' questioned the judgment of the learned Single Judge in Letters Patent Appeal No. 68 of 2008 and other analogous appeals which were considered together on 11.05.2015 by a Division Bench of this court presided over by the then Hon'ble the Chief Justice. A copy of the judgment of the Hon'ble Division Bench is



available on the record as Annexure-'3' to the Interlocutory Application.

6. The Hon'ble Division Bench having considered the submissions of the parties took a view that in the nature of the case, the BIADA shall be under obligation to levy 15% of transfer fee at the 'BIADA' rate and not the circle rate. There are other observations and directions. Thereafter the 'BIADA' has challenged the judgment of the Hon'ble Division Bench of this Court before the Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) No. 19367/2014. By order dated 16.12.2015, the Hon'ble Apex Court has been pleased to issue notice and passed the interim order directing that *"Until further orders there shall be stay of the operation and implementation of the impugned order"*.

7. In the aforementioned background, Mr. Suraj Samdarshi, learned counsel representing the petitioner has outrightly mentioned the matter for disposal of the writ application, as according to him, in the present circumstance where the petitioner is unable to operate it's



unit due to the ongoing dispute the petitioner is willing to deposit the entire demand of Rs. 13,36,596.04, as contained in Memo No. 1263 dated 01.07.2011, issued under the signature of Executive Director, 'BIADA' (Annexure-9 to the writ application).

8. Learned counsel however hastened to add that his decision to deposit the amount in terms of Annexure-'9' is being taken in a compelling circumstance and thereby he would not loose the benefit if any accrues to the petitioner by virtue of the order of the Hon'ble Division Bench of this court and/or Hon'ble Supreme Court in the pending Special Leave Petition. Learned counsel submits that such payments shall be subject to the result of the SLP.

9. On the last date when learned counsel for the 'BIADA' came with instruction, a plea was taken that with the passage of time the circle rate of the land in question has increased and the petitioner would now be liable to pay a sum of Rs. 37,87,364.00. This court was not satisfied with the kind of plea being taken on behalf of



'BIADA', the court adjourned the matter on 25.01.2019 giving the Managing Director, 'BIADA' an opportunity to take a fresh view of the matter and inform this court as to his decision on the offer of the petitioner. The court directed that a recent decision on this issue may be placed on record with an affidavit on behalf of 'BIADA' within the aforesaid period.

10. In tune with the direction of this court recorded on 25.01.2019, today a supplementary affidavit has been filed on behalf of Respondent Nos. 3 to 5. In paragraph-6 of the supplementary affidavit, a stand has been taken that the proposal may be accepted with a payment of interest @ 10% on the demanded amount from the date of demand to the date of payment with further stipulation that the same shall be subject to the decision of the Hon'ble Supreme Court in SLP, which is still pending for adjudication.

11. In course of hearing, Mr. Suraj Samdarshi, learned counsel for the petitioner agrees that in case the SLP is allowed ultimately by the Hon'ble Supreme Court,



the petitioner may be liable to pay interest over the amount of transfer fee which was demanded from the petitioner in the year 2011, vide Annexure - '9' to the writ application, but he has an apprehension in his mind that, in case, he deposits the interest amount at this stage, ultimately, if the Hon'ble Supreme Court gives benefit of not paying interest to the other similarly situated persons whose cases are pending before the Hon'ble Supreme Court, by paying the interest to 'BIADA', at this stage, the petitioner will be putting itself in a position where he would have no option but to incur a loss in terms of money. It is submitted that payment of interest can wait the final outcome of the 'SLP'.

12. On the other hand, Mr. Yashraj Bardhan, learned counsel representing the BIADA submits that the petitioner was liable to pay the transfer fee in the year 2011 itself which he is now offering to pay in the year 2019. It is submitted that no doubt his offer is being made subject to result of the SLP before the Hon'ble Supreme Court of India, but the fact remains that at this stage the



petitioner is willing to deposit only that much amount which he was liable to deposit in the year 2011.

13. It is further submitted that the apprehension of learned counsel for the petitioner that by depositing the interest amount, the petitioner will be putting itself in a position from where he may be at a loss is not a well founded apprehension, as in case of the decision of the Hon'ble Supreme Court going in favour of the transferee, the petitioner would be equally benefited by the same.

14. At this stage, learned counsel for the petitioner submits that the petitioner would be willing to pay the interest @ 7% per annum on the amount indicated in Annexure-9 to the writ application, but such liability to pay interest on the amount may be imposed against and realised from the petitioner only after the decision of the Hon'ble Supreme Court in pending SLP.

15. Learned counsel submits that if on the ultimate analysis, it is found that the petitioner was liable to pay the amount, as indicated in Annexure-9, in the year



2011, the petitioner shall pay the interest amount, as stated above, but subject to any direction or observation of the Hon'ble Supreme Court.

16. Having heard learned counsel for the parties and on perusal of the records, this court finds that the controversy between the petitioner and the 'BIADA' has almost narrowed down and the only issue which has now remained the bone of contention is the time when the petitioner should be called upon to pay the interest amount over the amount as indicated in Annexure-9 to the writ application. This court finds that the question as to whether 'BIADA' is correct in imposing a transfer fee @ 15% at the circle rate or it should be at the 'BIADA' rate is pending consideration before the Hon'ble Supreme Court till today. Presently, there is stay of the operation of the order of the Hon'ble Division Bench of this court by virtue of which the circle rate at which the transfer fee is being imposed is the rate prevailing and the same is required to be implemented, but this court would hasten to add that the decision of 'BIADA' to impose circle rate is still not



final. The matter is subjudice before the Hon'ble Supreme Court of India.

17. In such view of the matter, this court is of the considered opinion that if the petitioner has come forward with an offer to deposit the amount as indicated in Annexure-9, which is as per circle rate, he is acting only *bona fide* and both the parties are rightly agreeing that their respecting offer and acceptance at this stage will be guided by and subject to the decision of the Hon'ble Supreme Court in the pending SLP.

18. So far as the question of payment of interest on the amount is concerned, the petitioner is undertaking to pay interest @ 7% per annum, which this court finds to be a reasonable rate of interest which may be imposed upon and realised from the petitioner if in ultimate analysis, the petitioner is found liable to pay the amount as per Annexure- '9'. This will depend upon the decision of the Hon'ble Supreme Court.

19. This court is thus of the view that instead of insisting the petitioner to deposit the interest amount



simultaneously with the amount indicated in Annexure-9 to the writ application, 'BIADA' may wait for sometime and till disposal of the SLP. The petitioner has already undertaken to pay the interest amount on the demand in terms of Annexure - '9' which is at the circle rate if the chargeability at circle rate is finally found to be correct by the Hon'ble Supreme Court.

20. This writ application is thus disposed of with a direction to 'BIADA' to accept the amount as indicated in Annexure-'9' to the writ application, subject to decision of the Hon'ble Supreme Court which may come in the Special Leave Petition. If the rate at which the 'BIADA' had imposed the transfer fee in Annexure-'9' is ultimately upheld by the Hon'ble Supreme court subject to the decision of the Hon'ble Apex Court 'BIADA' would be fully justified in calling upon the petitioner to abide by his undertaking to pay the interest amount @ 7% per annum from the date of demand as contained in Annexure - '9' till the date of deposit and further interest over the interest accrued till date of deposit till the date of payment of the



entire interest amount.

21. Needless to say that ultimately if the judgment of the Hon’ble Division Bench remains, the petitioner shall also be entitled to the benefits which may be flowing from the judgment of the Hon’ble Division Bench of this court.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.02.2019
Transmission Date	

