
(2015) 01 JH CK 0113
In the Jharkhand High Court
Case No : Writ Petition(C) No. 7113 of 2012

Jagran Prakashan Limited

APPELLANT

Vs

Ranchi Industrial Area Development Authority and Others

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Citation : (2015) 3 JLJR 161

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.—Seeking quashing of letter dated 14.07.2012 requiring the petitioner to pay Rs. 41,60,113/-, the present writ petition has been filed.

2. Briefly stated, one M/s Bharat Steel Casting secured loan from Bihar State Financial Corporation by mortgaging leasehold right over 0.50 acres of land along with the building, plant, machineries etc. in favour of BSFC. However, M/s Bharat Steel Casting defaulted in repayment of loan and accordingly, BSFC initiated action under Section 29 of the Bihar State Financial Corporation Act. The mortgaged properties were sold to M/s Priya Enamel Industries and an agreement for sale cum payment was executed between M/s Priya Enamel Industries and the Bihar State Financial Corporation however, M/s Priya Enamel Industries also could not repay the dues of the Corporation and therefore, a sale notice was published in the daily newspaper in which the petitioner also participated. In the negotiation, the petitioner offered price to the tune of Rs. 11 lacs excluding the dues of RIADA and thereafter, vide advertisement dated 18.12.2008 further offers were invited. However, no offer was received and therefore, vide order dated 30.01.2009, sale order was issued in favour of the petitioner. Possession of the mortgaged assets was given to the petitioner on 23.03.2009 and on 24.03.2009, a registered sale-deed was executed by BSFC in

favour of the petitioner. Though, the petitioner submitted several representations for substituting its name in place of the erstwhile promoter/lessee, no action was taken by the respondent-RIADA.

3. The petitioner has also purchased leasehold right in respect of land of RIADA situated at Industrial Plot No. 7(Part) admeasuring 0.34 acres at Tatisilway Industrial Area from one Sri Vijay Ranjan Prasad vide agreement for sale dated 27.05.2010. The said Sri Vijay Ranjan Prasad has purchased the said right from M/s Bihar Concrete Bricks which was allotted the said plot by respondent-RIADA. Since M/s Bihar Concrete Bricks failed to repay the loan, BSFC initiated action under Section 29 of the Bihar State Financial Corporation Act and in auction sale, the said Sri Vijay Ranjan Prasad was issued sale order dated 28.03.2007. On 12.12.2007, the assets of M/s Bihar Concrete Bricks were handed over to the said Sri Vijay Ranjan Prasad who after paying the entire sale consideration was issued "no dues certificate" on 12.03.2010 by BSFC however, Sri Vijay Ranjan Prasad could not run the unit effectively and he therefore, executed an agreement for sale in favour of the petitioner namely, M/s Jagaran Prakashan Limited. The petitioner has paid the entire consideration amount mentioned in agreement of sale dated 27.05.2010 to Sri Vijay Ranjan Prasad who has handed over the industrial unit to the petitioner. The petitioner made representation to respondent-RIADA vide letter dated 31.05.2010 for allotting the said plot in its name and vide letter dated 02.08.2010, the petitioner was informed to submit project report along with necessary documents. The petitioner submitted the detailed project report and the expansion programme has been approved by the respondent-RIADA. The petitioner has also paid the outstanding dues of M/s Bharat Steel Casting as well as M/s Bihar Concrete Bricks. In its meeting held on 03.03.2012, PCC/LAC has taken a decision for fresh allotment in favour of the petitioner however, as per prevailing terms and conditions of RIADA. Subsequently, vide impugned letter dated 12.07.2012, the petitioner has been directed to pay a sum of Rs. 41,60,113/-. Besides payment of the said amount, various other conditions have also been imposed for transfer of the land in question in favour of the petitioner and therefore, the petitioner has approached this Court.

4. A counter-affidavit has been filed by the respondent-RIADA taking the objection of non-joinder of necessary party, that is, Bihar State Financial Corporation. It is stated that the land comprised in plot No. 7P and 8 admeasuring 0.84 acres allotted to M/s Bharat Steel Casting 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 institutions. The lease-deed 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-deed or the sale agreement and copies of which were never supplied to respondent-RIADA. The documents executed between the petitioner-company and BSFC and between Sri Vijay Ranjan Prasad and BSFC indicate that the consideration amount paid by the

petitioner-company and the said Sri Vijay Ranjan Prasad does not include dues of RIADA, though, the various clauses in lease-deed make it obligatory for the purchaser-petitioner to pay the Authority's dues. Since the ownership rights over the lands are owned by RIADA, the Bihar State Financial Corporation could not have sold the same. Earlier, vide office order No. 94/1994 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 and therefore, a new lease-deed has to be executed in favour of the petitioner, on the present prevailing terms and conditions.

5. A rejoinder affidavit has been filed by the petitioner denying the allegation of suppression of material facts. The copy of a lease-deed has been filed by the petitioner by filing supplementary affidavit. It is stated that since the original allottee was granted lease on a long term basis for a period of 99 years, the Bihar State Financial Corporation has sold the mortgaged right for remaining period of lease. In terms of the lease-deed, the erstwhile promoters which were registered as small scale industry were not required to take separate permission for mortgaging their assets to the financial institution for raising loan. After the petitioner-company and the said Sri Vijay Ranjan Prasad purchased the assets in auction sale, they stepped into the shoes of the original promoters and thus, the petitioner is entitled for substitution of its name in place of the original promoters.

6. Heard the learned counsel appearing for the parties.

7. The learned counsel appearing for the petitioner submits that the petitioner is an auction sale purchaser in respect of 0.50 acres from original allottee M/s Bharat Steel Casting and it deposited the entire sale consideration of Rs. 10.50 lacs. The petitioner has also purchased leasehold rights in 0.34 acres of land from Sri Vijay Ranjan Prasad who also purchased the land and building/plant of the original allottee M/s Bihar Concrete Bricks in auction-sale for a sale consideration of Rs. 11 lacs. After depositing a sum of Rs. 1,63,125/- on 25.04.2011 being the outstanding dues against the RIADA with respect of unit namely, M/s Bharat Steel Casting and a further sum of Rs. 64,737/- on 25.04.2011 which was the outstanding dues against the unit namely, M/s Bihar Concrete Bricks, the petitioner stepped into the shoes of the original allottees and thus, it is entitled for substitution of its name in the lease-deeds. The learned counsel for the petitioner relies on decision in Vikramshila Transformers (Pvt.) Ltd. Vs. The State of Bihar and Others, .

8. 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 had no authority to auction the property of RIADA. RIADA

is not a confirming party to the documents executed between the petitioner-company and Bihar State Financial Corporation and between Sri Vijay Ranjan Prasad and BSFC and therefore, those transactions are not binding on RIADA. It is submitted that there is a specific provision in order No. 94/1994 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 and in terms thereof as well as in the light of order No. 94/1994, market rate has to be charged from the petitioner. Petitioner in the garb of substitution of its name in place of the original allottees is trying to get the leasehold rights for the remaining period of 99 years, which cannot be granted.

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

10. Before referring to the contention of the parties, various clauses in the sale-deed and the lease-deed may usefully be noticed. 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 case of sale, 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 the lessee is required to take written consent of lessor before assigning its leasehold interest and, 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 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 lessees namely, M/s Bharat Steel Casting and M/s Bihar Concrete Bricks defaulted in making payment and it committed breach of condition of lease deed. The petitioner-company is not a person claiming under M/s Bharat Steel Casting and M/s Bihar Concrete Bricks and thus, it cannot claim leasehold right of M/s Bharat Steel Casting and M/s Bihar Concrete Bricks conferred upon them through lease deeds. The auction sale orders in favour of the petitioner-company and the said Vijay Ranjan Prasad indicate that the entire

assets of M/s Bharat Steel Casting and M/s Bihar Concrete Bricks were transferred on "as is where is basis" and it further provides that the financial corporation will not be liable for any deficiency in the mortgaged/hypothecated 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 issued by the Bihar State Financial Corporation clearly notices that the sale consideration 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 such cases 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. A perusal of the extract of decision taken in meeting held on 03.03.2012 discloses as under:

"The committee after a deliberation allowed the cancellation of the land allotted to M/s Bharat Steel Casting and M/s Bihar Concrete Bricks and fresh allotment in favour of M/s Jagaran Prakashan Ltd., as per prevailing terms and condition of RIADA." 11. I find that the decision in "M/s. Vikramshila Transformers (Pvt.) Ltd." (supra) 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. 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 decision dated 03.03.2012 of PCC/LAC nor the provision under order No. 94/1994 has been challenged by the petitioner. In these facts, I do not find any unfairness in the approach of the respondent-RIADA. The respondent-RIADA has been fair enough to recognise the sale by Bihar State Financial Corporation. Though, the sale of the land in question which admittedly belongs to respondent-RIADA is void, the respondent-RIADA has agreed to transfer the said land in favour of petitioner for 30 years on prevailing terms and conditions. The plea that by subsequent change in policy, the terms and conditions of lease-deed executed in favour of original promotee cannot be changed is also thus devoid of merit. When the RIADA has categorically challenged the sale in favour of the petitioner, not binding on it, unless a declaration is sought and the court declares

that the sales by BSFC in favour of the petitioner and the said Sri Vijay Ranjan Prasad are binding, the petitioner cannot make a grievance in this respect. Moreover, the object behind the change in policy, the extent to which the decision of predecessor State would be binding on the successor State, the public interest involved etc. have to be examined. The writ petition is devoid of pleadings on the above aspects.

12. I do not find any infirmity in the decision taken by the respondent-RIADA vide impugned letter dated 14.07.2012. The writ petition is devoid of merit and accordingly, it is dismissed.