

(2014) 01 PAT CK 0014

In the Patna High Court

Case No : Letters Patent Appeal No's. 1354, 1387, 1462, 1479, 1489, 1549, 1679, 1680 and 1681 of 2012 in Civil Writ Jurisdiction Case No's. 8840, 710, 8840 and 427 of 2006 With Interlocutory Application No's. 5737, 5837, 6148, 6776, 6244, 6775, 7151, 7051 and 70

Bihar State Sugar Corporation Ltd. and General Manager, APPELLANT
Bihar State Sugar Corporation Ltd., Motipur Unit and Others
Etc.

Vs

Ahmad Abdullah and Others Etc. RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Companies Act, 1956 — Section 560, 560(6), 617
Constitution of India, 1950 — Article 226

Citation : (2015) 2 PLJR 437

Hon'ble Judges : R.M. Doshit, C.J;Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Lalit Kishore and Mr. Piyush Lall in LPA No. 1354, 1479, 1549, 1679, 1680 and 1681 of 2012, Mr. Jitendra Singh, Mr. Dhruba Mukherjee and Mr. Satyabir Bharti, in LPA No. 1387, 1462 and 1489 of 2012, for the Appellant; Raghib Ahsan, Mr. Khalid Ahsan, S.M. Sabir Alam, Deepak Kumar Singh, Advocates for Respondent Nos. 1 to 6 in LPA No. 1354 and 1489 of 2012, Mr. Madhuresh Prasad, GP 12, Mr. Prabhat Ranjan, AC to GP 12 for Respondent Nos. 7, 8 and 12 in LPA No. 1354, 1489 of 2012, Mr. Raghib Ahshan, Mr. Khalid Ahsan, S.M. Sabir Alam, Ravi Verma, AC to GP 12 for Respondent Nos. 7, 8 and 12, Mr. Lalit Kishore, Mr. Piyush Lall for Respondent Nos. 2 to 8 in LPA No. 1489, 1681 of 2012, for Respondent Nos. 2 and 3 in LPA No. 1549 of 2012, for Respondent Nos. 6, 7 and 8 in LPA No. 1679, 1680 of 2012, Mr. Gyan Shankar, Advocates for Respondent No. 9, 10 and 11 in LPA No. 1387 of 2012, for Respondent Nos. 2 to 8 in LPA No. 1489 of 2012, For Respondent Nos. 2 and 3 in LPA No. 1549 of 2012, to 9 in LPA No. 1479 of 2012, Mr. Umesh Kumar Singh, Mr. Khatim Reza, Advocates for Respondent No. 1 to 5 in LPA No. 1462 of 2012, for Respondent Nos. 1 to 5 in LPA No. 1679 of 2012, for Respondent Nos. 1 to 5 in LPA No. 1680 of 2012, Mr. S.K. Mandal, SC 24 for Respondent Nos. 7 to 9 in LPA No. 1462 of 2012, for Respondent Nos. 6, 7 and 8 in LPA No. 1680 of 2012, Mr. Y.V. Giri, Mr. Raju Giri, Ashish Giri, Advocates for Respondent No. 1 in LPA No. 1489, 1549, 1681 of 2012, Mr. Jitendra Singh , Mr. Dhruba Mukherjee, Advocate, Mr. Satyabir Bharti, Advocate for Respondent No. 4 in LPA No. 1549 of 2012, in LPA No. 1679 of 2012, in LPA No. 1680, 1681 of 2012, for the Respondent

Judgement

R.M. Doshit, C.J.—This group of Appeals preferred under Clause 10 of the Letters Patent arise from the common judgment and order dated 25th June 2012 passed by the learned single Judge in CWJC Nos. 8840/2006, 427/2008 & 710/2011. The matter at issue is the acquisition of Motipur Sugar Factory, a Company within the meaning of the Companies Act, 1956 acquired under the Bihar Sugar Undertaking Acquisition Ordinance dated 27th October 1985 replaced by the Bihar Sugar Undertaking Acquisition Act, 1985 (Bihar Act No. 12 of 1985) (hereinafter referred to as "the Act of 1985").

2. Under the provisions of the Act of 1985, the Government of Bihar acquired the Motipur Sugar Factory (hereinafter referred to as "the Sugar Factory") and transferred the same to the Bihar State Sugar Corporation (hereinafter referred to as "the Corporation"). The Corporation is a Government Company owned by the Government of Bihar. Since its acquisition, the Sugar Factory has been given on lease to M/s. Indian Potash Limited for running the factory. The action of the State Government or the Corporation in transferring the Sugar Factory on lease to M/s. Indian Potash Limited (hereinafter referred to as "the Company") has been challenged under Article 226 of the Constitution by the workmen of the Sugar Factory in CWJC No. 8840/2006, by the Sugar Factory in CWJC No. 427/2008 and by the share holders, the five Waqfs in CWJC No. 710/2011. According to the writ petitioners, the transfer of the Sugar Factory by the Corporation to the Company is vitiated by mala fide.

3. The workmen of the Sugar Factory have approached this Court under Article 226 of the Constitution in above CWJC No. 8840 of 2006 to lodge their claim over the assets of the Sugar Factory. The said writ petitioners challenged the public notice given by the Government of Bihar/Corporation for transfer of the assets of the Sugar Factory for reviving and running the Sugar Factory. The writ petitioners were apprehensive that in the guise of the transfer, the assets of the Sugar Factory would be squandered off and the outstanding dues of the workmen would never be paid. The said writ petitioners, therefore, claim that the lands of the Sugar Factory be settled in favour of the workmen.

4. Similarly, feeling aggrieved by the attempt of the State Government to transfer the assets of the Sugar Factory with a view to reviving and running the same, the Sugar Factory has approached this Court in above CWJC No. 427 of 2008. According to the Sugar Factory, the State Government was obliged to clear the outstanding dues of the Sugar Factory to the cane growers, to the workmen and to the other creditors and that the State Government should, after discharging the above referred liabilities, return the assets of the Sugar Factory to its promoters for reviving and running the same.

5. The five of the share holders, the Waqfs have approached this Court under Article 226 of the Constitution in above CWJC No. 710 of 2011. According to the Waqfs, 1/3rd of the total shares of the Sugar Factory were owned by some five

persons. The said shareholders have dedicated the said shares to the petitioner Waqfs. The five Waqfs together hold some 843 shares (1/3rd of the total shareholding) in the Sugar Factory. The petitioner Waqfs, therefore, were the owners of the 1/3rd of the assets of the Sugar Factory. The share of the Waqfs could not have been transferred by the Corporation without the permission of the Waqf Board.

6. The petitions were contested by the State Government, the Corporation and the Company. According to the State Government, the State Government had acted in consonance with the provisions of the Act of 1985 and that the said Act of 1985 having been held to be intra vires the Constitution, the action of the State Government was beyond challenge. According to the Company, although it is not a Government Company within the meaning of Section 617 of the Companies Act, its management is controlled by the Government of India and that several officers of the Government of India sit on the Board of the Company by virtue of their office. It was the common case of the State Government and the Company that the Sugar Factory was leased to the Company on a nominal rent of Re. 1/- on conditions, inter alia, that the Company is required to infuse a considerable amount to make the Sugar Factory operational and to clear the liabilities of the Sugar Factory to the cane growers and the workmen. The allegation of mala fide has been denied by the State Government, the Corporation and the Company.

7. The learned single Judge has allowed the Writ Petitions. The learned single Judge has quashed and set aside the auction notice and the letter of intent issued by the Corporation, the lease deed made in favour of the Company and the agreement between the Corporation and the Company. The Company has been directed to return all assets and properties of the Sugar Factory to the Corporation. The learned single Judge has also directed to pay the legitimate dues of the workmen. The learned single Judge has also directed the State Government to pay compensation to the writ petitioners as per the market value of the properties with interest and other payments in accordance with law.

8. Feeling aggrieved, the State of Bihar has preferred the above Letters Patent Appeal Nos. 1479/2012, 1549/2012 & 1679/2012; the Bihar State Sugar Corporation Ltd. has preferred Letters Patent Appeal Nos. 1354/2012, 1680/2012 & 1681/2012 and M/s. Indian potash Limited has preferred Letters Patent Appeal Nos. 1387/2012, 1462/2012 & 1489/2012.

9. Learned Principal Additional Advocate General Mr. Lalit Kishore has appeared for the State Government and the Corporation and learned counsel Mr. Jitendra Singh has appeared for the Company. Learned counsel Mr. Y.V. Giri has appeared for the Motipur Sugar Factory, the writ petitioner in CWJC No. 427 of 2008. Learned counsel Mr. Umesh Kumar Singh has appeared for the Waqf Estates, the writ petitioners in CWJC No. 710 of 2011 and learned advocate Mr. Raghib Ahsan has appeared for the workmen, the writ petitioners in CWJC No. 8840 of 2006.

10. Learned Principal Additional Advocate General Mr. Lalit Kishore has appeared for the State of Bihar. He has submitted that the validity of the Act of 1985 was the subject matter of challenge in the matter of Shri Kirshna Gyanoday Sugar Ltd. and Another Vs. State of Bihar, . The Hon''ble Supreme Court has, under its judgment and order dated 18th February 2003, upheld the constitutional validity of the Act of 1985. Mr. Lalit Kishore has submitted that the delay in implementing the Act of 1985 is on account of several litigations pending before the concerned Courts. Mr. Lalit Kishore has also submitted that under the offer of lease, the Company has agreed to infuse a sum of Rs. 56,20,00,000/- to meet the existing liabilities of the Sugar Factory and to make the Sugar Factory operational. A sum of Rs. 34,00,000/- has been released in favour of the District Magistrate, Muzaffarpur for being distributed amongst the workmen of the Sugar Factory against their outstanding dues. The Company is also obliged to pay a sizable amount to the cane growers against their outstanding dues.

11. Learned counsel Mr. Y.V. Giri has appeared for the Sugar Factory. Mr. Giri has vehemently submitted that the action of the State Government in transferring the assets of the Sugar Factory on lease to the Company is contrary to the provisions contained in the Act of 1985. He has submitted that under the Act of 1985, the State Government is authorised to transfer a scheduled undertaking either to the Corporation or to a Government Company. Indisputably, the Company is not a government company within the meaning of Section 617 of The Companies Act. The exercise undertaken by the State Government is, therefore, void ab initio and amounts to malice in law. He has further submitted that although the Sugar Factory is vested in the State Government since 21st August 1985 under the Ordinance of 1985, till date the State Government or the Corporation has not been able to revive the Sugar Factory or to discharge its liabilities. Although the Act of 1985 was, when passed, a valid law, by passage of time and the inaction of the State Government to revive or run the scheduled undertakings the very purpose of the Act of 1985 is frustrated and the Act of 1985 has lost its efficacy. It is, therefore, imperative that the assets of the Sugar Factory be returned to its promoters. He has submitted that the impugned action of transferring the Sugar Factory to the Company is a fraud on power and the statute and calls for interference by this Court.

12. Learned counsel Mr. Raghib Ahsan has appeared for the workmen writ petitioners in CWJC No. 8840 of 2006. He has strenuously urged that the workmen of the Sugar Factory be paid their dues.

13. In support of their respective submissions, the learned counsels have relied upon various provisions of the Act of 1985; the Companies Act, 1956; the Waqf Act, 1995. The learned counsels have relied upon the judgments of the Hon''ble Supreme Court in the matters of The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, , Charan Lal Sahu Vs. Union of India,) Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another, , Shri Kirshna Gyanoday Sugar Ltd. and Another Vs. State of Bihar, , Centre for

Public Interest Litigation Vs. Union of India (UOI) and Another, Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Another, K.D. Sharma Vs. Steel Authority of India Ltd. and Others, Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others, Kishore Samrite Vs. State of U.P. and Others, , Tyman's LD. Vs. Craven [1952(2) Queens Bench 100], Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, In Re: U.N. Mandal's Estate Private Ltd., , Kalyan Singh Vs. State of U.P., Khajamian Wakf Estates etc. Vs. State of Madras and Another, , Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and Others Vs. The State of Gujarat and Others, Devinder Singh and Others Vs. State of Punjab and Others, Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, Paul Enterprises and Others Vs. Rajib Chatterjee and Co. and Others, Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others, Food Corporation of India Vs. Municipal Committee, Jalalabad and Another, Centre for Public Interest Litigation Vs. Union of India (UOI) and Another, A.V. Papayya Sastry and Others Vs. Government of A.P. and Others,] Kusheshwar Prasad Singh Vs. State of Bihar and Others, , Devinder Singh and Others Vs. State of Punjab and Others, and of Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another,

14. We shall deal with the above referred judgments hereafter as and when the occasion arises.

15. The Government of Bihar had enacted the Bihar Sugar Undertaking (Acquisition) Act, 1976 (Bihar Act No. XIII of 1977) with a view to acquiring certain Sugar Undertakings in the interest of general public. Under the said enactment, some eight Sugar Undertakings were acquired by the Government of Bihar. It appears that on account of the challenge to the said Bihar Act No. XIII of 1977 and the pending litigations, the said enactment could not be implemented in its true spirit. The Government of Bihar thereafter, in supersession of the above referred Bihar Act No. XIII of 1977, on 21st August 1985 passed Bihar Sugar Undertaking (Acquisition) Ordinance, 1985. The said Ordinance was replaced by The Bihar

16. Sugar Undertaking (Acquisition) Act, 1985 (Bihar Act No. XII of 1985) (hereinafter referred to as "the Act of 1985" or "the 1985 Act") with an avowed object, "to ensure the continued manufacture to (sic, "of) sugar and other goods essential to the needs of the country and that (sic, "to") safeguard the interest of the sugarcane growing farmers and labourers engaged in the mills and for reorganizing and re-constructing the said mills so as to ensure there rational coordinated and scientific development to best subserve the common good and for the matters connected therewith or incidental thereto."

17. The said Act of 1985 came into effect on 16th December 1985. Section 2(h) of the said Act of 1985 defines the "Scheduled Undertaking" to mean "an undertaking engaged in the manufacture or production of sugar... specified in the First Schedule...." Under the said Act of 1985, five Sugar Undertakings named in the First Schedule have been acquired by the Government of Bihar; Motipur

Sugar Factory, Motipur, Muzaffarpur being one of them. Section 3 thereof provides for vesting on the appointed day, i.e. the rights and interest of the Sugar Undertakings is deemed to have stood transferred to and vested unto the State of Bihar free from all encumbrances. Sub-section (2) thereof empowers the State Government to vest such Sugar Undertakings in the Corporation or a Government Company, if it is willing to comply with such terms and conditions as may be imposed by the State Government. Section 4 thereof provides for the consequences of such vesting. Section 5 thereof, inter alia, enjoins a person in possession or custody of the properties or assets, books of account, registers, documents, etc. to forthwith deliver the same to the Collector and enjoins the Collector, inter alia, to take all necessary steps for securing possession of the properties or assets, books of account, registers, documents, etc.

18. Section 7 thereof enjoins the State Government to pay compensation for the acquisition in the manner mentioned therein. Section 11 thereof provides for management of the scheduled undertakings. It provides, inter alia, for absorption of the workmen of the Sugar Undertakings as the employees of the Corporation/ Government Company.

19. The constitutional validity of the aforesaid Act of 1985 came to be challenged before the Hon''ble Supreme Court in the matter of Shri Krishna Gyanoday Sugar Ltd. (Supra). The Hon''ble Supreme Court held that under Entry 42 of List 3 of Schedule VII to the Constitution, the State of Bihar was competent to enact the Act of 1985 and that the matter was not governed by Entry 7 or Entry 52 of List 1 of Schedule VII to the Constitution. Having upheld the legislative competence of the Government of Bihar to enact the Act of 1985, the Hon''ble Supreme Court negated the other contentions also and upheld the constitutional validity of the Act of 1985 in its entirety.

20. We may at the outset note, although it was not brought before the learned single Judge it has now been brought before us in the Letters Patent Appeal preferred by the Company that on the date of the petition, the Sugar Factory was not in existence. The name of the Sugar Factory was removed from the roll of the Registrar of Companies as early as in February 2008 in exercise of power conferred by Section 560 of The Companies Act, 1956.

21. Learned counsels Mr. Lalit Kishore and Mr. Jitendra Singh have also relied upon the judgments of the Hon''ble Supreme Court in the matters of K.D. Sharma Vs. Steel Authority of India Ltd. and Others, and Kishore Samrite Vs. State of U.P. and Others, to buttress the contention that the petition at the instance of the Sugar Factory was not maintainable.

22. The Sugar Factory, not being an existing company, it could not have maintained a petition under Article 226 of the Constitution. Besides, the Sugar Factory has made false assertion in the Writ Petition (CWJC No. 427 of 2008) that it was an existing company. We have also noticed that one Syed Iftekhhar Arif has filed rejoinder to the counter affidavit in favour of the petitioner Sugar

Factory in CWJC No. 427 of 2008. The said deponent has claimed that he is a share holder in the Sugar Factory and that he was authorised to make the said affidavit on behalf of the Sugar Factory. As recorded hereinabove, since 2008 the Sugar Factory is not in existence and has stood dissolved by operation of Section 560 of The Companies Act. Thereafter, neither the Sugar Factory could have made affidavit; nor could it have authorised the deponent to make the affidavit on its behalf. It is not even established that the said deponent was at any time the share holder in the Sugar Factory. In our view, it is nothing but a desperate move by a few persons to stall the transfer of the assets of the Sugar Factory for extraneous reasons and with oblique motive.

23. The assets of the Sugar Factory having been vested in the State Government, none of the three sets of the writ petitioners has a right or a claim against the assets of the Sugar Factory except the right to compensation u/s 7 of the 1985 Act. The constitutional validity of the 1985 Act having been upheld by the Hon"ble Supreme Court, the present set of the Writ Petitions are filed and modulated to circumvent the decision of the Hon"ble Supreme Court.

24. The factum of removal of the Sugar Factory from the roll of the Registrar of the Companies is not denied. Learned counsel Mr. Y.V. Giri has submitted that the promoters of the Sugar Factory were not aware of the factum of its removal from the roll of the Registrar of Companies and now that it has been brought on the record, the promoters/Directors of the Sugar Factory have made application for restoration of the Sugar Factory on the roll of the Registrar of Companies. If the said application were allowed, the same would take effect from the date the Sugar Factory was removed from the roll of the Registrar of Companies. The Writ Petition, therefore, in any way would be maintainable.

25. We are afraid, we are unable to agree with Mr. Giri. Once the Sugar Factory is removed from the roll of the Registrar of Companies, the Sugar Factory cannot be said to be an existing company nor could it have maintained the Writ Petition before this Court. This Court cannot entertain the Writ Petition on a presumption that the application for restoration made u/s 560(6) of The Companies Act, 1956 will one day be allowed and will have retrospective effect from the date the Sugar Factory was removed from the roll of the Registrar of Companies. In our view, the entire exercise of entertaining the Writ Petition and of allowing the same by the learned single Judge was in futility. The Writ Petition deserves to be dismissed on the ground of maintainability alone.

26. In our opinion, equally frivolous is the Writ Petition (CWJC No. 710 of 2011) filed by the Waqf Estates. Indisputably, the said Waqf Estates were the shareholders in the Company. It is the case of the Waqf Estates that around 1/3rd of the total shares of the Company were owned by five individuals who had dedicated the said shares to the aforesaid Waqf Estates for religious and charitable purposes. The said Waqf Estates, therefore, claim that they have become owners of the 1/3rd share in the Sugar Factory and consequently the owners of the 1/3rd of the assets of the Sugar Factory. According to the said

Waqf Estates, the property of the Waqf could not have been transferred or disposed off by the State Government without the permission of the Waqf Board. The contention has appealed to the learned single Judge. The learned single Judge has held that the transfer of the property of the Waqf Estates by the State Government and the Corporation to the Company without the permission of the Waqf Board was totally illegal.

27. We are of the opinion that the learned single Judge has erred in holding that the shareholder of a company has a proportionate right over the assets of the company. A shareholder in a company has a limited right conferred by the Companies Act and has no right, title or interest in the assets of the company. By mere dedication of shares to the Waqf Estates, the property and the assets of the Sugar Factory did not stand transferred to the Waqf Estates; nor was the State Government or the Corporation obliged to take prior permission of the Waqf Board for transfer or disposal off the assets of the Sugar Factory. In any view of the matter, the Sugar Factory having been acquired by the State Government, the assets of the Sugar Factory having been vested in the State Government free of all encumbrances, the Waqf Estates-the share holders have no locus standi to challenge the action of the State Government or of the Corporation. The Writ Petition (CWJC No. 710 of 2011) filed by the Waqf Estates is filed on misconception of law and deserves to be dismissed on the ground of maintainability alone.

28. Equally untenable is the Writ Petition (CWJC No. 8840 of 2006) filed by the workmen. All that the workmen could claim is the right to receive their dues out of the compensation that may be paid to the Sugar Factory. The challenge to the action of the State Government or the Corporation in transferring the assets of the Sugar Factory on lease to the Company at the instance of the workmen should necessarily fail.

29. As we have recorded hereinabove, under the Act of 1985, the Scheduled Undertakings are acquired by the Government of Bihar. All assets and interests also are vested in the Government of Bihar absolutely free from all encumbrances. The Act of 1985 also empowers the Government of Bihar to vest the assets of an acquired Sugar Undertaking unto the Corporation or a Government Company. We may also note that once the assets of a Scheduled Undertaking are vested in the Corporation, there are no fetters imposed upon the Corporation how it should manage the Scheduled Undertaking. In the present case, by operation of Section 3 of the Ordinance of 1985, the assets of the Motipur Sugar Factory, Motipur, Muzaffarpur stood acquired by the State Government and its assets stood vested in the State Government as on 21st August 1985 (the appointed day). Since then the State Government, under Notification dated 27th October 1985 vested the assets of the Sugar Factory in the Corporation. It is the Corporation which has transferred the assets of the Sugar Factory to the Company on lease for 60 years on the terms and conditions mentioned in the agreement. The contention that the Company not being a

Government Company within the meaning of Section 617 of The Companies Act, 1956, the transfer of the assets of the Sugar Factory to the Company is contrary to Section 3 of the Act of 1985 and is bad and illegal requires to be rejected. We reiterate that subsection (2) of Section 3 of the Act of 1985 does empower the State Government to vest the assets of the Scheduled Undertakings unto the Corporation. In our opinion, once the assets have vested in the Corporation by the act of the State Government, there being no fetters upon the Corporation, the Corporation had the discretion either to run the Sugar Factory itself or to transfer it to any other person who is willing to run the Sugar Factory on the specified terms and conditions. In the aforesaid view that the Writ Petitions are misconceived and are not maintainable taken by us, we do not consider it necessary to delve into elaborate discussion of the above referred judgments relied upon by the learned advocates.

30. For the reasons recorded hereinabove, the Appeals are allowed. The impugned common judgment and order dated 25th June 2012 passed by the learned single Judge in CWJC Nos. 8840/2006, 427/2008 & 710/2011 is set aside. CWJC Nos. 8840/2006, 427/2008 & 710/2011 are dismissed. This order is not intended to deprive any person of the legitimate amount of compensation payable u/s 7 of the 1985 Act. This order shall not preclude any of the writ petitioners from claiming compensation as envisaged by Section 7 of the Act of 1985. We have already recorded that a sum of Rs. 34 lakhs has been released to the District Magistrate, Muzaffarpur for payment of the outstanding dues of the workmen. We have also noticed the order made by the District Magistrate for payment of the outstanding dues of some workmen. The workmen may, therefore, approach the District Magistrate. If the workmen so approach, the District Magistrate will ascertain the outstanding dues of each workman and will pay the same after verifying the identity of the workman.