

(2000) 01 PAT CK 0076

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 11828 of 1996

Om Prakash Sharma

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-01-2000

Acts Referred:

Bihar Industrial Area Development Authority Act, 1974 — Section 11

Citation : AIR 2000 Patna 148 : (2000) 48 BLJR 869 : (2000) 1 PLJR 924

Hon'ble Judges : Sudhir Kumar Katriar, J

Bench : Single Bench

Advocate : Radheyshyam Prasad, for the Appellant; Nirmal Kumar and Uday Chand Prasad and Bhirgunath Singh, J.C. to S.C.V., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Kumar Katriar, J.—This writ petition has been preferred with the prayer to issue a direction in the nature of writ of certiorari for quashing the certificate proceeding started against the petitioner under the provisions of the Bihar Public Demand Recovery Act, 1914 (hereinafter referred to as the 1914 Act), which has since been registered as certificate Case No. 52/89-90 in the Court of respondent No. 2, for realization of the dues by respondent No. 3 (Industrial Area Development Authority, Patna).

2. The petitioner is running a small scale industry for manufacture of guns at Munger. The different gun manufacturers at Munger were scattered at different places and were in private accommodation at Munger. For reasons of safety and security, the State Govt. decided to create a special place for the gun manufacturers and accordingly specific space was allotted in the industrial area at Munger. The petitioner along with others were applicants for allotment of space with a shade. The petitioner was granted one such shade. After the applications were processed and decided, the State Government in the Industries Department had issued its letter to the Accountant General, Bihar, Patna, about the policy in this behalf. It inter alia, indicated the rent payable by every

occupant, and the rent was provisionally fixed. Pursuant to the same, the Collector of Munger had issued his letter No. 7796, Dt. 13-12-77 (Annexure A), to all those gun manufacturers who had been allotted space in the industrial area, and the rate was payable with effect from 1-1-1978, the date of allotment of the space. The petitioner along with other gun manufacturer occupied the respective spaces allotted to him in 1979, but have not paid the rents so far. Hence the certificate proceeding.

3. While assailing the validity of the impugned proceedings, learned counsel for the petitioner has submitted that the dues sought to be realized are not public demand and is not covered by anyone of the items mentioned in Schedule 1 of the Act. Learned counsel appearing for respondent No. 3 has invited my attention to the provisions of Section 11 of the Bihar Industrial Area Development Authority Act, 1974 (hereinafter referred to as the 1974 Act), which is set out hereinbelow for the facility of quick reference:--

^QhI] yxku ;k izHkko e}s] vFkok Hkwfe] edku ;k vU; py vkSj vpy IEifRr ds fuiVkus ls vFkok yxku vkSj equkQs ds :i esa izkf/kdkj dks n;s dksbZ /ku izkf/kdkj }kjk fcgkj yksx ekax olwyh vf/kfu;e ?ifCyD fMekaM~l fjdojh ,sDV?] 1914 ds v/khu Hkw&jktLo ds cdk;s ds :i esa clwy fd;k tk ldrk gSA**

It is thus manifest that the dues in question is in the nature of rent payable by the petitioner to respondent No. 3 for use of land, building or other property, which is clearly covered by provisions of Section 11 of the 1974 Act. I have, therefore, no hesitation in rejecting the petitioner's contention, and accordingly hold that the dues in question is a public demand within the meaning of the 1974 Act.

4. Learned counsel for the petitioner has next contended that the dues cannot be realized till such time written agreement inter partes with respect to the tenancy is arrived at. In the absence of a written agreement inter partes creating the agency, there is no rent which is required to be paid by the petitioner and, therefore, nothing is to be realized. He relies on the judgment of a learned single Judge of this Court reported in 1991 BBCJ 297 (HC) (Manoharlal Agrawala v. Commissioner, North Chotanagpur Divn.), as well as a Division Bench judgment of this Court reported in 1992 BBCJ 162 (HC) (Indradeo Pd. Sinha v. State of Bihar). Learned counsel for respondent No. 3 has invited my attention to the aforesaid letter dated 15-11-97 (Annexure B), as well as the letter dt. 13-12-77 (Annexure A). The letter is from the Collector of the district of Munger to all the allottees of the gun factories in the industrial area and indicates the terms and conditions of the tenancy. It provisionally indicates the rate of rent realizable from the occupants which shall be payable from 1-1-78, the date of allotment. Law is well settled that in the absence of a formal agreement inter partes, the terms of the agreement can be inferred from the conduct of the parties or the letters of the parties. In view of Annexures A and B on record, this Court has no difficulty in finding out the terms and conditions operating inter partes, may be provisionally. In such circumstances, the proposition laid down in the aforesaid

two reported judgments are not applicable to the facts and circumstances of the present case. The contention, therefore, fails.

5. Learned counsel for the petitioner next contended that a certificate proceeding cannot commence or continue without payment of requisite Court-fee. He relies on a Division Bench judgment of the Ranchi Bench of this Court reported in 1994 (2) PLJR 617 (HC) (Sheela Sinha v. State of Bihar). I am unable to accede to the contention for the reason that court-fee can be paid after initiation of the proceeding also for which purpose the Certificate Officer is competent to grant leave to respondent No. 3 to pay the deficit court-fee.

6. In the circumstances, this writ petition falls. The petitioner is hereby directed to file his written statement before the Certificate Officer within a period of one month who shall dispose of the matter in accordance with law.