

(2024) 05 JH CK 0032

In the Jharkhand High Court

Case No : Latter Patent Appeals No. 132, 146 Of 2015

M/s Jagran Prakashan Limited And Others

APPELLANT

Vs

Ranchi Industrial Area Development Authority And Others

RESPONDENT

Date of Decision : 07-05-2024

Acts Referred:

State Finance Corporation's Act, 1951 — Section 29
Bihar State Financial Corporations Act, 1951 — Section 29

Citation : (2024) 05 JH CK 0032

Hon'ble Judges : Rongon Mukhopadhyay, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Dr. Ram Lal Ram, C.A.,Bardhan

Final Decision : Dismissed

Judgement

Deepak Roshan, J

1. Since both these appeals involve common question of law as such both are being heard together and being disposed of by this common order.

2. LPA No.132 of 2015 has been preferred against the judgment and order dated 23.01.2015 passed in W.P.(C) No.7113 of 2012 and LPA No.146 of 2015 has been preferred against the judgment and order dated 23.01.2015 passed in W.P.(C) No.4748 of 2012.

3. The brief facts in LPA No. 146 of 2015 is that a lease deed dated 04.04.1987 for 99 years was executed by the RIADA in favour of M/s Beltrade Industries (P) Limited, a registered small-scale industry, for carrying on the business of manufacturing on the plot no. 346(P), 348(P) and 349(P) at Tupundana Industrial Area, Ranchi measuring 0.52 acres. M/s Beltrade Industries (P) Limited secured a term loan for setting up an industry by mortgaging the leasehold land granted to it by Ranchi Industrial Area Development Authority (hereinafter to be referred as RIADA) along with land, building, plant and machinery from Bihar State Financial Corporation (hereinafter to be referred as BSFC) on the terms &

conditions in the loan agreement.

Clause 6 of the original lease deed dated 25.09.1979 stipulates that the lessee will not mortgage the land without the prior permission of the lessor RIADA but an exemption was given to the small scale industries (in short SSI) for mortgaging the land with financial institution for raising a loan for the purpose of industry for which the land was allotted. It was also stated in said clause that dues of the RIADA were pari passu to the loan sanctioned by such financial institution.

M/s Beltrode Industries (P) Limited committed default in the payment of instalments of loan as the consequence of which BSFC under Section 29 of the State Finance Corporation's Act, 1951 decided to sell the mortgaged assets for the realization of the outstanding dues. The Board of Directors of the BSFC vide item number 14067 dated 21.05.2007 approved the sale of the mortgaged assets of M/s Beltrode Industries (P) Limited in favour of the appellant on their best offer received against the auction sale notice, and the same was communicated to the appellant bearing memo no. 115/Z-IV/Patna dated 30.06.2009.

In compliance of the sale order dated 30.06.2009, the mortgage land was liquidated for Rs. 31.16 lakhs excluding the dues of the RIADA which was to be paid by the appellant. The appellant has made payment of the entire consideration amount of Rs.31.16 lakh by cheque, the same was received by BSFC on 24.07.2009 and 25.07.2009. Thereafter, the appellant approached the Managing Director, RIADA for substituting its name on the records of RIADA. The appellant has also made the payment of dues of the erstwhile promoter to the tune of Rs. 1,22,696/- which was communicated to appellant by letter dated 01.10.2009.

Thereafter, in the meeting of PCC/LAC held on 03.03.2012 where the proposal given by the appellant with respect to substituting its name was discussed, wherein a decision was taken that necessary order shall be passed for substituting the name of the appellant and was communicated the same to the appellant vide memo no. 353 dated 25.04.2012. In spite of repeated reminders to the respondent the leasehold right over M/s Beltrode Industries (P) Limited has not been substituted in the name of Appellant.

4. The brief facts in L.P.A. No. 132 of 2015 is that on an application filed by M/s Bharat Steel Casting, a term loan was sanctioned by the BSFC to set up an industry on the terms and conditions in the loan agreement dated 19.04.1988. M/s Bharat Steel Casting mortgaged the leased land measuring 0.50 Acres granted to it by RIADA through a registered lease deed dated 06.01.1988 for 99 years in favour of the proprietor of M/s Bharat Steel Casting for carrying on business or manufacturing on plot no.8 at Tatisilwai Industrial Area, Phase-I on 06.01.1988.

M/s Bharat Steel Casting committed default in making payment of the installment for which the BSFC decided to sell the mortgaged assets for

realization of the outstanding dues. The advertisement for sale of the unit was made and according to which M/s Priya Enamel Industries was declared as the successful bidder; subsequently M/s Priya Enamel Industry also defaulted and, in such condition, a sale notice was published wherein lease land was sought to be sold by public auction. Ultimately, the appellant participated in the auction and came out as the highest bidder by offering the price of Rs.11,00,000/- excluding the dues of RIADA. Sale order vide memo no. 409/Z-IV dated 30.01.2009 was issued in favour of the appellant. 'No dues Certificate' was also issued in favour of the appellant vide letter no. 1204 dated 27.03.2009. Thereafter, the appellant approached the Managing Director, RIADA vide its letter dated 03.04.2009 for transferring the appellant's name in the lease deed in place of M/s Bharat Steel Casting and requested for providing a requisite form for doing the same.

In the meantime, the appellant also purchased the leasehold land of RIADA having an area of 0.34 Acres, situated in Industrial plot No.7(Part) of Tatisilwai Industrial Area from Vijay Ranjan Singh and executed an agreement for sale of leasehold land dated 27.05.2010 at total consideration price of Rs.11 lakh. The leasehold land purchased by the appellant dated 27.05.2010 was originally allotted by RIADA in favour of M/s Bihar Concrete Bricks for a period of 99 years lease. M/s Bihar Concrete Bricks could not repay the loan availed to them by BSFC; therefore, the said unit was advertised for auction sale in which Sri Vijay Ranjan Prasad came out as the highest bidder accordingly, the sale deed was issued in his favour at a consideration price for sale fixed at Rs. 3.75 lakh excluding the dues of RIADA. The purchaser Sri Vijay Ranjan Prasad could not run his unit efficiently due to which he sold his interest in favour of the appellant M/s Jagran Prakash Limited at a total consideration of Rs.11 lakhs. Sri Vijay Ranjan Prasad surrendered the said plot of land in favour of the appellant by letter dated 27.05.2010. Further, he requested the Managing Director, RIADA to execute the lease agreement in favour of the appellant, the respondent replied by letter dated 02.08.2010 informing the appellant that both the units purchased by the appellant may be regularized by submission of the project report along with relevant documents for setting up of the industrial unit.

On 03.03.2012 the PCC/LAC of RIADA meeting was held for considering the proposal given by the appellant for regularization of the lease deed by substitution in favour of the appellant and the project report submitted by the appellant for expansion of the earlier unit.

The respondent issued a letter to the appellant having Reference No.729 dated 14.07.2012; whereby leasehold land has been ordered to be renewed for a period of 30 years only with a further condition that the appellant is required to make payment of Rs. 31,37,700/- per acre towards cost of land in the name of M/s Bharat Steel Casting having area of 0.50 acres and for regularization of the same land make a payment of Rs.15,68,850/-

The respondent directed the payment of Rs. 21,33,636/- for renewal of the lease of 30 years with respect to the unit namely M/s Bihar Concrete Bricks having an

area of 0.34 acres. Furthermore, as after the purchase of leasehold right from the BSFC of this unit in the name of M/s Bihar Concrete Bricks was not regularized in the name of Sri Vijay Ranjan Prasad. For this reason, the land of the appellant has been directed to pay double the rate to the tune of Rs.21,33,636 and accordingly, the appellant has been directed to make a payment of Rs.41,60,113/-.

In reply to the letter dated 14.07.2012, the appellant vide letter dated 11.08.2012 requested to substitute the name of the appellant for the remaining period of the lease after collection of dues in the name of M/s Bharat Steel casting only. For the other unit, the appellant has agreed to pay the current price of the land i.e. Rs. 10,66,818/- as Sri Vijay Ranjan Prasad was also required to pay old dues of M/s Bihar Concrete Bricks for substitution of his name for the remaining period of lease.

The said order dated 14.07.2012 has been challenged by the appellant.

5. Learned Counsel for the appellant submits that upon the purchase of the mortgaged assets the appellants have stepped in the shoes of original allottees and are entitled for regularization/continuation of the lease in their favour for the remaining period of lease which was granted in the favour of the original allottees. Further, by the effect of the order no. 94/1994 as the said order was subsequently, superseded by the respondent's 67th Board decision dated 24.06.2003 and further that the said office order was never relied upon by the respondents and as such no finding could have been recorded on the basis of the said office order dated 24.08.1994.

Learned Counsel has further submitted that as clause

6 of the lease deed permits the lessee for mortgaging the leasehold right to any financial institution for raising the loan for the purpose of industry for which the land was allotted without obtaining prior permission from the respondents RIADA and as such under such circumstances BSFC being mortgagee was within its right to sale the mortgage assets including leasehold right which was mortgaged in favour of BSFC. As the original allottees being registered small scale industry were not required to obtain separate permission from RIADA for mortgaging leasehold right and as such, the respondent RIADA could not be a party either to the loan agreement or to the subsequent sale transaction.

It has been further submitted that the appellants have purchased the leasehold right for the remaining period of the lease in an auction sale and as such the industrial policy cannot be made applicable and the appellants be made liable to make payment of the current market price of the leasehold land for 30 years only and RIADA has no authority to question the auction conducted by the BSFC which exercised its power under Section 29 of the BSFC Act.

6. Learned Counsel for the respondents has raised the objection of non-joinder of necessary parties, i.e. BSFC and that the lease deed executed between the

authority and the respective original allottees were for the period of 99 years and the land exclusively belonged to RAIDA and in case of the mortgage, RIADA has the first charge on the properties under mortgage pari passu of the charge of the financial institution.

It has been further submitted that the appellants have not filed loan agreement and loan/security documents including the documents relating to the creation of the mortgage executed between the original allottees and BSFC and the respondent was not a confirming party either to the mortgage deed or the sale agreement and the copies of it were never supplied to the respondent.

Learned Counsel has further argued that since the land belonged to RIADA, the BSFC could not have sold the same and further the appellants have not challenged the decision of the PAC/LAC meeting dated 03.03.2012 wherein it was approved that the regularization would be as per the prevailing terms and conditions of the Authority vide Office Order no. 94/1994 dated 24.08.1994, wherein it was stated that in case of mortgage and subsequent purchase, the new rate has to be charged.

It has been contended by learned counsel for the respondents that after the creation of the State of Jharkhand, lease for 30 years is being executed as per the direction of the state government. Thus, the process of regularization of land in place of the allottees could not have been entertained by the respondent and new lease deed has to be executed in favour of the respective appellant on the prevailing terms and conditions.

7. Having heard learned counsel for the parties and after going through the documents available on record and the impugned judgment it appears that in LPA No. 146 of 2015 a lease deed dated 04.04.1987 for 99 years was executed by the RIADA in favour of M/s Beltrode Industries (P) Limited for carrying on the business of manufacturing measuring 0.52 acres and in LPA NO. 132 of 2015 a lease deed dated 06.01.1988 for 99 years was executed by the RIADA in favour of M/s Bharat Steel Casting.

8. M/s Beltrode Industries (P) Limited secured a term loan for setting up an industry by mortgaging the leasehold land granted to it by RIADA along with land, building, plant and machinery from BSFC and in LPA No. 132 of 2015 M/s Bharat Steel Casting mortgaged the leased land measuring 0.50 Acres granted to it by RIADA through a registered lease deed for 99 years dated 06.01.1988 for carrying on business or manufacturing on plot no.8 at Tatisilwai Industrial Area, Phase 1 on 06.01.1988. In the meantime, the appellant also purchased the leasehold land of RIADA having an area of 0.34 Acres, situated in Industrial plot No.7(Part) of Tatisilwai Industrial Area from Vijay Ranjan Singh and executed an agreement for sale of leasehold land dated 27.05.2010 at total consideration price of Rs.11 lakh. The leasehold land purchased by the appellant dated 27.05.2010 was originally allotted by RIADA in favour of M/s Bihar Concrete Bricks for a period of 99 years lease. M/s Bihar Concrete Bricks could not repay

the loan availed to them by BSFC; therefore, the said unit was advertised for auction sale in which Sri Vijay Ranjan Prasad came out as the highest bidder accordingly, the sale deed was issued in his favour at a consideration price for sale fixed at Rs. 3.75 lakh excluding the dues of RIADA. The purchaser Sri Vijay Ranjan Prasad could not run his unit efficiently due to which he sold his interest in favour of the appellant M/s Jagran Prakash Limited at a total consideration of Rs.11 lakhs. Sri Vijay Ranjan Prasad surrendered the said plot of land in favour of the appellant by letter dated 27.05.2010. Further, he requested the Managing Director, RIADA to execute the lease agreement in favour of the appellant, the respondent replied by letter dated 02.08.2010 informing the appellant that both the units purchased by the appellant may be regularized by submission of the project report along with relevant documents for setting up of the industrial unit.

9. Clause 6 of the original lease deed in both the cases stipulated a condition precedent for mortgaging the leasehold property that the lessee will not mortgage the land without the prior permission of the lessor (RIADA) but an exemption was given to the small-scale industries (SSI) for mortgaging the land with financial institution for raising a loan for the purpose of industry for which the land was allotted. The relevant clause is quoted herein below:

"6. The lessor and the lessee hereby covenant and agree as follows:

(i) That the lessee will not assign, mortgage, underlet or part with the possession of land or any right or interest therein or in respect thereto without the previous consent of the lessor or his nominee in writing provided that in case of registered small scale industries no separate permission will be required to be obtained by the lessee for mortgaging it with any financial institutions for raising loan for the purpose of the industry for which the land was allotted and in that case the dues of the Industrial Area Development Authority, Ranchi shall also be 1" Charge on the properties under mortgage 'pari passu with the charge of the financial institutions, further, the properties offered as security against the loan of the financial institutions should be adequate to cover the full dues of the lessor as well as the loans given by the financing institution. In that case also the Industrial Area Development Authority, Ranchi will retain 'pari passu' (1st interest with the institution)."

Emphasis Supplied

10. From bare perusal of the clause 6 of the lease agreement it is crystal clear that though express prior approval was required from the respondent-RIADA to mortgage the lease-hold land with any financial institution for raising loan for the purpose of industry for which the land was allotted; however, the SSI units were not required to take such prior approval which is evident from the clause itself. Admittedly, both the appellants are SSI unit.

11. The learned writ Court at para 11 of WP(C) No. 4748 of 2012 has held that in the absence of express prior approval from the respondent-RIADA the land which was allotted on lease to M/s Beltrade Industries (P) Limited could not have been

sold by BSFC nor the leasehold right for the remaining period can be assigned to the petitioner without prior approval of the respondent-RAIDA. This finding of the learned Writ Court is perverse, inasmuch as, it ignored the exemption clause which was especially meant for SSI Units. For brevity, relevant part of the impugned order is extracted herein below:

"11..... 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 Beltrode 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."

As stated herein above, since the lessee companies (original allottees) were registered SSI Units which is an admitted fact; thus, the learned Writ Court has committed an error in holding that petitioner-company has failed to disclose a legal right in itself for issuing a mandamus to the respondent-RIADA.

12. However, from record it further appears that the sale order in L.P.A.146 of 2015 the case contemplates a situation in which the concerned Industrial Area Development Authority may consider executing a fresh lease deed in favour of the purchaser further the sale order in both cases clearly notices that the sale consideration was excluding the dues of RIADA. The sale was permitted on "as is where 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.

13. It is also evident from records that in the meeting of PCC/LAC dated 03.03.2012 (Annexure 6 of WPC 4748 of 2012) the committee approved the regularization of the lease on the prevailing terms and conditions of the authority vide Office Order No. 94/1994 dated 24.08.1994 (Annexure 11 of L.P.A.146 of 2015).

It was decided that in case of mortgage and subsequent purchase, the prevailing rate or the new rate has to be charged.

13. At this stage, it is necessary to indicate that after the formation of the State of Jharkhand and coming into force of the new Industrial Policy of the State of Jharkhand in 2001 wherein as per the direction of State Government, lease for the period of 30 years will be executed, thus in terms of direction of State Government the rates have been revised and the conditions have also been changed which are binding on the respondent therefore new lease deed has to be executed in favour of the respective appellants on the present prevailing terms and conditions.

14. In both these appeals the respective appellant has neither challenged the provisions of Industrial Policy of the State of Jharkhand nor the decision of PCC/LAC meeting based on Office Order No. 94/1994 dated 24.08.1994; thus, no

relief can be granted to the appellants.

15. As stated hereinabove, though on the question of prior permission of RIADA for mortgage; we have already held that the same is not required in the case of SSI units but on the other issue i.e. the decision of RIADA for granting fresh lease for the period of 30 years in terms of direction of State Government, new lease deed has to be executed in favour of the respective appellants on the present prevailing terms and conditions; does not require any interference.

15. In view of the above discussion, we find no merits in both the appeals/ and accordingly both the LPA stands dismissed.