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(2015) 09 PAT CK 0088

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1755 of 2011

CTS Industries Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 28-09-2015

Acts Referred:

Constitution of India, 1950 — Article 141
Transfer of Property Act, 1882 — Section 52

Citation : (2015) 09 PAT CK 0088

Hon'ble Judges : Vikash Jain, J

Bench : Single Bench

Advocate : Sanjeet Kumar and Dhananjaya Nath Tiwary, for the Appellant; Suman Kumar Jha, AC to AAG5, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Vikash Jain, J—The present writ petition has been filed for setting aside the letter No. 84 dated 28.01.2010 issued by the Bihar Industrial Area Development Authority, Darbhanga (respondent No. 5) calling for the undernoted payments from the Petitioner for purposes of transfer of the land of M/s. Ranjan Chemicals Limited (In liquidation) in favour of the petitioner -

2. The short facts of the case are that a sale notice dated 29.03.2007 in respect of the assets/properties of M/s. Ranjan Chemicals Limited (In liquidation) was published and in due course, the confirmation of sale of the factory land admeasuring 10 acres was made in favour of the petitioner, it being the highest bidder, and upon its depositing the full and final sale consideration of Rs. 60 lacs on 21.06.2007, physical possession was accordingly handed over to the petitioner. A deed of assignment was also executed on 12.07.2008 in its favour on payment of stamp duty and registration fee by it. The petitioner then approached the respondent authority for its consent for mortgaging the land in connection with obtaining bank finance, in response to which however the respondent authority raised the aforesaid demand of Rs. 2,45,67,840/-. The

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petitioner''s objection dated 15.01.2009 against the demand on grounds that the land had been acquired by means of a bid taken through the official liquidator and hence it was not entering into a fresh agreement and the old agreement was applicable, did not however find favour with the respondent authority which reiterated its demand in terms of the impugned letter dated 28.01.2010. Reliance is placed on Samarendra Nath Sinha and Another Vs. Krishna Kumar Nag, AIR 1967 SC 1440 : (1967) 2 SCR 18 on this point.

3. Learned counsel for the petitioner submits that the demand raised by the respondent authority is arbitrary and without authority of law and the petitioner cannot be saddled with such a liability considering that it had acquired the land in auction sale in the winding up proceedings of M/s. Ranjan Chemicals Limited (In liquidation). It is submitted that this was not a voluntarily sale and would thus not attract the cost of transfer, fee etc. as was being required to be deposited by the respondent authority.

4. Learned counsel appearing on behalf of the respondent authority on the other hand submits that the cost of transfer etc. have rightly been demanded from the petitioner. He refers to his counter affidavit and invites attention to the office order dated 18.11.2003 of the respondent authority, wherein a decision had been taken in its third meeting to permit change in constitution of a unit on payment of 15% of the value of the land then fixed and its up-to-date dues. In its subsequent office order dated 12.03.2004 the respondent authority had taken a decision in its fourth meeting that such policy would also be applicable in all cases of transfer of ownership by way of sale and purchase; transfer or change in constitution as a result of purchase of a Unit in an auction from BSFC; and merger and de-merger of units resulting in change of constitution and transfer. It was clarified that in all such cases, 15% of the value of the land then fixed would be payable to the respondent authority.

5. Learned counsel for the Respondent authority relies on the order dated 12.03.2010 passed by a learned Single Judge of this Court disposing of I.A. No. 6250 of 2009 in Company Petition No. 11 of 1996 [M/s. Misrilall Jain (P) Ltd. v. M/s. Nacro Chemicals Ltd.] which in turn noticed an earlier decision of this Court dated 09.07.2009 passed in I.A. No. 1145/2009 in Company Petition No. 1/1991 [In the matter of Hathwa Metals & Tubes Limited (in liquidation)] and the matter decided on similar lines, repelling the identical contention of the applicant therein as in the present case to the effect that the assets of the Company in liquidation had been purchased in course of winding up proceedings and as such the policy decision of the respondent authority could not be applied.

6. Learned counsel for the respondent authority especially relies on the undernoted observations of this Court in its decision dated 09.07.2009 in Company Petition No. 1/1991 referred to above, to submit that the policy decisions of the respondent authority had statutory force and binding effect having regard to the BIADA Act 1974, which thus required to be obeyed by the Petitioner -

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"The applicant-company having purchased the assets of the company in liquidation is required to obey all local and national laws for the purpose of running its industry in the State of Jharkhand."

7. It is further pointed out that the order dated 12.03.2010 in Company Petition No. 11 of 1996 was carried in Company Appeal (DB) No. 8 of 2010 which was dismissed by a Division Bench of this Court, expressing the view that the policy decision of the respondent authority dated 12.03.2004 was in force on 15.02.2007 being the date on which the auction sale had been approved by the learned Company Judge.

8. It is therefore submitted that the view expressed in Company Petition No. 11 of 1996 as upheld by the Division Bench in appeal squarely covers the facts and issues in the present case. Moreover, the contention of the Petitioner that the Hon''ble Single Judge had left it open to the applicant to approach the appropriate forum, could also not be understood out of context. Learned Counsel for the Respondent authority relied upon the well-settled principles of binding precedents as reiterated in Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, (1996) 7 AD 47 : (1996) 8 JT 306 : (1996) 6 SCALE 434 : (1996) 6 SCALE 431 : (1996) 6 SCC 44 : (1996) 5 SCR 32 Supp in the following terms, pointing out that the applicability of the policy decisions had been upheld and it was that part which constituted the binding ratio of the case -

"The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution."

9. Learned counsel for the respondent authority then invites attention to the common judgment dated 11.05.2015 passed in LPA No. 68 of 2008 [BIADA and others v. Sri Amit Kumar and others] and analogous cases, wherein the Hon''ble Division Bench considered the view taken by the Learned Single Judge in some Writ Petitions (including Badri Mehrotra''s case) to the effect that no levy whatever could be made for transfer, as well as the view expressed in other Writ Petitions (including Shankar Saw Mills) that the levy shall be on BIADA rates. The view in the latter category of cases was approved. The attempt of Learned Counsel for the Petitioner to distinguish the decision in the LPA by pointing out that the matters therein involved sale by private parties to other private parties and were not cases of auction sales of properties of Companies in liquidation through the Official Liquidator, was resisted by the Respondent authority submitting that the distinction would not make any different to the end result, the validity of the levy itself having been upheld.

10. It is therefore submitted by Learned Counsel for the Respondent authority

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that the binding principle emanating from the decision of the Hon''ble Division Bench is that the levy for permission to transfer stands validated. He however fairly submits that as regards the calculation of 15% of the value of the land to be applied, the matter stands concluded in the same decision, holding that the levy of 15% shall be on BIADA rates and not with respect to circle rates, as existing on the date of according permission for transfer.

11. Having heard the parties at length and on careful consideration of the materials on record, this Court is an agreement with the submissions made on behalf of the respondent authority. In view of the order dated 12.03.2010 in Company Petition No. 11 of 1996 as upheld in Company Appeal (DB) No. 8 of 2010, this Court is satisfied to hold that the respondent authority is competent to levy the transfer fee, etc. and the petitioner shall be liable to pay the same for purposes of obtaining permission for transfer of land in its favour. It is not disputed that the office orders of the respondent authority dated 18.12.2003 and 12.03.2004 referred to above are in operation. The same shall therefore have to be given effect to as and when the respondent authority considers the matter and accords permission for transfer of the land in favour of the petitioner. The amount of the transfer fee however shall be calculated at the prescribed rate of 15% with reference to the BIADA rates and not with reference to circle rates as held in LPA No. 68 of 2008 and analogous cases.

12. The decision in Samarendra Nath Sinha''s case (supra) relied upon by Learned Counsel for the Petitioner does not appear to apply in the facts and circumstances of the present case, being in the context of applicability of Section 52 of the Transfer of Property Act and the doctrine of lis pendens.

13. Before parting with this judgment, another submission made on behalf of the Petitioner may be noticed. It is claimed that the total demand of Rs. 2,45,67,840/- raised by the Respondent authority includes some amount towards past dues relatable to M/s. Ranjan Chemicals Pvt. Ltd. (In Liquidation) which is not legally exigible from the Petitioner. No such averment has however specifically been made in the Writ Petition. In the interest of justice and as prayed, the Petitioner is granted liberty to approach the Respondent authority with a representation in this regard, which if done, shall be considered and disposed of on its own merits in accordance with law.

14. The writ petition accordingly stands disposed of.

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