
(2015) 01 JH CK 0009
In the Jharkhand High Court
Case No : W.P. (C) No. 4746 of 2012

Shree Mahabir Refractories Works	Vs	APPELLANT
Ranchi Industrial Area Development Authority and Others		RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : (2015) 4 AJR 823

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Rajiv Ranjan and A.K. Yadav, for the Appellant; Ramit Satender, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Seeking a direction for regularisation of land initially allotted to M/s. Jaishree Engineering Works comprised in plot Nos. 166 and 167 at Tupudana Industrial Area, in terms of recommendation/decision taken in the meeting of PCC/LAC dated 03.03.2012, the present writ petition has been filed. A further prayer seeking declaration that the petitioner is entitled for substitution of its name in place of M/s. Jaishree Engineering Works for remaining period of leasehold right of M/s. Jaishree Engineering Works, without making payment of cost for grant of fresh lease, has also been made in the writ petition. The facts narrated in the writ petition are summarized thus:

The petitioner is a partnership firm which purchased the land comprised in plot Nos. 166 and 167, total area measuring 50500 sq. ft. at Tupudana Industrial Area for a total sale consideration of Rs. 6.25 lacs. Initially, the land in question was allotted to one M/s. Jaishree Engineering Works by Ranchi Industrial Area Development Authority. M/s. Jaishree Engineering Works secured loan of Rs. 2.64 lacs on 22.06.1979 from Bihar State Financial Corporation for setting up an industry for manufacturing of fabrication work. The loan agreement was signed on 25.10.1979 and about 80 decimal of land in plot Nos. 166(A) and 167(A), out

of total allotted land to M/s. Jaishree Engineering Works was mortgaged by executing mortgage deed in favour of the Bihar State Financial Corporation. After the said M/s. Jaishree Engineering Works failed to implement the scheme and committed defaults in payment of loan, the Bihar State Financial Corporation initiated action under Section 29 of the State Financial Corporations Act, 1951 however, M/s. Jaishree Engineering Works failed to discharge loan liability and therefore, the unit of the said M/s. Jaishree Engineering Works was put on sale. The Board of Director of BSFC in its meeting dated 25.08.2006 approved the sale of the mortgaged assets of the M/s. Jaishree Engineering Works in favour of the petitioner-company and accordingly, the petitioner was communicated sale order dated 28.03.2007. In terms of the sale, out of total consideration amount of Rs. 6.25 lacs, the petitioner was required to make payment of Rs. 1.60 lacs and remaining amount of Rs. 4.65 lacs was treated as term loan to be repaid in two years in eight quarterly installment of Rs. 58,125/-, besides the payment of interest on due dates. The sale order was issued in favour of the petitioner on "as is where is basis" with a further stipulation that statutory liability would be the personal liability of the original promoters except, the liabilities of municipal dues, land revenue, Ranchi Industrial Area Development Authority's dues and water cess etc. which were to be paid by the purchaser. The sale order dated 28.03.2007 was accepted by the petitioner vide letter dated 27.04.2007 and thereafter, agreement for sale-cum-payment was executed on 26.06.2007. The mortgage assets along with land and building, plant and machinery and other assets of M/s. Jaishree Engineering Works were handed over to the petitioner on 25.07.2007. The petitioner made payment of the entire consideration amount with interest to the Bihar State Financial Corporation and accordingly, BSFC issued "No Dues Certificate" vide memo dated 10.05.2010. Thereafter, sale deed for assigning the remaining period of leasehold right was executed on 07.04.2011 which was duly registered in the office of Sub-Registrar, Ranchi in favour of the petitioner-company. Thereafter, the petitioner approached the respondent-RIADA for substituting the name of the petitioner-company in place of the erstwhile promoter namely, M/s. Jaishree Engineering Works. The petitioner was informed vide letter dated 14.10.2011, the total outstanding dues against the erstwhile promoter to the tune of Rs. 1,97,126.88 which was also paid by the petitioner vide cheque dated 13.02.2012. The respondent-RIADA in its meeting dated 03.03.2012 recommended regularisation of the land allotted to the M/s. Jaishree Engineering Works in plot Nos. 166 and 167 in favour of the petitioner-company, as per the prevailing terms and conditions of the Authority. The petitioner vide letter dated 18.05.2012 made representation for regularisation of the land in question in its favour by substituting its name. The petitioner again made representation to the RIADA on 23.05.2012 for issuing "No Dues Certificate" and the respondent-RIADA issued "No Dues Certificate" vide memo dated 22.06.2012. However, the name of the petitioner-company was not substituted with respect to the remaining leasehold right of M/s. Jaishree Engineering Works. Constrained, the petitioner has approached this Court.

2. A counter-affidavit has been filed by the respondent-RIADA taking the objection of non-joinder of necessary party i.e. Bihar State Financial Corporation. It is stated that the land comprised in plot No. 166A and 167A, Khata Nos. 33, 89, 15, 69, 33, 70 and 98 admeasuring 1.16 acres allotted to M/s. Jaishree Engineering Works by RIADA exclusively belongs to the RIADA and in case of mortgage, the Authority has the first charge on the properties under mortgage "pari-passu" with the charge of the financial institution. Clause 6 of the lease deed dated 25.09.1979 which was executed on 27.09.1979 contains stipulation of first charge over the mortgage property in favour of Authority. The respondent-RIADA is not a confirming party either to the mortgage deed or the sale agreement and copies of which were never supplied to respondent RIADA. The various documents executed between the petitioner-company and BSFC indicate that the consideration amount paid by the petitioner-company does not include dues of RIADA though, the various clauses therein make it obligatory for the purchaser-petitioner to pay the Authority's dues. It is stated that the Authority was not the consenting party to several documents executed between the petitioner-company and BSFC in connection with the auction sale/purchaser transaction. Since the land belongs to the respondent-RIADA, the Bihar State Financial Corporation could not have sold the same. After an inspection was carried out, during which it was found that the unit of M/s. Jaishree Engineering Works was closed and non functional, a show cause notice was issued on 14.05.1991 for cancellation of allotment to M/s. Jaishree Engineering Works. It is further stated that entire auction sale proceeded illegally and in violation of the settled principles of law. As far back as on 15.03.2010, the petitioner was provided details of outstanding dues of M/s. Jaishree Engineering Works however, the petitioner-company failed to deposit the dues and in an unauthorised manner started using the premises in question, without permission of the RIADA and accordingly, a show cause notice dated 15.09.2011 was issued to one Shashi Shekhar for using the premises without permission of the RIADA. Thereafter, the petitioner-company deposited the dues of M/s. Jaishree Engineering Works. In the meeting of PCC/LAC dated 03.03.2012, the Committee approved regularisation as per the prevailing terms and conditions of the Authority. Vide office order No. 94/94 dated 24.08.1994, it was decided that in case of mortgage and subsequent purchase, the prevailing rate/new rate has to be charged. Initially, RIADA allotted land for 99 years however, after creation of the new State of Jharkhand, lease for 30 years only is being executed. In terms of the direction of the State Government, the rates have been revised and the conditions have also changed. The petitioner is undertaking a new project and the name of the unit has changed and its constitution has also changed and thus, the petitioner cannot claim substitution of its name without paying market rate etc.

3. A rejoinder affidavit has been filed by the petitioner denying the allegation of suppression of material facts. The copy of lease deed and the mortgage deed have been filed by the petitioner by filing supplementary affidavit. It is stated

that since the original allottee was granted lease on a long term basis for a period of 99 years, the Bihar State Financial Corporation has sold the mortgaged right for remaining period of lease. In terms of lease deed dated 27.09.1979, erstwhile promoter namely, M/s. Jaishree Engineering Works which was registered as a small scale industry was not permitted to take separate permission for mortgaging its assets to the financial institution for raising loan. After the petitioner-company purchased the assets of M/s. Jaishree Engineering Works in auction sale, it has stepped into the shoes of the original promoter and thus, entitled for substitution of its name in place of original promoter.

4. Heard learned counsel for the parties.

5. Referring to various documents executed between the petitioner and the Bihar State Financial Corporation, the learned counsel for the petitioner submits that once an absolute sale deed is executed by the Bihar State Financial Corporation in favour of the business partner of M/s. Shree Mahabir Refractories Works namely, Shashi Shekhar, the petitioner-company became entitled for assignment of leasehold rights for the remaining period of unexpired lease granted in favour of M/s. Jaishree Engineering Works. It is submitted that after the petitioner-company deposited the entire sale consideration to the Bihar State Financial Corporation and the dues of Ranchi Industrial Area Development Authority (RIADA) and RIADA issued no objection certificate, the petitioner-company is entitled for substitution of its name in place of M/s. Jaishree Engineering Works, that is, the original promoter/lessee. The learned counsel relies on a decision in *Vikramshila Transformers (Pvt.) Ltd. Vs. The State of Bihar and Others*, to fortify the claim of the petitioner. The learned counsel also refers to order passed by this Court in Company Petition No. 06 of 2003 and submits that a similar direction may be issued to the respondent-RIADA for substituting the name of the petitioner-company in place of M/s. Jaishree Engineering Works.

6. As against the above, Mr. Ramit Satender, the learned counsel appearing for the respondent-RIADA raises serious objection to the prayer made in the writ petition. Reiterating the stand taken in the counter-affidavit, it is submitted that the land in question remains the property of RIADA and thus, the Bihar State Financial Corporation has no authority to auction the property of RIADA. RIADA is not a confirming party to the documents executed between the petitioner-company and Bihar State Financial Corporation and therefore, those transactions are not binding on RIADA. It is submitted that there is a specific provision for charging market rate in cases, where the name of the unit has changed or a fresh deed has to be executed. Trying to distinguish the judgment in "*M/s. Vikramshila Transformers (Pvt.) Ltd. v. The State of Bihar & Ors.*" (supra), the learned counsel for the respondent-RIADA submits that after the new industrial policy 2001 came into existence, lease deed for only 30 years is being executed. Petitioner in the garb of substitution of its name in place of M/s. Jaishree Engineering Works is trying to get the leasehold rights for the remaining period of 99 years, which cannot be granted.

7. In reply, the learned counsel for the petitioner submits that a subsequent change in policy would not extinguish the right of a transferee. What has been transferred to the petitioner-company by the Bihar State Financial Corporation is the remaining leasehold rights of M/s. Jaishree Engineering Works and thus, the RIADA cannot refuse the claim of the petitioner-company for substitution of its name in place of M/s. Jaishree Engineering Works. In fact, in the garb of fresh demand, the respondent-RIADA is denying the right of the petitioner-company.

8. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

9. Before referring to the contention raised on behalf of the parties, various clauses in the sale agreement, mortgage deed and the lease deed may usefully be noticed. The lease deed dated 27.09.1979 executed by RIADA in favour of M/s. Jaishree Engineering Works indicates that the land in question was allotted to M/s. Jaishree Engineering Works for establishing a factory for manufacture of steel fabrication, for 99 years. It provides that any arrear including the interest may be recovered from the lessee as an arrear of land revenue under the provisions of the Bihar and Orissa Public Demands Recovery Act. Besides a provision that in case of loan raised by the lessee, the security taken by the financial institution must be adequate to cover the total dues of RIADA and the loan of the financing institution and in that case, the RIADA would have first charge "pari passu" with the charge of the financing institution, there is a specific clause which provides that no change in the lease, proprietorship or partnership, if it is a private limited or unlimited company or registered or unregistered firm shall be recognised without the previous written consent of the lessor. It further appears that only after the written consent of lessor is taken, if the lessee assigned its leasehold interest in the land to another person, the transferee shall duly get its name registered with the lessor within four calendar months after obtaining possession and the transferee shall also be bound by the terms and conditions of the lease agreement. It further provides that the lessee is required to take prior approval of lessor before selling or assigning the rights to other party. The lease agreement further provides that the lessee or another person lawfully claiming under it shall have the right to hold and enjoy the land for the term of the lease only on payment of rent and other charges and on observing various covenants and conditions of the lease agreement. Clause (ii) and (iii) of the lease agreement is extracted below:

(ii) No change in the lease, proprietorship or partnership if it is private limited or unlimited company or a registered or unregistered firm shall be recognised without the previous written consent of the lessor or his nominee.

(iii) If the lessee assigns its leasehold interest with the written consent of the lessor in the land described in Part-I of the Schedule here under written the assignee shall duly get his/its or their name or names registered with the lessor or his nominee within four calendar months after obtaining possession of the holding and will possess and use the land and be bound by all terms, covenants

and condition herein contained.

10. In the present case, admittedly no prior written permission for sale of the land and/or assignment of leasehold right has been taken from the respondent-RIADA. The original lessee namely, M/s. Jaishree Engineering Works defaulted in making payment and it committed breach of condition of lease agreement. The petitioner-company is not a person claiming under M/s. Jaishree Engineering Works and thus, it cannot claim leasehold right of M/s. Jaishree Engineering Works conferred through lease agreement dated 27.09.1979. As noticed above, a fresh lease-deed has to be executed which can be executed in terms of the prevailing policy.

11. The auction sale order in favour of the managing partner of the petitioner-company indicates that the entire asset of M/s. Jaishree Engineering Works was transferred on "as is where is basis" to the petitioner-company and it further provides that the financial corporation will not be liable for any deficiency in the mortgaged/hypothicated assets. The sale order clearly contemplates a situation in which the concerned Industrial Area Development Authority may consider executing a fresh lease deed in favour of the purchaser. The deed of transfer dated 07.04.2011 between the managing partner of the petitioner-company and Bihar State Financial Corporation clearly notices that the sale consideration of Rs. 6.25 lacs was excluding the dues of RIADA. The sale was permitted on "as is where is 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. The specific covenant in the lease deed makes it obligatory on the part of the financial institution to ensure that the security given by the borrower adequately covers the loan of the financial institution as well as the dues of RIADA and thus, it is apparent that before proceeding for sale, the Bihar State Financial Corporation was under obligation to inform RIADA and to ascertain the outstanding liability of the original lessee. Merely because a separate permission was not required to be taken for mortgaging the property to the financial institution, it would not confer an absolute right on the financial institution to sell the mortgaged properties without ascertaining the outstanding dues of RIADA and without having express written prior approval of RIADA. The deed of transfer also provides that if a fresh lease deed is executed by the concerned Area Development Authority in favour of the purchaser then, the purchaser is required to submit original copy of new lease deed. The payment of outstanding dues of M/s. Jaishree Engineering Works by the petitioner-company would not confer an absolute right to get its name substituted. The recommendation of Land Allotment Committee (LAC) indicates that a decision was taken for regularisation of land however, subject to prevailing terms and conditions of Authority. In case of sick and closed industries, if new project is started in the new name with structural change, the proceeding of 67th Board Meeting dated 24.06.2003 makes it clear that the Board has taken a decision to cancel the earlier allotment and to execute fresh lease deed at the prevailing rate. The relevant portion of "Extract of decision of PCC/LAC meetings held on 03.03.2012" is extracted below:

LAC recommendation:

It is a case of regularization of land allotted to M/s. Jai Shree Engineering Works, Plot Nos. 166, 167 total area measuring 50,500 sq. ft. at Tupudana Industrial Area in favour of the applicant unit. The applicant unit has purchased the said unit auction sale from BSFC. The committee after deliberation approved the regularization of land as per prevailing terms and conditions of Authority.

12. The relevant portion of the decision taken in the 67th Board Meeting are extracted below:

"After cancelling the earlier allotment, new allotment should be approved to new purchaser at the prevailing rate for the lease period. The amount deposited against the cost of this land by earlier firm shall be adjusted."

13. The respondent-RIADA has also relied on office order dated 24.08.1994, which provides that in case of new industrial undertaking fresh lease would be executed on payment of prevailing market rate. In para 2 of the office order No. 94 of 1994 also, there is a condition for charging the prevailing rate. The relevant portion of order No. 94 of 1994 is extracted below:

2. "The changes as mentioned under (kh), in which original allottee withdraws but the name and product of unit remain same, after cancelling earlier allotment a fresh allotment order should be issued in the name of the new industry at the prevailing rate and the amount earlier deposited for cost of the land may be adjusted. But this allotment shall be applicable for the remaining period of earlier allotment of lease."

14. The respondent-RIADA has pleaded that after the new State of Jharkhand was created, the Government of Jharkhand formulated a new industrial policy for which lease deed for 30 years only is being executed. The learned counsel for the respondent-RIADA has referred to various clauses in Jharkhand Industrial Policy. The learned counsel for the respondent-RIADA has distinguished the order passed in "M/s. Vikramshila Transformers (Pvt.) Ltd. v. The State of Bihar & Ors." by demonstrating that the order in the said case was passed in company petition which is not the case here.

15. I find that the decision in "M/s. Vikramshila Transformers (Pvt.) Ltd. v. The State of Bihar & Ors." (supra) is clearly distinguishable in the facts of the present case. As noticed above, the decision taken by the respondent Board of RIADA for regularizing the land in the name of the present petitioner is subject to certain conditions. As noticed above, the land belongs to respondent-RIADA and it was not a confirming party to various documents executed between the petitioner, and the Bihar State Financial Corporation. In spite of an objection taken by the respondent-RIADA, the petitioner has chosen not to implead Bihar State Financial Corporation in the present proceeding. In view of the specific covenant in the lease deed dated 27.09.1979, without taking prior approval of respondent-RIADA, the land should not have been sold to the petitioner-company. The

auction sale in favour of the petitioner-company thus, is not binding on respondent-RIADA. In "M/s. Vikramshila Transformers (Pvt.) Ltd." case, the effect of order No. 94/1994 was neither argued nor considered by the Division Bench. The effect of the new Industrial Policy of the State of Jharkhand which came into existence in the year, 2001 also could not have been examined when the case of "M/s. Vikramshila Transformers (Pvt.) Ltd." was decided by the Division Bench. It appears that the decision taken by the Patna Industrial Area Development Authority was impugned in the said case whereas, in the present case, neither the decision dated 03.03.2012 of PCC/LAC nor the decision taken in the 67th Board Meeting besides, provision under order No. 94/1994 have been challenged by the petitioner. In view of above discussion, I find no merit and accordingly, this writ petition stands dismissed.