
(2015) 01 JH CK 0109
In the Jharkhand High Court
Case No : Writ Petition(C) No. 4748 of 2012

Beltrade Industries

APPELLANT

Vs

Ranchi Industrial Area Development Authority and Others

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Citation : (2015) 3 AJR 662

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Rajeev Ranjan and Ashok Kr. Yadav, for the Appellant; Ramit Satender, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—This writ petition was heard along with W.P.(C) No. 4746 of 2012 and W.P.(C) No. 7113 of 2012 and a common question of law is involved in all the writ petitions however, the facts in all three cases are substantially different and therefore, separate orders are passed in all three cases.

2. Seeking a direction for regularisation of land initially allotted to M/s Beltrade Industries (P) Ltd. comprised in plot Nos. 346(P), 348(P) and 349(P) at Tupudana Industrial Area, in terms of recommendation/decision taken in the meeting of PCC/LAC dated 03.03.2012, the present writ petition has been filed. A further prayer seeking a declaration that the petitioner is entitled for substitution of its name in place of M/s Beltrade Industries (P) Ltd. for remaining period of leasehold right of M/s Beltrade Industries (P) Ltd. without making payment of cost for grant of fresh lease, has also been made in the writ petition.

3. Brief facts of the case are that, the original allottee namely, M/s Beltrade Industries (P) Ltd. secured loan from the Bihar State Financial Corporation and it mortgaged leasehold right of land measuring 0.52 decimals in Plot Nos. 346(P), 348(P) and 349(P) at Industrial Area, Tupudana, Ranchi which was allotted to it by the Ranchi Industrial Area Development Authorities. After the said industry

namely, M/s Beltrode industries (P) Ltd. defaulted in repayment of the loan amount, action under Section 29 of the Bihar State Financial Corporation Act, 1951 was initiated against the said company and finally, the assets of the said company were put on continuous sale on 03.07.1995 to 14.03.2006. The sale order dated 30.06.2009 was issued by BSFC in favour of the petitioner for a total consideration amount of Rs. 31.16 lacs, excluding the dues of RIADA. The said sale order was issued on "as is where basis". The petitioner thereafter paid the entire sale consideration of Rs. 31.16 lacs on 24.07.2009 and 25.07.2009. Thereafter, the entire mortgaged asset of M/s Beltroda Industries (P) Ltd. including building, plant, and machinery were handed over to the petitioner on 19.08.2009. The petitioner has also paid an amount of Rs. 1,22,696/- on account of dues of M/s Beltroda Industries (P) Ltd. The petitioner was required to submit an undertaking that there is no dues of any financial institution or the Government company/corporation etc., which the petitioner duly submitted. In the meeting of PCC/LAC dated 03.03.2012, it was decided that necessary order shall be passed for substituting the name of the petitioner however, inspite of repeated request of the petitioner, its name has not been substituted in place of the original allottee.

4. A counter-affidavit has been filed by the respondent-RIADA taking the objection of non-joinder of necessary party i.e. Bihar State Financial Corporation. It is stated that the land comprised in plot Nos. 346(P), 348(P) and 349(P) at Tupudana Industrial Area ad-measuring 0.52 decimals allotted to M/s Beltorde industries (P) Ltd. by RIADA, exclusively belongs to the RIADA and in case of mortgage, the Authority has the first charge on the properties under mortgage "pari-passu" with the charge of the financial institution. Clause 6 of the lease deed dated 04.04.1987 contains stipulation of first charge over the mortgaged property in favour of the Authority. The respondent-RIADA is not a confirming party either to the mortgage deed or the sale agreement and the copies of which were never supplied to respondent-RIADA. The document executed between the petitioner-company and BSFC indicates that the consideration amount paid by the petitioner-company does not include dues of RIADA, though, the various clauses therein make it obligatory for the purchaser-petitioner to pay the Authority's dues. It is stated that the Authority was not the consenting party to documents executed between the petitioner-company and BSFC in connection with the auction sale/purchase transaction. Since the leasehold rights over the land are owned by RIADA, Bihar State Financial Corporation could not have sold the same. Vide letter dated 27.02.1992, 17.08.1992, 16.11.1992 and 08.09.1993 the Authority initiated series of correspondences addressed to the allottee-unit requesting for payment of unpaid dues of the Authority. Thereafter, the petitioner-company deposited the dues of M/s Beltorde industries (P) Ltd. In the meeting of PCC/LAC dated 03.03.2012, the Committee approved regularisation as per the prevailing terms and conditions of the Authority. Vide office order No. 94 dated 24.08.1994, it has been decided that in case of mortgage and subsequent purchase, the prevailing rate/new rate has to be

charged. Initially, RIADA allotted land for 99 years however, after creation of the new State of Jharkhand, lease for 30 years only is being executed. In terms of the direction of the State Government, the rates have been revised and the conditions have also changed. The petitioner is undertaking a new project. Since the constitution of the unit has changed, the petitioner cannot claim substitution of its name without paying market rate etc.

5. Heard the learned counsel appearing for the parties.

6. The learned counsel appearing for the petitioner submits that the petitioner is an auction sale purchaser and after it deposited the entire sale consideration of Rs. 31.16 lacs and also deposited the dues of the original allottee M/s Beltrode Industries (P) Ltd., the petitioner stepped into the shoes of the original allottee and thus, it is entitled for substitution of its name in the lease-deed. It is further submitted that the petitioner has, with a view to keep the identity of the erstwhile industry, is producing the same article and it has also retained the name of the erstwhile promoter, that is, M/s Beltrode Industries and thus, it complies with all the necessary legal requirement for substitution of its name in place of M/s Beltrode Industries (P) Ltd. The learned counsel for the petitioner relies on decision in Vikramshila Transformers (Pvt.) Ltd. Vs. The State of Bihar and Others, .

7. As against the above, Mr. Ramit Satender, the learned counsel appearing for the respondent-RIADA raises serious objection to the prayer made in the writ petition. Reiterating the stand taken in the counter-affidavit, it is submitted that the land in question remains the property of RIADA and thus, the Bihar State Financial Corporation has no authority to auction the property of RIADA. RIADA is not a confirming party to the document executed between the petitioner-company and Bihar State Financial Corporation and therefore, those transactions are not binding on RIADA. It is submitted that there is specific provision for charging market rate in cases, where a fresh deed has to be executed. Distinguishing the judgment in "M/s. Vikramshila Transformers (Pvt.) Ltd." (supra), the learned counsel for the respondent-RIADA submits that after the new Industrial Policy- 2001 came into existence, lease deed for only 30 years is being executed. Petitioner in the garb of substitution of its name in place of M/s Beltrode Industries (P) Ltd. is trying to get the leasehold rights for the remaining period of 99 years, which cannot be granted.

8. I have carefully considered the submissions of the counsel for the parties and perused the documents on record.

9. Though, neither a copy of the original lease agreement executed by RIADA in favour of M/s Beltrode Industries (P) Ltd. nor a copy of the mortgage deed executed by the original allottee in favour of BSFC has been brought on record, the counsel for the parties admit that the terms and conditions of the lease-deed and the mortgage deed are similar to the one executed in W.P.(C) No. 4746 of 2012. From the materials on record, I find that the deed of transfer of assets of

M/s Beltrode Industries (P) Ltd. in its favour has not been brought on record by the petitioner, though it is stated in the writ petition that the assets including, building, plant etc. of M/s Beltrode Industries (P) Ltd. have been handed over to the petitioner-company. Only the sale order and money receipt of Jharkhand State Electricity Board have been brought on record by the petitioner. Based on these documents, a plea has been raised that the petitioner has stepped into the shoes of the original allottee M/s Beltrode Industries (P) Ltd. As noticed in W.P. (C) No. 4746 of 2012, the lease-deed provides that any arrear including the interest may be recovered from the lessee as an arrear of land revenue under the provisions of the Bihar and Orissa Public Demands Recovery Act. Besides a provision that in case of loan raised by the lessee, the security taken by the financial institution must be adequate to cover the total dues of RIADA and the loan of the financing institution and in that case, the RIADA would have first charge "pari passu" with the charge of the financing institution, there is specific clause which provides that no change in the lease, proprietorship or partnership, if it is a private limited or un-limited company or registered or unregistered firm shall be recognised without the previous written consent of the lessor. It further appears that only after the written consent of lessor, if the lessee assigns its leasehold interest in the land to another person, the transferee shall duly get its name registered with the lessor within four calendar months after obtaining possession and the transferee shall also be bound by the terms and conditions of the lease agreement. It further provides that the lessee is required to take prior approval of lessor before selling or assigning its right to the other party. It is further provided that the lessee or another person lawfully claiming under it shall have the right to hold and enjoy the land for the term of the lease only on payment of rent and other charges and on observing other covenants and conditions of the lease agreement. In the present case, admittedly no prior written permission for sale of the land has been taken from the respondent-RIADA. The original lessee namely, M/s Beltrode Industries (P) Ltd. defaulted in making payment and it committed breach of condition of lease deed. The petitioner-company is not a person claiming under M/s Beltrode Industries (P) Ltd. and thus, it cannot claim leasehold right of M/s Beltrode Industries (P) Ltd. conferred through lease deed dated 04.04.1987. The auction sale order in favour of the managing partner of the petitioner-company indicates that the entire asset of M/s Beltrode Industries (P) Ltd. was transferred on "as is where is basis" to the petitioner-company and it further provides that the financial corporation will not be liable for any deficiency in the mortgaged/hypothicated assets. The sale order clearly contemplates a situation in which the concerned Industrial Area Development Authority may consider executing a fresh lease deed in favour of the purchaser. The sale order dated 30.06.2009 of Bihar State Financial Corporation clearly notices that the sale consideration of Rs. 31.16 Lacs was excluding the dues of RIADA. The sale was permitted on "as is where is basis" and the liability on account of land revenue, municipal dues, water cess and Industrial Area Development Authority's dues were to be paid by the purchaser. The respondent-RIADA has also relied on office order dated 24.08.1994, which

provides that in cases like the present one, fresh lease would be executed on payment of prevailing market rate. The respondent-RIADA has submitted that after the new State of Jharkhand was created, the Government of Jharkhand formulated a new Industrial Policy under which lease deed for 30 years only is being executed.

10. In the rejoinder affidavit, the petitioner has stated that, "inspite of the fact that the respondents have already taken a decision for regularisation of the land in favour of the petitioner in its meeting held on 03.03.2012 with respect to the land" and a similar statement has been made in the writ petition, however, a perusal of extract of decision in meeting held on 03.03.2012 (Annexure-6) discloses as under:

"The committee after a deliberation opined that it should be put up separately in file for necessary approval." 11. I find that the decision in *Vikramshila Transformers (Pvt.) Ltd. Vs. The State of Bihar and Others*, is clearly distinguishable in the facts of the present case. As noticed above, the land belongs to respondent-RIADA and it was not a confirming party to various documents executed between the petitioner and the Bihar State Financial Corporation. In spite of an objection taken by the respondent-RIADA, the petitioner has chosen not to implead the Bihar State Financial Corporation in the present proceeding. I further find that the writ petition is bereft of necessary foundational facts for raising a claim for substitution of the name of the petitioner in place of M/s Beltrade Industries (P) Ltd. The petitioner-company has failed to disclose a legal right in itself for issuing a mandamus to the respondent-RIADA. In absence of express prior approval from the respondent-RIADA, the land which was allotted on lease to M/s Beltrade Industries (P) Ltd. could not have been sold by the Bihar State Financial Corporation nor the leasehold right for the remaining period can be assigned to the petitioner, without prior approval of the respondent-RIADA. Mere similarity in name and the fact that the petitioner is also engaged in a similar business, are not sufficient for raising a plea that the petitioner is entitled for leasehold right of the original allottee, on making payment of its liability. It is not in dispute that the constitution of the petitioner-company is different from the constitution of the erstwhile promoter and thus, both the entities are different. Moreover, neither the office order dated 24.08.1994 nor the specific clauses in the Jharkhand Industrial Policy has been challenged by the petitioner-company and it is not in dispute that the terms of the lease-deed executed in favour of the original allottee would be binding on the petitioner. In "*M/s. Vikramshila Transformers (Pvt.) Ltd.*" case, the effect of order No. 94/1994 was neither argued nor considered by the Division Bench. The effect of the new Industrial Policy of the State of Jharkhand which came into existence in the year, 2001 also could not have been examined when the case of "*M/s. Vikramshila Transformers (Pvt.) Ltd.*" was decided by the Division Bench. It appears that the decision taken by the Patna Industrial Area Development Authority was impugned in the said case whereas, in the present case, neither the provision of Jharkhand Industrial Policy nor the provision under order No.

94/1994 has been challenged by the petitioner.

12. In view of above discussion, I find no merit and accordingly, this writ petition stands dismissed.