

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7236 of 2012

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M/S Aishwarya Foundation (Trust) having its registered office at
Bari Ishar, P.O. Hathua, District – Gopalganj, through its
Chairman Sri Rakesh Kumar Tiwary, Resident of 46 , Patliputra
Colony, P.S. Patliputra, Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department
of Industries, Government of Bihar, Patna.
2. Bihar Industrial Area Development Authority, 1st Floor, Udyog
Bhawan, East Gandhi Maidan, Patna-4 through its Secretary.
3. The Managing Director, Bihar Industrial Area Development
Authority, 1st Floor, Udyog Bhawan, East Gandhi Maidan,
Patna-4
4. The Secretary, Bihar Industrial Area Development Authority,
1st Floor, Udyog Bhgwan, East Gandhi Maidan, Patna-4.
5. The Executive Director, Bihar Industrial Area Development
Authority, 1st Floor, Udyog Bhawan, East Gandhi Maidan,
Patna-4

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Ashish Giri, Advocate Mr. Rajat Kumar Tiwary, Advocate Mr. Sumit Kumar Jha, Advocate
For the BIADA	:	Mr. Piyush Lal, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 28-01-2019

Heard Mr. Ashish Giri, learned counsel
representing the petitioner and Mr. Piyush Lal, learned
counsel representing the Bihar Industrial Area Development
Authority ('BIADA') and it's authorities.

2. This writ application was filed long back in the



year 2012 being aggrieved by the order dated 04.08.2011 bearing No. 4286/D issued by the Executive Director, Bihar Industrial Area Development Authority (herienafter referred to as the "BIADA") (Respondent No. 5) by which the petitioner was called upon to deposit a sum of Rs. 1,45,92,748.00 by way of transfer fee for the purpose of transfer of lease hold rights of the industrial plot of 'BIADA' in favour of the petitioner.

3. The writ application was one of the series of the writ applications which were presented before this court challenging the decision of the 'BIADA' to levy of transfer fee @ 15% on the prevailing circle rate. The challenge was also made to the power/authority of the 'BIADA' to impose such kind of charges in lieu of transfer of lease hold rights by any allottee/lessee of the industrial plot in favour of the transferee.

4. The writ applications, which were preferred before this court, the lead case being CWJC No. 9696/2005 Amit Kumar Vs. The State of Bihar and others), came to be decided by a learned Single Judge of this court who allowed



the writ application by quashing the order passed by the 'BIADA' levying @ 15% of the circle rate and directions were issued for completion of the formalities of the transfer of lease hold rights without insisting on depositing of the 15% of the circle rate. Similar orders were passed in the other analogous writ applications. 'BIADA' moved in Letters Patent Appeal giving rise to L.P.A. No. 68/2008 and analogous appeals which were pending consideration. On 25.06.2013, when the present writ application came for consideration before the learned coordinate Bench of this court, following order was passed:

"Let this case go out of my list so that it can be heard along with LPA No. 68 of 2008 and its analogous cases in which similar issues arise."

5. It appears that L.P.A. No. 68/2008 and other analogous matters came for consideration before the Hon'ble Division Bench of this court presided over by the then Hon'ble the Chief Justice on 11.05.2015. The Hon'ble Division Bench of this court noticed the issues raised in the Letters Patent Appeal, it will appear from the contents of the



order dated 11.05.2015 itself that one of the issues raised before the learned writ court as well as the Hon'ble Division Bench was that the levy @ 15% of the circle rate as transfer fee by 'BIADA' was outside the powers of the appellant. The Hon'ble Division Bench also noticed the several legal and factual grounds which were urged. After hearing the parties, all those Letters Patent Appeals were decided directing the 'BIADA' to accept transfer fee @ 15% of the 'BIADA' rate and not of the circle rate. The judgment of the Hon'ble Division Bench of this court is under challenge before the Hon'ble Supreme Court of India in Special Leave to Appeal bearing CC No.(s) 19367/2015. A copy of the order dated 16.12.2015 passed by the Hon'ble Supreme Court in the said appeal has been brought on record as Annexure-R2/3 to the second supplementary counter affidavit filed on behalf of the 'BIADA'. A perusal thereof shows that the order of the Hon'ble Division Bench in L.P.A. No. 68/2008 and the analogous cases has been stayed by the Hon'ble Supreme Court.

6. Unfortunately when the L.P.A. No. 68/2008



was being heard, the Hon'ble Division Bench was not informed about the present writ application. This writ application remained pending. It is only when the petitioner was again served with letter no. 983/D dated 29.03.2016 by the Executive Director, BIADA, he moved this court in I.A. No. 4489/2016 to amend this writ application.

7. In Interlocutory Application No. 4489 of 2016, in paragraph-8 petitioner made the following statements:

"8. That due to said reason the present writ application of the petitioner despite the order of the Hon'ble Single Judge could not be listed along with LPA No. 68/2008. However the issue has been decided and therefore the same would cover the case of the petitioner."

8. In the aforementioned background, when the writ application came before this court for consideration, at this stage, Mr. Ashish Giri, learned counsel representing the petitioner submits that in fact the issues which have been raised in the present writ application were neither canvassed



nor decided in the Letters Patent Appeals being L.P.A. No. 68/2008 and other analogous matters, therefore, this writ application be heard on the issues which are being raised now.

9. Learned counsel submits that one of the issues which the petitioner would like to canvass before this court is that the 'BIADA' had no authority in law to impose the transfer fee. According to him, a perusal of the Sections 6 and 14 of the 'BIADA' Act 1974 read with the Rules framed thereunder would show that the power of imposition of transfer fee could at best be construed in favour of the State and by no stretch of imagination 'BIADA' may be said to be competent to levy such transfer fee.

10. Learned counsel also submits that the issue which was not raised before the Hon'ble Division Bench cannot be said to have been decided and for that the proposition of law is well settled. He has relied upon the judgment of the Hon'ble Supreme Court in case of **Delhi Airtech Services Private Limited and Another Vs. State of Uttar Pradesh and Another** reported in **(2011) 9 SCC**



254 and in the case of **Dadu Dayalu Mahasabha Jaipur (Trust) Vs. Mahanth Ram Niwas and Another** reported in **(2008) 11 SCC 753 (paragraph-26)** to submit that the conduct of the petitioner in not informing the Hon'ble Division Bench about the pending writ application cannot be taken as a waiver on his part and in so far as this writ application involves pure question of law, the same may be decided by this court on its own merit.

11. On the other hand, Mr. Piyush Lal, learned counsel representing the 'BIADA' and it's authorities submits that at this stage the petitioner is trying to raise an issue which has already been considered and decided up to Hon'ble Division Bench of this court in L.P.A. No. 68/2008 and other analogous matters. Learned counsel has specifically pointed out that part of the order of the Hon'ble Division Bench in which the Bench has specifically taken note of the issue raised in the Letters Patent Appeal which includes the case of writ petitioners in those cases that 'BIADA' would have no authority in law to impose the transfer fee.



12. Learned counsel further submits that even in order to maintain judicial discipline the conduct of the petitioner may be noticed and this writ application need not be entertained now when it was the case of the petitioner right from beginning that the writ petition involves similar issues which were pending consideration before the Hon'ble Division Bench in L.P.A. No. 68/2008 and other analogous cases.

13. Learned counsel submits that it was the petitioner who was at fault in not pointing out to the Hon'ble Division Bench about the pending writ application. Learned counsel further submits that even if assuming the question which is now trying to be raised before this Court is a pure question of law, the same could have been argued by the learned Advocate before the Hon'ble Division Bench hearing the other Letters Patent Appeals but even that effort was not made.

14. Learned counsel has pointed out from several observations of the Hon'ble Division Bench that in fact upon consideration the Hon'ble Division Bench has in



L.P.A. No. 68/2008 recorded a finding to the effect that 'BIADA' has the authority of law to levy the transfer fee.

15. It is submitted that once the Hon'ble Division Bench has recorded a finding and decided the question of law the same cannot be interfered with and no attempt may be made to interpret the same otherwise by this Court.

16. After hearing learned counsel for the parties and on perusal of the records, this court finds substance in the submission of learned counsel representing the 'BIADA'. The order passed by the Hon'ble writ court as back as on 06.05.2013 shows that at that point of time learned counsel for the petitioner had not contested any issue when it was recorded that this case involves similar issue with that of those involved in L.P.A. No. 68/2008 and other analogous cases and the writ petition was released by learned writ court for hearing along with L.P.A. No. 68/2008. If at all the petitioner had a different issue in hand he was required to point it out to the Bench. In fact the statement made in paragraph 8 of I.A. No. 4489/2016 is a



reiteration of the stand of the petitioner in black and white.

17. On the face of this specific stand and then on going through the order of the Hon'ble Division Bench, this court is of the considered opinion that once the Hon'ble Division Bench has recorded it's view stating that the 'BIADA' has the authority of law to levy the transfer fee, it would not be just and proper for this writ court to consider the same issue and take a view thereon otherwise which the learned counsel for the petitioner is looking for.

18. So far as the judgments placed before this court are concerned, there is no quarrel on the proposition of law that an issue which has not been raised, canvassed or decided in a judgment cannot be said to be a decision on that issue.

19. This court is of the opinion that in the present case the issues, which are being raised now, were very much the issues raised before the Hon'ble Division Bench which have been decided in L.P.A. No. 68 of 2008 and other analogous cases and now the matter is subjudice before the Hon'ble Supreme Court of India. In the opinion of



this court, in view of the judgment of the Hon’ble Division Bench in L.P.A. No. 68 of 2008 and other analogous cases which is subjudice before the Hon’ble Apex Court, this writ application cannot proceed. The petitioner will be obliged to abide by the judgment of the Hon’ble Apex Court in pending C.C. No. (s) 19367 of 2015.

20. The Writ Application stands dismissed accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
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