

(2004) 05 JH CK 0021

In the Jharkhand High Court

Case No : C.W.J.C. No. 2143 of 1991 (R)

Tata Iron and Steel Co. Ltd. and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 19-05-2004

Acts Referred:

Bihar and Orissa Public Demand Recovery Act, 1914 — Section 5, 7
Bihar Land Reforms Act, 1950 — Section 5, 6, 7, 7A, 7B, 7C, 7(D), 7(E)
Chotanagpur Tenancy Act, 1908 — Section 3(1), 4, 6, 7, 8
Constitution of India, 1950 — Article 213, 213(2), 213(2)(a)

Citation : (2004) 4 JCR 210

Hon'ble Judges : P.K. Balasubramanyan, C.J.;Tapen Sen, J

Bench : Division Bench

Advocate : R.K. Jain and G.M. Mishra, for the Appellant; R.N. Sahay, Jyoti Prasad Sinha and Rashmi Kumari, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—In this writ petition the petitioner company, prays inter alia for quashing the demand made by the Deputy Commissioner, Singhbhum (East) at Jamshedpur under the provision of the Bihar Land (Surcharge on Rent) Ordinance 1977 as contained in Annexure-5 to the writ petition being in the nature of surcharge on rent together with 13% interest per annum for the period 1978-79 to 1988-89 (sic) amounting to a sum of Rs. 1,62,88,775.89 Paise (Rupees One Crore Sixty Two Lakhs Eighty Eight Thousand Seven Hundred Seventy Five and Paise Eighty Nine Only) in respect of the lease hold premises of the company which were demised unto it by Deed of Lease dated 1.8.1985 (forming part of the supplementary affidavit filed by the petitioner on 9.4.2004). The petitioners further pray for quashing the notice dated 18.9.1991 and the requisition for certificate, both having been issued under the provisions of Sections 5 and 7 of the Bihar and Orissa Public Demands Recovery Act, and as contained in Annexure-7 appended to the writ petition as also for quashing the entire consequential certificate proceeding being certificate case No. 6 (Rent

Cases) 1991-92 pending before the Sub-Divisional Certificate Officer, Dalbhum at Jamshedpur (respondent No. 3).

2. According to the petitioner, the aforementioned action on the part of the respondent in making demand of surcharge on rent is not at all applicable to the petitioner because the petitioner company is not a tenant within the meaning of the Chotanagpur Tenancy Act, 1908 and, in any event, the provisions of the Bihar Land (Surcharge on Rent) Ordinance cannot be made applicable de hors the provisions of Article 213(2)(a) of the Constitution of India in as much as the said ordinance having not been placed before the Legislative Assembly, ceased to operate within the time stipulated under the said constitutional provision. Consequently, the demand amounts to fraud on the Constitution and after expiry of the Ordinance, the respondents have no authority to enforce a lapsed liability.

3. The case of the petitioner No. 1 is, that by an agreement dated 4.8.1984 read with the Deed of Lease dated 1.8.1985 (brought on record by the supplementary affidavit filed on 9.4.2004), the State of Bihar (now Jharkhand) demised unto the petitioner No. 1 lands for different purposes specifically mentioned in Schedules I to V of the said registered Deed of Lease executed on 1.8.1985 between the Governor of the State of Bihar and the Tata Iron and Steel Company. These lands were, in addition to those lands which had already been deemed to have been settled u/s 7 of the Bihar Land Reforms Act, 1950 with effect from 1.1.1956 under Sections 7(D) and (E) of the Bihar Land Reforms Act, 1950 upon terms and conditions specifically mentioned in the registered agreement and the Lease dated 4.8.1984 and 1.8.1985 respectively.

4. The lands mentioned in Schedules I to V of the registered Deed of Lease dated 1.8.1985 as stated in the writ petition are as follows :

"Schedule I.--Lands used for storage of a materials and marshalling yards, for dumping of slag and other plant, wastes etc. (Clause II of the Agreement dated 4th August 1984);

"Schedule II.--Lands utilized for providing residential facilities to the employees of the company (Clause III of the Agreement dated 4th August 1984);

Schedule III.--Lands utilized for providing civic amenities such as health, welfare, hospitals dispensaries and clinics etc. (Clause IV of the Agreement dated 4th August 1984);

Schedule IV.--Lands leased to different parties such as other industrial undertakings individuals etc. (Clause (V), (IX) and (X) of the Agreement dated 4th August 1984);

Schedule V.--Residuary vacant lands to be used by the company only for factory production processes, providing civic amenities to the town and housing facilities to the employees of the company (Clause VII of the Agreement dated 4th August 1984);

5. Thus what petitioner No. 1 contends is that none of the lands are used for any agricultural purposes. On the contrary, they are all used in connection with the activities of the company which are industrial in nature and which includes the providing of facilities to their employees which are integral for the survival of the company.

6. According to them, the levy of surcharge on rent is in respect of tenants because under the ordinance, the surcharge on rent is to be levied in respect of land held by such tenant. The expression "tenant", under the Ordinance is to apply on any area in which the Chotanagpur Tenancy Act, 1908 applies and the word "rent" is to have, the same meaning as assigned to it in that Act. The levy of surcharge as per Clause 3 of the Ordinance provisions inter alia that every tenant shall be liable to pay surcharge to the Government on the amount of rent payable to him in respect of lands held by him at the following rates :--

i. Where the area of the holding is 1.01 Hectares to 4 Hectares of irrigated land at 2.01 hectares to 8 Hectares of un-irrigated land, at the rate of 50% of annual rent payable in the previous agricultural year;

ii. Where the area of the holding exceeds 4 Hectares of irrigated land or 8 Hectares of un-irrigated land, at the rate of 100% of the annual rent payable in the previous agricultural year.

7. It is thus evident from the language used in the Ordinance itself that primacy has been given to words like "tenant" "irrigated land", "un-irrigated land" and "agricultural year". These are words which are also used in the Chotanagpur Tenancy Act, 1908 which is an Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant and Settlement of Rents in Chotanagpur. The words "agricultural year" has been defined u/s 3(1) of the said Chotanagpur Tenancy Act, 1908 and it reads thus :

"Agricultural year" means the year prevailing in a local area for agricultural purposes and such year shall be deemed to commence and terminate on such dates, respectively, as the State Government may by Notification direct."

8. Now in the Chotanagpur Tenancy Act, 1908, Section 4, describes the following classes of tenants :

- a. Tenure holders including under tenure holders;
- b. Occupancy raiyats i.e. raiyats having a right of occupancy in the land held by them;
- c. Non occupancy raiyats i.e. raiyats not having such a right of occupancy;
- d. Raiyats having khunt katti rights; and
- e. Under raiyats i.e. tenants holding whether immediately or mediately under raiyats and mundari khunt kattidars.

9. The word "tenure holder" u/s 6 of the Chotanagpur Tenancy Act, means

primarily a person who has acquired from the proprietor or from another tenure holder, right to hold land for purposes of cultivating the land or bringing it under cultivation by establishing tenant on it. Similarly, the word "raiyat" u/s 6 means primarily a person who has acquired a right to hold and for purposes of cultivating it himself or by members of his family or by hired servants or with the aid of partners and include the successors-in-interest of person who has acquired such a right but does not include a "mundari khunt kattidar."

10. u/s 7 a raiyat having khunt katti rights means a raiyats in occupation of, or having subsisting title to land reclaimed from jangle by the original founders of the village or their decendents, u/s 8, a mundari khunt Kattidar. means a mundari who has acquired a right to hold jungle land for purposes of bringing suitable portions thereof under cultivating by himself or by male members of his family. Thus, it is evident that the Chotanagpur Tenancy Act, 1908, Primarily deals with the rights of tenants/tenure holders/raiyats/ mundari khunt kattidars vis-a-vis their agricultural/cultivable land. The provisions of the Ordinance speaks of the "expression and" as having the same meaning in areas where the Bihar Tenancy Act, applies and the same meaning in areas where the Chotanagpur Tenancy Act applies. It also provides that this word shall have the same meaning in its application to an area where the Santhal Pargana Tenancy Act applies. Similar is the provision in relation to the definition of the word "tenant" used in the said Ordinance.

11. The argument of the learned counsel for the petitioner to the effect that since all definitions under CNT Act have been made applicable in the Ordinance, therefore, by no stretch of imagination can it be made applicable over areas which have not nothing to do with any of the provisions of the Act. There appears to be justification in the aforementioned arguments of the learned counsel for the petitioner and this Court is inclined to hold that the provisions of the Ordinance cannot be made applicable upon the petitioner in respect of lands which are covered under Schedule I to V of the registered Deed of Lease dated 1.8.1985 and which go to show that these lands are used exclusively in relation to carrying on activities directly connected to the purpose for which the petitioner company exists i.e. the production of Iron and Steel. In order to carry on with this activity, it requires large colonies for purposes of housing its employees and when such colonies are developed, they have to be provided with such civic amenities which are necessary for human habitation. The lands under Schedule I to V do not show any agricultural activity. That apart, it would perhaps also be necessary to refer to Clause II of the registered Deed of Lease dated 1.8.1985 brought on record by the petitioner in the supplementary affidavit filed on 9.4.2004 and which inter alia states that by Deed of Agreement, dated 4th August, 1984, executed between the Governor of the State of Bihar (Lessor) of the one part and TISCO (Lessee) of the other part and registered on 9.11.1984 in Book No. 1, Volume No. 48, Pages 412 to 426 being No. 6417 of the year 1984 at Jamshedpur Sub-Registration Office, it was agreed that the lessor shall grant unto the lessee, leases in respect of vacant land as well as those with buildings

and structures standing thereon and execute a Deed of Lease in respect of lands which are deemed to be leased to the lessee by virtue of Section 7(D) and 7(E) of the Bihar Land Reforms Act, 1950. It would not be out of place to mention that the aforesaid Deed of Lease was executed pursuant to the said agreement referred to above.

12. Sections 7(D) and Section 7(E) referred to in the Deed of Lease would therefore perhaps be worth noticing for purposes of coming to a conclusion that by no stretch of imagination, the Bihar Land (Surcharge on Rent) Ordinance, can be made applicable to the petitioner company. Sections 7(D) and 7(E) reads as follows :

"7-D. Land and building etc. acquired for an industrial undertaking and utilized for providing civic amenities, namely, health, housing, welfare, power house, and educational facilities to be deemed settled with it by the State.--1. If any land has been acquired for an industrial undertaking under the Land Acquisition Act, 1894 (Act 1 of 1894) so much of such land and buildings and structures thereon in possession of the industrial undertaking as are being utilized for providing civil amenities, namely health, housing, welfare, power house and education facilities to its employees and so much of the remaining portion of such land and buildings and structures thereon as are found essential on enquiry by the State Government for production processes of the industrial undertaking shall be deemed to have been leased out by the State Government with the owner of the industrial undertaking for such period as determined by the State Government subject to payment of such fair and equitable rent as determined by the State Government.

(2) The provisions of Sub-section (1) shall have effect notwithstanding anything contained in Section 4(a) and shall be without prejudice to the exemptions granted or concession given to intermediaries under Sections 5, 6, 7, 7-A, 7-B and 7-C.

(3) If the claim of the industrial undertaking as to possession over the lands, buildings and structure is disputed by any person within three months of the commencement of the Bihar Land Reforms (Amendment) Act, 1972, the Collector shall make such inquiries in the matter as he deems fit and pass orders as may appear to him as just and fair.

(4) The provisions of Sub-section (1) shall be deemed to have been inserted in this Act from the commencement thereof.

"7-E. Land and building etc. acquired for an industrial undertaking and leased out by it to another industrial undertaking for its expansion by establishing new industry or to an individual, to be deemed as leased with it by State Government on same terms--(1) If any portion out of the land acquired for an industrial undertaking under the Land Acquisition Act, 1894 (Act 1 of 1894) has been leased out by the industrial undertaking before the 22nd June, 1970 to another industrial undertaking for establishment of a new industry or its expansion or to

any individual or society or association for residential, commercial or for such other purpose, the whole of such land, buildings or structures covered by such lease shall with effect from the commencement of this Act, be deemed to be leased to the industrial undertaking for such period as may be determined by the State Government and the other industrial undertaking, individual, society or association to whom lease has been granted by the industrial undertaking shall be deemed to be the sub-lessee of the original industrial undertaking and the provisions of Clauses (g) and (h) of Section 4 shall not be effective with respect to such land or buildings or structures thereon.

(2) The terms and conditions of the lease granted under Sub-section (1), shall be determined by the State Government :

Provided that if the period of sublease expires before the expiry of the lease granted under Sub-section (1) then in that condition at the time of renewal of the sub-lease, the State Government shall have power to revise the amount of rent payable to State Government by the lessee".

13. Taking into consideration the aforementioned provisions of the Ordinance read with the provisions of the Chotanagpur Tenancy Act, 1908 as well as the provisions of Sections 7(D) and 7(E) of the Bihar Land Reforms Act plus considering the recitals of both the registered Agreement as well as the Deed of Lease, this Court has no hesitation in upholding the contention of the learned counsel for the petitioners to the effect that the petitioner company not being tenants nor the lands being used for agricultural purposes, the provisions of the Ordinance cannot be applied upon them nor can they be made liable to pay surcharge on rent under the provisions of the said Ordinance. To that extent therefore, the contention of the respondents in their counter affidavit that the petitioners are Tenants under the Chotanagpur Tenancy Act or that they are occupancy/non occupancy raiyats under that Act is held to be wholly misconceived and is accordingly, rejected.

14. There is yet another interesting aspect which cannot be lost sight of. The learned counsel for the petitioners submitted that the Legislative Assembly of Bihar was in session from 19.11.1977 till 21.12.1977 and in view of the provisions of Article 213(2)(a) of the Constitution of India, the Ordinance had lapsed long before 31.3.1978, i.e. the date till it intended to be effective.

15. The Governor of Bihar, in exercise of his powers under Article 213 of the Constitution of India issued Ordinance No. 198 of 1975 on October 30, 1975 and later issued another Ordinance No. 31 of 1976 on January 16, 1976. By the said Ordinance, the respondents sought to levy surcharge on rent payable by the tenants as defined in the said Ordinance. The provisions of the said Ordinance were identical to the provisions of Ordinance No. 222 of 1977. The dates of issue of the said. Ordinances and the period for which they were effective are as follows :--

----- Ordinance No.

Date	of	Issue	Period
-----			198/75
30.10.1975	1.4.1975 to 31.3.1976	31/76	10.1.1976 1.4.1975 to 31.3.1976
109/76	21.4.1976	1.4.1976	to 31.3.1977

16. Ordinance No. 31 of 1976 issued on January 10, 1976 repeals Ordinance No. 198 of 1975 issued on October 30, 1975. However, Ordinance No. 198 of 1975 and Ordinance No. 31 of 1976 both provide for levy of surcharge on rent for the same period viz. April 1, 1975 to March 31, 1976.

17. The learned counsel for the petitioners have further stated and submitted that although in the years 1975, 1976 and 1977 when the said Ordinance were issued, the Legislative Assembly of the State of Bihar was in session yet they were never placed before the Assembly in terms of the provisions of Article 213(2)(a) of the Constitution of India. The learned counsel for the respondents could not dispute this argument and no materials were either placed or brought before this Court so as to justify taking of a contrary view nor could the respondents make any submissions contrary to what has been stated in the counter affidavit that could compel this Court to doubt or reject these submissions of the petitioners. From the pleadings, it appears that the dates during which the Legislative Assembly of the State of Bihar was in session are as follows--

1975 12.2.1975 to 20.3.1974 (sic-1975?) 9.5.1975 to 10.5.1975 28.7.1975 to 29.7.1985 (sic-1975?) 9.12.1975 to 22.12.1975 1976 12.3.1976 to 31.3.1976 22.6.1976 to 29.7.1976 30.11.1976 to 22.12.1976 1977 24.3.1977 to 26.3.1977 26.6.1977 to 23.7.1977 15.11.1977 to 28.12.1977

18. From a perusal of the details given above, it is evident that the first Ordinance being Ordinance No. 198/1975 was issued on 30.10.1975 making it effective for the period 1.4.1975 to 31.3.1976. In the year 1975, the Assembly was in session during various date but that Ordinance was never placed before the Assembly as a result whereof it lapsed on 30.1.1976 in terms of the provisions of Article 213(2) of the Constitution of India. Similarly, the other Ordinance namely Ordinance No. 13/1976 also lapsed on 5.5.1976 and although the Assembly was in session, it was not placed. Similar was the fate with Ordinance No. 109 of 1976 which lapsed on 24.8.1976 and finally Ordinance No. 222 of 1977 lapsed on 10.1.1978 without being placed before the Assembly. The details in relation to these dates have been given in a tabulated form in the supplementary affidavit filed by the petitioners. However, statements had also been made between pages 17 to 20 of the writ petition.

19. Surprising although the petitioners have specifically given these details in respect of the Ordinances above, yet all that the respondents have to say in their counter-affidavit, is as follows--

"....It is stated that in the light of Ordinance and CNT Act, the respondent is

entitled to demand because the Ordinance remained effective from 1.3.1975 to 31.3.1978. The Ordinance was not in effect after 31.3.1978. So the demand was also not raised after 1.4.1978 Point No. VII : In the light of surcharge on rent, Ordinance and lease agreement cess under the Cess Act becomes automatically payable on surcharge on rent.."

20. The aforesaid statement in the counter affidavit cannot be said to be an answer to what the learned counsel for the petitioners has submitted in relation to the effect of non-placement of an Ordinance before the Assembly in terms with the provisions of Article 213(2) of the Constitution of India.

21. Surprisingly no demand was raised up to June 1991, and it was only on 14th June, 1991 i.e. after a period of almost 13 years from the date when Ordinance No. 222 of 1977 had lapsed on 10.1.1978, that the impugned demand was raised seeking to levy and recover surcharge on rent plus cess under the said lapsed Ordinance for financial years 1975-76, 1976-77 and 1977-78. This demand therefore, must be held to be totally unconstitutional/illegal and arbitrary in view of not only the provisions of Article 213 of the Constitution of India but also on account of the fact that the respondents have attempted to raise a demand under the authority of an Ordinance, which, for all practical purposes, must, be deemed to have died a Constitutional death on 10.1.1978 in terms of the provisions of Article 213(2) of the Constitution of India. That being the position, this Court does not have any hesitation in holding that the action of the respondents is ultra vires the provisions of Article 213 of the Constitution of India and is also wholly without jurisdiction, taking into consideration that the respondents had no authority to proceed under the provisions of an Ordinance which apparently had died a legal death some 13 years ago.

For the foregoing reasons we are satisfied that the impugned action of the concerned respondent in issuing the demand dated 14.6.1991 and the certificate case initiated on the basis thereof must be held to be illegal and arbitrary. The writ petition therefore must succeed and it is accordingly allowed to do so. The impugned demand dated 14.6.1991 and the consequential certificate case No. 6 (Rent Cess)/1991-92 including the notices issued therein are hereby set aside and quashed. There shall however be no order as to costs.