

(2022) 03 PAT CK 0059

In the Patna High Court

Case No : Letters Patent Appeal No. 1294 Of 2016 In Civil Writ Jurisdiction Case No. 13485 Of 2013

Ramjee Sah

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 10-03-2022

Acts Referred:

Citation : (2022) 03 PAT CK 0059

Hon'ble Judges : Ashutosh Kumar, J;Anjani Kumar Sharan, J

Bench : Division Bench

Advocate : Manik Vedsen, Subhash Chandra Bose, Shilpa Singh, Prasahnt Kumar, Lalit Kishore, Yashraj Bardhan, Raj Nandan Prasad

Final Decision : Disposed Of

Judgement

1. Heard Mr. Manik Vedsen, the learned counsel for the appellant, Mr. Yashraj Bardhan for the respondent nos. 2 and 3, namely, Bihar Industrial Area Development Authority through its Managing Director and Mr. Raj Nandan Prasad for the Bihar State Finance Corporation. The State is represented by Mr. Prashant Kumar, learned AC to SC-05.

2. The appellant had preferred a writ petition seeking quashing of the demand of the respondent BIADA of the transfer fee of Rs. 1,71,329/- from the appellant / writ petitioner for transferring the concerned plot to him which he had purchased in the auction sale of the plot by the mortgagee/ Bihar State Finance Corporation (hereinafter referred to as "BSFC") but the question in the present appeal is limited to whether the BIADA is justified in charging the transfer fee and if so, what should be the quantum of the same.

3. Be it noted that the demand of the BIADA of the transfer fee of Rs. 1,71,329/- has already been paid by the appellant along with the dues of the erstwhile allottee but without prejudice to his rights and contentions.

4. The plot in question was allotted to one M/s Bhojpur Bucket Industry on

16.06.1977 for setting up a unit for manufacturing buckets. The aforesaid allottee had obtained loan on the said plot on mortgaging it to Bihar State Finance Corporation. Because of the default in re-payment of loan, the plot along with the lease hold land and the machinery was put to auction sale by the BSFC and the appellant had purchased the same on a consideration amount of Rs. 4,10,000/- with further stipulation that the dues payable to BIADA by the original lessee / allottee would also be restituted by the appellant.

5. When the appellant applied before the respondent /BIADA for change in the name of the proprietor and the project along with the prescribed fee of Rs. 1,000/-, the same was refused on the ground that the lease in favour of original allottee had been cancelled before the lease hold land was auction sold to the appellant.

6. It further appears that the appellant approached the High Court vide C.W.J.C. No. 15639/2009 when a Bench of this court referred the dispute to the Principal Secretary, Department of Industries, who was holding the post of Chairman of BIADA as also the Chairman of BSFC. He, on enquiry and on hearing the parties, validated the sale of lease-hold land but held that the appellant would be required to pay the transfer fee before the plot could be transferred in his name for a different project.

7. Pursuant to the aforesaid decision by the Principal Secretary, Department of Industries, the appellant was asked to pay an amount of Rs. 2,53,819/- towards the dues incurred by the erstwhile allottee along with a transfer fee of Rs. 1,71,329/- as well as the general charges of Rs. 4,532/-.

8. The transfer fee appears to have been calculated at the rate of 15% of the value of land evaluated at Rs. 271.95/- per sq. ft.

9. This was questioned by the appellant vide C.W.J.C. No. 13485 of 2013, which has been disposed off by judgment dated 18.05.2016 which has been impugned in the present appeal, holding that since the policy decision of the BIADA to charge transfer fee has not been challenged, such demand could not be asked to be quashed. However, the rate at which the quantum of transfer fee would be calculated was left open by the learned Single Judge as according to him, no document was placed by the parties for any determinative decision in that regard.

10. The reliance of the appellant on the judgment of this Court in M/s Vikramshila Transformers vs. State of Bihar 1994 (1) PLJR 604 was not accepted by the learned Single Judge as in the aforesaid case, a fresh price was demanded from the purchaser of the lease-hold land whereas in the present case, the appellant was only asked for the transfer fee as the primary ownership of the land always remained with BIADA.

11. Since the appellant had been suffering losses on account of non-transfer of the land in his name and consequently no permission to change the project, the

transfer fee as demanded by the respondent / BIADA was paid but only under protest.

12. It is the contention of the appellant that the BIADA is not entitled to claim anything over and above the dues payable by the original lessee as the appellant had, with the purchase of the plot in question in auction-sale by the mortgagor / BSFC, had entered into the shoes of the original allottee with complete leasehold rights over the said plot of land for which the lease deed had originally been executed for 99 years.

13. As opposed to the aforesaid contention, the respondent / BIADA has taken the plea that the appellant not only sought a change in the name and of the project; rather he had asked for the transfer of the land from one individual unit to another, may be on auction purchase of the lease hold rights. The transfer fee charged from the appellant is stated to be in consonance with the established principles as well as the policy decision of the BIADA, which principle is not unknown and is in vogue in other Corporations and Authorities under the statute or by the statute like Municipal Corporations, Housing Board etc. The practice of seeking certain percentage of the enhanced value of land as transfer fee is a well accepted norm. It has also been urged by Mr. Bardhan, the learned counsel for the BIADA that the quantum of 15% of the prevailing market rate as transfer fee cannot be said to be arbitrary or without any basis as BIADA has to spend money in providing facilities and security in the Industrial Areas. It has also been brought to the notice of the Court that the Bihar Industries Association had also recommended for a specially constituted committee by the Department of Industries for recommending the modalities for maintenance of infrastructural facilities in the Industrial Areas in the State of Bihar, which committee had recommended for a 15% of the current land value as the transfer fee in cases of transfer of sale.

14. The aforesaid policy decision has been adopted by the Board of Directors of BIADA in its 4th meeting on 19.02.2004 whereafter every such transfer or sale has been subjected to the transfer fee calculated at the rate of 15% of the current market value of land.

15. Taking objection to the aforesaid submissions urged on behalf of the respondent / BIADA, Mr. Manik Vedsen, the learned Advocate has submitted that a policy decision of 2004 ought not to govern and cover a concluded contract wherein it was never in the contemplation of the purchaser that he shall be subjected to any transfer fee and that also at the current market value of the land. No doubt, the appellant had agreed at the time of transfer to pay the dues of original lessee / allottee but no covenant in the sale deed provided for payment of any transfer fee by the BIADA. It has further been submitted that calculating the transfer fee at the rate of 15% of the current market value of the land is absolutely unjustified and to a large extent arbitrary because with the permitted sale of the lease hold property, the purchaser enters into the shoes of the erstwhile lessee and under no circumstance, he ought to be charged anything

more than what was charged from the original lessee. While calculating the transfer fee, the BIADA has also not taken into account that the original lease was for 99 years but many years have passed by and now there would only be approximately 64 years left for the lease to expire. Thus, it has been submitted that even if it is found that transfer fee is in the nature of charges by the BIADA for the upkeep of the Industrial Area and continuous maintenance of infrastructural facilities, the quantum charged is questionable. The circle rate cannot be the index. The logic behind the justification of the BIADA as the primary owner of the land to pocket part of the unearned increase in the value of the land is highly misplaced as BIADA is an agency of the Government and not a commerce-driven organization.

16. We have examined the issues raised by the parties and we find that there is no parallel with the facts of *M/s Vikramshilla Transformers* (supra) which has been relied upon by the appellant.

17. In *M/s Vikramshilla Transformers Pvt. Ltd* (supra), the company had purchased the lease hold plot of the then Patna Industrial Area Development Authority in auction sale as the original lessee had defaulted in payment of loan to the Bihar State Financial Corporation with which the land was mortgaged. When permission was sought by the company for transfer of the land in its favour, the Patna Industrial Development Authority had put up a demand of an amount equivalent to the price of the land at the new rate. A Division Bench of this Court in the aforesaid case held that a lease creates an interest in the leasehold land and the lessee acquires a transferable interest which could be transferred in favour of any third party but subject to other terms and conditions of the lease. Any restrictive covenant in the lease has to be given effect to but in the absence of any such restrictive covenant, there cannot be any further demand on the purchaser for payment of price of land again at the market value. The Bench, therefore, held that since no prior permission was required for sale from the Patna Industrial Development Authority and the mortgage in favour of the BSFC had been created by the erstwhile lessee in terms of the lease deed itself, it logically followed that the mortgagee could enforce the mortgage by selling the mortgaged assets. The purchaser stepped into the shoes of original mortgagor, who could be subjected to, at best, the same terms and conditions of the lease to which the original lessee / mortgagor was subjected to. Thus, it was held that the purchaser, namely, *M/s Vikramshilla Transformers Pvt. Ltd.* could not have been asked for the market price of the land all over again.

18. In the present case, the BIADA has not charged the price of the land but has saddled the appellant with a transfer fee and that also in accordance with its policy decision which is regularly being followed in all such transfer or sale, be it auction or distress sale or sale by choice.

19. The question, therefore, which arises for consideration is whether the transfer fee should be calculated at the rate of 15% of the circle rate of the land i.e. the current market value at the time of transfer or of the BIADA rate which is

a subsidized rates for development of Industrial Zones and facilitating investors.

20. To answer the aforesaid poser, Mr. Bardhan, learned counsel for the BIADA has brought to out notice a judgment of the Supreme Court in Bihar Industrial Area Development Area Authority and Others v. Amit Kumar and Others 2019 (10) SCC 733, in which a decision of the Division Bench of the Patna High Court in L.P.A. No. 68/2018 and other analogous appeals holding that the BIADA was entitled to demand 15% of the BIADA rate and not the circle rate of the land, was set aside and it was held that there was no arbitrariness in charging the transfer fee on the basis of current market rate of the land in question.

21. The Supreme Court was of the view that in cases of original allotments, a fixed price is charged by the BIADA. However, when the allottee transfers and gets something more for the land at the current market value, there would be no reason why the owner of the land /BIADA ought not be benefited by the unearned increase in the value of the land.

22. Mr. Vedsen, learned Advocate submits that the facts of this case is entirely different where original lessee had sought permission to sell the lease-hold land at a profit. This is not the case in the present litigation where the mortgaged lease-hold land had been put to auction-sale where any purchaser could have entered into the shoes of the original lessee, which might obligate him to pay the dues of the original lessee but there could be no justification for charging any transfer fee as it would not be in the nature of any share in the unearned increase of the land. The price at which the lease-hold is auction-purchased in that case becomes much more, which might not have been in the contemplation of any buyer / appellant.

23. We had asked Mr. Yashraj Bardhan to inform us as to the basis for calculation of the transfer fee. The chart provided by him today indicates that the value of the land has been assessed at the circle rate of 118.16 per acre and the transfer fee has been calculated by computing 15% of the multiple of the value of the land at the rate of 271.95 per sq. ft. With the aforesaid calculation, the figure comes to 1,71,329/-.

24. We do not find any arbitrariness in the aforesaid calculation and the consequent demand of the transfer fee from the appellant.

25. However, we do find that while computing the quantum of transfer fee the BIADA has not at all taken into account that now only 64 years are left for the lease to expire and before any transfer fee could have been calculated on any rate, there ought to have been depreciation in terms of the number of years left in the currency of the lease. That not having been done, the imposition of the transfer fee of the amount of Rs. 1,71,329/- is not justified and reflects, to some extent, non-application of mind towards that aspect of the matter.

26. We reject the contention of the BIADA that once the amount of transfer fee has been paid by the appellant even under protest and subject to his rights and

contentions later, it could not have been questioned in the present appeal. The very concept of conditional and on protest payment is that such levy could be challenged in any competent forum.

27. We, therefore, hold that BIADA is entitled to charge 15% of the current market value of the land with reference to the date of sale but it ought to take into account that depreciation is required to be made for the lesser number of years of the lease in currency.

28. The appeal, is thus, disposed of with a direction to the appellant to make a representation before the Chairman-cum- Managing Director of the BIADA within a period of 30 days to take into account the aforesaid aspect of the matter and re-calculate the transfer fee qua the number of years of lease left and any amount which is required to be depreciated from the amount which has been saddled on the appellant and which has already been paid by him under protest, be refunded to him.

29. It is expected that the concerned respondent shall take up the matter in right earnest and shall take an informed decision in that regard within a period of three months thereafter.

30. Before parting with this matter, we also express our gratitude to Ms. Shilpa Singh, the learned Amicus who has provided us with a number of decisions of different High Courts and of other judicial bodies where this issue has been discussed.

31. The appeal stands disposed off accordingly.