
(2010) 08 PAT CK 0146
In the Patna High Court
Case No : CWJC No. 4325 of 2009

Shankar Saw Mills

APPELLANT

Vs

Bihar Industrial Area Development Authority and Others

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Citation : (2010) 08 PAT CK 0146

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Petitioner is a proprietorship firm duly registered with the Department of Industries having a permanent registration number. Way back in the year 2000, it applied for allotment of a plot of land in the industrial area of the Respondent Bihar Industrial Area Development Authority (hereinafter referred to as BIADA or Authority). The request of the Petitioner for such an allotment was allowed vide order dated 7.12.2000. The plot was 0.50 acre and consideration amount demanded was Rs. 3,53,695/-.

2. The first instalment in terms of the demand contained in Annexure-2 was deposited on 16.2.2001 and thereafter possession was handed over on 8.11.2001. But before the Petitioner could really set up the unit of saw mill, the licence granted by the Forest Department was not renewed due to some decisions taken by the Hon"ble Supreme Court in matter of running saw mills across the country including the State of Bihar. Since the original object of setting up a saw mill could not be achieved due to the above development, the unit never took off. Matter drifted and even default on payments accrued but taking advantage of One Time Settlement (OTS) Scheme floated by the Authority, Petitioner opted to clear the outstanding dues against the cost of land and other charges. 25 per cent of the settlement amount amounting to Rs. 78,000/- was deposited on 30.6.2007. Alongwith the said deposit, a request was also made by the Petitioner to transfer the land in the name of a private limited company incorporated and registered by the Petitioner. The name of the company so registered is M/s Samras Products Private Limited. The object was to

manufacture edible oil. Petitioner was one of the directors of the said company. The request made by the Petitioner is annexed as Annexure-4 to the writ application.

3. On 30.7.2007 Petitioner deposited the balance amount under the OTS Scheme amounting to Rs. 2,33,751/-. By this payment hundred per cent of the agreed amount under OTS was deposited and receipt thereof issued, which is on record. After this payment Petitioner made yet another request for transfer of the land in the name of the private limited company as the original firm M/s Shankar Saw Mills became defunct in the above stated circumstance. Instead of responding to the request for such a transfer the Authority vide letter No. 1830 dated 21.8.2007 asked the Petitioner to deposit a sum of Rs. 8,25,000/- as transfer charge. This was stated to be 15 per cent of the land value. This demand is Annexure-7 to the writ application. This communication is under challenge in the present writ application, terming it to be irrational and arbitrary if not violative of Article 14 of the Constitution of India. Petitioner requested for reconsideration of the demand as transfer charge was excessively high and was many times more than the initial cost of allotment of land made to the Petitioner's firm. On what basis 15 per cent of the land value was worked out was not understood by the Petitioner. Respondent authorities instead of modifying the demand contained in Annexure-7, decided to cancel the allotment of land vide order dated 31.1.2008., which is Annexure-9 to the writ application. This order too is under challenge by the Petitioner in the present writ application.

4. Submission of the counsel for the Petitioner is that there is no rationale in demanding the transfer charge of 15 per cent which is based on the equated rate of freehold land fixed by the Registration department of the area. This transfer charge has not been worked out on the basis of the cost of initial allotment but on the basis of the so-called going price of land on which registration is being made in that area. But such registration is for alienation of a freehold land, vesting a permanent right in the purchaser. It is not so in the present case. BIADA was allotting land to industrialists, which was a leasehold land without giving them a permanent right of alienation. This demand made by the BIADA is the subject matter of challenge and adjudication in the present writ application.

5. It has also been urged on behalf of the Petitioner that the request for transfer of the land is not to a stranger but to a company which has been floated and registered by the proprietor of the present firm. The necessity for change of trade has already been explained by the Petitioner to the Respondents, in the background that the Forest Department refused to renew the saw mill licence, which the firm held, after the allotment of land was prayed for and granted. Since the saw mill became defunct due to unexpected developments, the proprietor of the firm decided to float a Private Limited Company. The Company would engage in production of edible oil. But ignoring these facts and the ground reality, the Respondents are treating the request, as a case of transfer to a new entity. A demand of Rs. 8,25,000/- which is so-called 15 per cent of the land

value is being made from the Petitioner, as a price for such transfer in the name of M/s Samras Products Private Limited.

6. It is urged on behalf of the Petitioner that even if technically the request of transfer of land in the name of the new company is treated to be a case of transfer to a new entity then what would be the price which is to be worked out as the cost of such transfer, on the basis of 15 per cent of the "value of the land". Taking the line of least resistance Petitioner submits that the Respondent authorities have duly notified the price of land for every industrial area, across the State and such price is not only available in the brochure but even on the official website. The official going rate for the land in industrial area at Sitamarhi has been fixed at 12.53 lacs per acre i.e. the price on which allotment of land in the industrial area is being made to an entrepreneur. But instead of demanding 15 per cent of the above value of land, the Respondents are insisting on extracting money by taking into consideration the price of registration of a freehold land fixed by the local registration office of the district.

7. It is his case that land for the development of industries in the State were acquired many-many years ago. A new Applicant is still being offered land at a much lower price on the rate fixed by the Respondents i.e. if you happened to be an Applicant for the first time. But rationale for demanding transfer charge at the rate of 15 per cent of the registration value of a freehold land is not only irrational but arbitrary per se. The Respondents are trying to create two class of allottees with different prices. In one case first time allottee would be allotted land at the price fixed by the Authority but for the purpose by demanding transfer charge, the base price has been linked with the sale of free hold land of the area.

8. Respondents were directed to file their counter affidavit not only to explain their position but also justify such a demand made from the Petitioner.

9. The basic facts are not in dispute. The whole issue basically hinges on the interpretation of the words "15 per cent of land value".

10. The stand of the authorities that the change in the constitution of the firm into a private limited company does amount to transfer in share beyond 51% and any request for transfer of land in the newly constituted entity, which may be a private limited company, would attract 15 per cent of the land value. According to them, the land value is the rate of the adjoining land fixed by the registry office of the area for its registration. The demand on the Petitioner has been made on the basis of the value of land on which the land is being registered by the local registry office. The demand of 15 per cent of the value of land is based on a decision taken by the Board of Directors of the Authority in its 20th meeting held on 25.5.2007. The Board decided as a matter of policy that where a transfer of ownership or share of more than 51% is made, then the original allottee would be required to pay the outstanding dues alongwith "15 per cent of the land value". Based on the decision of the Board of Directors an office order dated

30.5.2007 has been issued. The said office order is Annexure-A to the counter affidavit. Further yet another letter dated 16.7.2007 issued by the Secretary of the Authority to its various officers has also been brought as Annexure-A/1. This letter clarifies that the rate of registration of the land fixed by the Collector of the area would be taken into consideration and the transfer charge would be calculated on the basis of a comparative rate fixed for registration by the registration authorities or by BIADA which ever is the higher value of the land. Two comparative rates would be made the basis for demand of transfer charge.

11. A supplementary counter affidavit has also been filed wherein some more documents have been brought on record that there is background and history behind such a decision. It is also the stand of the Respondents that the decision of the Board of Directors was based on some kind of understanding arrived at between the representatives of the Association of Industrialists and the Respondents. There is nothing arbitrary about the demand based on the value of the land at a price fixed by the registration office of the area. Similar kind of transfer charges are being also levied by other Industrial Development Authorities in other States and what BIADA is doing is nothing unique.

12. From the documents which have been brought on record in the counter affidavit, there is no dispute that Board of Directors did take a decision that wherever there is transfer of share of more than 51 per cent and above, it will be treated as a case of transfer and "15 per cent of land value" would be demanded -as a transfer charge.

13. There is nothing on record to show that Board of Directors had resolved that the "land value", will be linked to the value fixed by the registration office of the area and not "land value" fixed for such land in the industrial estate by the Authority. The word "land value" seems to have been explained by way of a mischief caused by the letter circulated by the Secretary of the Authority, which is Annexure-A/1. What is the basis for the Secretary to circulate such a letter informing the local authorities that they have to make a comparative chart of the price of land fixed by the Industrial Development Authority and the Collector of the area for registration of a freehold land and to demand higher of the two prices as transfer charge is not understood or explained.

14. The decision of the Board of Directors can only be explained and expanded by the Board of Directors. A new interpretation and dimension cannot be given by the Secretary of the Authority, who has no special powers under any provision which governs the functioning of the Respondent authorities. Obviously an (sic) has been made by the Secretary to (sic) his own interpretation to the decision of the Board. It is evident from the said letter contained in Annexure-A/1 that the object of demanding such transfer fee is not to meet the cost and expenses of such transfer but to enter into speculative gain by setting for a higher price of the land fixed by the local registry office for registration of a freehold land. There is a marked distinction between a lease hold land and freehold land. Price fixed by the Collector for registration/alienation of freehold land has no co-relation

with the allocation of land in industrial area on lease. The object and purpose for which the Industrial Development Authority was set up was to encourage industrialization in the State and not to engage in a speculative activity of real estate to make money by linking transfer charge of 15 per cent of the "land value" to the price of registration for freehold land of the area. The Hon"ble Supreme Court in the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, had this to say in para 46 of the said decision which is reproduced hereinbelow:

46. Financial gain by a local authority at the cost of public welfare has never been considered as legitimate purpose even if the objective is laudable.

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No one howsoever high can arrogate to himself or assume without any authorization express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra vires and bad in law. Where the law requires an authority to act or decide, "if it appears to it necessary" or if he is "of opinion that a particular act should be done" then it is implicit that it should be done objectively, fairly and reasonably. Decisions affecting public interest or the necessity of doing it in the light of guidance provided by the Act and rules may not require intimation to person affected yet the exercise of discretion is vitiated if the action is bereft of rationality, lacks objective and purposive approach. The action or decision must not only be reached reasonably and intelligibly but it must be related to the purpose for which power is exercised.....

15. In the opinion of this Court, the expression "land value" will mean value of the land fixed by the BIADA for the various industrial areas where the land is located. There is no rationale for creating two class of land within an industrial area, one for the first time allottees and another for a transferee. The "land value" would have to be read as the value fixed by the Authority and it has no co-relation with the value of the land fixed by the registration office for freehold land. Two different kinds of transactions cannot be equated in such a fashion.

16. Obviously, the Respondents by some mischief or wrong interpretation have expanded the meaning of the word "land value" and linked it with the freehold land as per the value fixed by the registration office of the local area.

17. In absence of rationale of keeping two kinds of price for allotment and transfer, the Respondents have violated Article 14 of the Constitution of India.

18. The Petitioner has made out a case that the demand made by the Respondents in terms of Annexure-7 is irrational and the same is quashed. Even the order of cancellation for non-deposit, contained in Annexure-9, dated 31.1.2008 also stands quashed.

19. The writ application is allowed. Respondents are directed that they shall only demand 15 per cent of the land value which has been fixed by BIADA for the lands situated in Sitamarhi Industrial Area as the price for transfer and shall not link it with the value of the land fixed by the registration office.

20. The writ is allowed and the matter is remanded to the Respondents to take the follow up action in view of the order as above.