
(2013) 07 PAT CK 0090
In the Patna High Court
Case No : CWJC No. 5334 of 2006

M/s. Vedanta Foundation

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Constitution of India, 1950 — Article 21, 226, 226, 227, 227

Citation : (2013) 3 PLJR 584

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Basant Kumar Choudhary and Arun Kumar, for the Appellant;
Pramod Kumar Sinha for the State, Lalit Kishore, Piyush Lall for the Respondent
Nos. 5 to 8, Mr. S.D. Sanjay for the Respondent No. 10, Mr. Arvind Kumar for the
Respondent Nos. 11 to 15 and Mr. Ajay Kumar Sinha for the Respondent No. 16,
for the Respondent

Final Decision : Dismissed

Judgement

Ravi Ranjan, J.—I have heard learned counsel for the petitioner, State, respondent Nos. 5 to 8, respondent No. 10 and 11 to 15 and respondent No. 16 and have perused the records of this case. Through this writ application, the petitioner seeks quashing of the letter/memo Nos. 1539/D, 1540/D, 1541/D, 1542/D and 1543/D all dated 24.9.2004, as contained in Annexure-26 series, issued by the Executive Director, Bihar Industrial Area Development Authority, Patna and further for quashing of the order dated 28.2.2006, as contained in Annexure-40, of the Appellate Authority (Industrial Development Commissioner) whereby the appeals filed against the aforesaid order of cancellation of plots and forceful vacation of the petitioner therefrom, have been dismissed. The present application was originally filed by one Ajay Kumar, Assistant Zonal Manager, M/s. Sterlite Foundation Trust. On objection having been raised on behalf of the respondents, one Interlocutory Application No. 3570 of 2009 was filed for allowing M/s Sterlite Foundation Trust to be represented through its Managing

Trustee Dwarika Prasad Agrawal, son of late Laxmi Narain Agrawal as the aforesaid Ajay Kumar has already left the Trust. The prayer was allowed. Another I.A. No. 7748 of 2009 came to be filed on behalf of the petitioner informing that the name of the petitioner's firm, namely, M/s Sterlite Foundation has been changed to M/s Vedanta Foundation with the same address. The aforesaid interlocutory application was also allowed directing the petitioner to modify the writ petition. Some interlocutory applications filed on behalf of the interveners, in whose favour the plots concerned were subsequently transferred by the Bihar Industrial Area Development Authority (hereinafter referred to be as "BIADA"), were also allowed and they were impleaded as party respondents in the writ petition. I.A. No. 4954 of 2011 filed on behalf of the M/s Bank of India through its Regional Manager was also allowed vide order dated 20.7.2012 and Bank of India was directed to be impleaded as respondent No. 16.

2. Short facts that would be necessary for consideration of this writ application are summarized as under:--

The plot Nos. C-23, C-24, D-5, D-5/A and D-6 were allotted to M/s Aryan Engg. & Allied Industries, M/s Pravin Trading Corporation, M/s Eastern Galvanizing Pvt. Ltd., M/s Union Industrial and Engg. Company and M/s Universal Polyethylene Industries (hereinafter to be referred to as "Five Companies"). Subsequently, the names of the said companies were changed as stated in paragraph No. 7 of the writ petition. However, as claimed by the petitioner, due to certain reasons, industries stopped working and eventually vide letter dated 22.12.2000, a proposal was sent to the BIADA for transferring the plots in question in the name of M/s Sterlite Foundation i.e., the petitioner which was the sister concern of the said five companies, for the purpose of establishing a software industry. The petitioner case is that the dues of the financial institutions were also liquidated and after several communication between the parties, it is claimed that the then Area In-Charge of PIADA/BIADA vide letter No. 102 dated 6.8.2001 requested the Development Officer to transfer the plots in the name of the petitioner. However, certain objections were raised and, vide letter No. 62/D dated 28.1.2002 (Annexure 14), the Development Officer of PIADA informed the petitioner regarding the acceptance of proposal of transfer after fulfillment of certain terms and conditions. Required steps were taken by the petitioner claiming to have fulfilled all the conditions. However, the petitioner requested the Secretary, Industries Department, Government of Bihar, Patna and the Managing Director PIADA/BIADA not to charge any transfer fee as the plot was being transferred to self, i.e. the petitioner being sister concern of the five companies. Again, vide Annexure-21 dated 26.4.03, it is claimed that the Development Officer, BIADA/PIADA had informed the Trust that proposal for transferring the plots has been approved. Subsequently vide memo No. 371/D dated 12.3.2004, which is an office order issued by the BIADA, it appears that it was decided that the transfer fee will be charged at the rate of 15% on the present value of the land in addition to the dues, if any. However, vide letter No. 742/D dated 27.5.2004 the Development Officer directed the five companies to deposit certain

amounts which was also mentioned in the aforesaid letter also stating that if production in the unit is not started and the conditions of the allotment are violated and satisfactory reply is not given, in that case, allotment of the plots would be cancelled. Thereafter, BIADA, which was actively considering to transfer the plots in favour of the petitioner, suddenly issued letters dated 24.9.2004, as contained in Annexure-26 series, canceling the allotment of the plots allotted in favour of the five companies. Vide Annexure-27 series dated 4.1.2005, the five companies requested to withdraw the cancellation of allotment of plots. The Director vide memo No. 108D dated 5.2.2005 requested the District Magistrate, Patna to get the plots in question vacated and handover them to the Area In-Charge, PIADA. In the meantime, the Development Officer, BIADA vide memo No. 349/D dated 30.3.2005 allotted the plot Nos. C-23 and C-24 to one M/s Shakti Sudha Industries for production of "Makhana" product. Thereafter, C.W.J.C. No. 6354 of 2005 came to be filed on 16.5.2005 by one Ajay Kumar, Assistant Zonal Manager, M/s. Sterlite Foundation Trust for quashing the letters of cancellation contained in the memo Nos. 1539-D, 1540-D, 1541-D, 1542-D and 1543-D all dated 26.4.2003 and further for enforcing the memo No. 337-D dated 26.4.2003 by transferring the concerned plots in favour of the Sterlite Foundation Trust. It would be pertinent to point out that the aforesaid letters and Annexure-26 series to this writ application are also under challenge in the present writ application. Another writ application bearing C.W.J.C. No. 15078 of 2005 came to be filed on 9.12.2005 for quashing the letter No. 273 dated 6.12.2005 directing the five Companies to immediately vacate the plots failing which they would be forcibly dispossessed. However, subsequently the petitioners were dispossessed vide Annexure-34 dated 8.12.2005. Both the writ applications remained pending and in the meantime it appears that the petitioner M/s Sterlite Foundation had also preferred two appeals for quashing the order of cancellation as well as dispossession of five companies, i.e., the issues which were already under consideration in C.W.J.C. No. 15078 of 2005 and C.W.J.C. No. 6354 of 2005. The appeals were dismissed and, thereafter, the petitioner of both the writ applications vide order dated 1.3.2006 had sought leave to withdraw both writ applications which were eventually dismissed as withdrawn on the same date. Thereafter, the present writ application came to be filed on 25.4.2006.

3. Learned counsel for the petitioner submits that the letter of cancellation of allotment in favour of the five companies, apart from being arbitrary, unreasonable and illegal, also suffers from mala fide in law inasmuch as after accepting the proposal of the transfer of the plots of the five Companies in favour of the M/s Sterlite Foundation, there was no occasion for the BIADA to cancel the allotment itself in favour of the five companies made in the year 1967 and dispossess the petitioners. Learned counsel points out that M/s Shakti Sudha Industries was allotted the area more than what was applied.

4. BIADA in its reply submitted that the allotment has been cancelled as five companies had stopped production for the last 15 to 20 years and, so far transfer is concerned, since the petitioner did not fulfill the condition there was no

illegality in canceling the allotment in favour of the five companies ignoring that.

5. The private respondents have submitted that since allotment has already been made in their favour and, not being responsible in any manner for any omission on part of others, their interest should be protected.

6. Learned counsel appearing for respondent No. 10 as well as BIADA has raised the issue of maintainability of this writ petition. It has been urged that writ petition would be barred by the principle of *res judicata* as the petitioner had withdrawn the earlier writ applications, which were filed for grant of self-same relief, without any liberty having been granted to prefer another writ application. Learned counsel for the respondent No. 10, in this connection, places reliance upon a decision of Apex Court in *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, which is also discussed in detail in *Bakshi Dev Raj and Another Vs. Sudhir Kumar*, . It is urged that while the writ petition was pending two appeals for the self-same relief were also preferred by the petitioner which were dismissed and, thereafter the petitioner in place of filing a writ application for the purpose of challenging the same or making any prayer for amendment in the earlier writ application for challenging the appellate order passed during the pendency of the same, had made a prayer for withdrawal of the case and eventually the writ applications were dismissed as withdrawn without granting any liberty to the petitioner to prefer fresh writ application. In that case, it is submitted that since the relief mentioned in the earlier writ applications and this writ application are one and the same and the writ application having been dismissed as withdrawn without granting any liberty, the subsequent writ application would not be maintainable having being barred by the principle of *res judicata*.

7. Per contra, learned counsel for the petitioner submits that since the earlier writ applications were not decided on merit, the subsequent writ application would be maintainable. That apart, it is submitted that in the subsequent writ application the petitioner has also challenged the appellate order apart from challenging the earlier order of cancellation of the allotment made in favour of the five companies and their dispossession from plots concerned.

8. Upon consideration of the rival contention, this Court finds force in the submission raised on behalf of the respondents. It is admitted position that in the earlier writ applications also the same set of action was under challenge by which the allotment in favour of the five companies were cancelled and they were subsequently dispossessed from the respective plots. Though it has not been mentioned in the writ application as to whether the appeals were preferred before filing of the writ application or after their filing. However, in view of the fact that learned counsel for the petitioner could not demonstrate from the earlier writ application that the factum of filing of any appeal had been disclosed added with the fact that in the counter affidavit filed on behalf of the respondent Nos. 1 and 2 in C.W.J.C. No. 6354 of 2005 a categorical stand has been taken in paragraph No. 7 that any one aggrieved by the decision of the BIADA could file

an appeal within the stipulated time before the Industrial Development Commission, Bihar, Patna, it appears that the appeals were preferred during the pendency of the writ application. From Annexure-36 which is an order dated 17.1.2006, it appears that the pendency of C.W.J.C. No. 6354 of 2005 involving identical issue was noticed and it has also been noticed that the petitioners are pursuing the matter before two forums for grant of identical relief, therefore, matter was adjourned for one month awaiting the decision of the High Court and status quo was directed to be maintained. However, even after that order, it does not appear that any effort was made to bring it to the notice of this Court that appeals have been preferred for self-same relief and, eventually, when nothing had been brought to the notice of the appellate authority, subsequently, the final order as contained in Annexure-40 was passed dismissing the appeals. The petitioner, thereafter, could have preferred fresh writ application against the order of the appellate authority or could have made prayer in the writ application for addition of relief for setting aside the appellate order also but in place of doing that the petitioner had sought leave to withdraw both the writ applications which were dismissed as withdrawn without granting any liberty for filing fresh writ application. It appears from the aforementioned fact and circumstance of the case that the petitioner's action, apart from the issue of being barred by the principle of *res judicata*, also suffers from the vice of suppression of fact and deliberate laches as learned counsel for the petitioner has miserably failed to demonstrate that any effort was made by the petitioner to inform this Court regarding the filing and dismissal of the appeals during the pendency of the writ application. Even if it is assumed that the appeals were preferred prior to the filing of the writ application then again same vice would be apparent in the conduct of the petitioner inasmuch as learned counsel could not demonstrate that factum of filing of appeals stands described in the earlier writ applications. However, the main point which is to be decided now is regarding the maintainability of this writ application as raised by the respondents. Learned counsel for the petitioner places reliance upon a decision of Apex Court in *Sarguja Transport Service (supra)*, wherein it has been held that withdrawal or abandonment of a petition under Article 226 and 227 of the Constitution of India without permission for filing fresh petition thereunder would bar such a fresh writ petition in the High Court involving same subject matter though other remedies would remain available to the petitioner. Their Lordships, while considering the issue, had considered the ambit of the Order XXIII Rule 1 of the CPC and its application. It has been noticed in the aforesaid decision that Order XXIII of the C.P.C. provides two kinds of withdrawal of suit, namely, (i) absolute withdrawal (ii) withdrawal with the permission of the Court to institute a fresh suit on the same cause of action. It has been held that the principle laid down in Order XXIII Rule 1 should be extended to the petition under Article 226 to 227 of the Constitution of India also as it is established practice that when the petitioner or his counsel finds that the court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel to permit the petitioner to withdraw the writ petition without seeking permission to institute a

fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. The earlier decision of Apex Court in *Daryao and Others Vs. The State of U.P. and Others*, , the Supreme Court has been considered, explained and distinguished after holding that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interest of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy as has been explained in the order concerned. The relevant passages from *Sarguja Transport Service (supra)* are reproduced as under:--

8. The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying R. 1 of O. XXIII of the Code is adopted in respect of writ petitions filed under Art. 226/227 of the Constitution also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in *Daryao and Others Vs. The State of U.P. and Others*, in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Art. 32 of the Constitution because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in *Daryao's case (supra)* is to be found at page 593 and it is as follows:--

If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Art. 32, because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of *res judicata* which has been argued as a preliminary issue in these writ petitions and no other.

9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art. 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in *Daryao's case (supra)* is of no assistance. But we are of the view that the principle underlying R. 1 of O. XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event

there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art. 32 of the Constitution since such withdrawal does not amount to *res judicata*, the remedy under Art. 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Art. 21 of the Constitution since such a case stands on a different footing altogether. We, however, leave this question open.

9. Learned Counsel for the petitioner has submitted that the petitioner has not abandoned the suit but has only withdrawn it. However, in my considered opinion, this limb of argument on behalf of the petitioner can be noted only to be rejected in view of the aforesaid decision of the Apex Court. Another issue raised by the petitioner that, in the present writ application, the appellate order is also under challenge which was not under challenge in the earlier writ application, would also not be tenable inasmuch as the appellate orders were passed during the pendency of the earlier writ applications and they were not sought to be challenged by amending the writ petition or even by filing fresh writ petition or were not even brought to the notice of the Court and, as such, no liberty was also granted to challenge the same. Apart from that if the appellate orders dismissing the appeals are to be set aside and relief is to be granted to the petitioner then again the main issue to be decided in this case would be the legality of the action taken by the authorities by issuing letters as contained in Annexure-26 series canceling the allotment in favour of the five companies which was also in issue in the earlier writ applications. The decision of this Court in *Smt. Usha Sinha Vs. The Chancellor, Patna University, Patna, Raj Bhawan, Patna (Bihar) and Others*, would be of no help to the petitioner as this Court has held that in view of the non-speaking order of withdrawal the consideration of the pending statutory representation would not be barred by *res judicata* and the decision was taken in view of the decision of the Apex Court in *Daryao (supra)* but the same had already been considered and distinguished by the subsequent decision of the Supreme Court in *Sarguja Transport Service (supra)* holding that even if the writ application would not be barred by the principle of *res judicata*, the subsequent application, for the self-same relief should be discarded on the ground of public policy described under Order XXIII Rule 1 of the Code of Civil Procedure.

10. In above view of the matter, in my considered opinion, this writ application would not be maintainable and, the same is, accordingly, dismissed. However, before parting with the matter, I must indicate another issue which has been raised by respondent No. 10 that the order of cancellation having been passed against five companies and since they have not preferred any writ application, the petitioner would have no locus to file the present writ application. This would have been another interesting issue to be decided in this case, however, in view of the fact that I have already held that this writ application would not be maintainable in view of the law laid down by the Apex Court in Sarguja Transport Service (supra), this issue and the other issues involved in the writ application are not required to be gone into.