

(2002) 12 JH CK 0001

Jharkhand High Court

Case No: LPA No. 148 of 2000 (R)

Tata Iron and Steel Company
Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: Dec. 17, 2002

Acts Referred:

- Bihar and Orissa Public Demands Recovery Act, 1914 - Article 7, 9
- Bihar Land Reforms Act, 1950 - Section 4, 7D

Citation: (2003) 1 JCR 595

Hon'ble Judges: S.J. Mukhopadhaya, J; Lakshman Uraon, J

Bench: Division Bench

Advocate: R.K. Jain, M.M. Banerjee, B.P. Verma and G.M. Mishra, for the Appellant; Anil Kumar Sinha, A.G., for the Respondent

Final Decision: Dismissed

Judgement

S.J. Mukhopadhaya, J.

The petitioner-Tata Iron & Steel Company Limited (Company for short) being not satisfied with the judgment and order dated 15th April, 2000 passed by the learned Single Judge in C.W.J.C. No. 891 of 2000 (R), preferred this letters patent appeal.

In a certificate case, the certificate officer rejected the objection preferred by petitioner u/s 9 of the Bihar & Orissa Public Demand Recovery Act, 1914 (P.D.R Act for short) regarding demand for realisation of Rs. 12,22,78,729.89 paise (Twelve crore "twentytwo lacs seventyeight thousand seven hundred twentynine and eightynine paise) which was affirmed by the learned single Judge.

2. The brief history of this case is that the company was established in the township of Jamshedpur and its estate vested in the State of Bihar in the year 1956, under the Bihar Land Reforms Act, 1950 (Bihar Act 30 of 1950). Disputes and differences arose between the then Government of Bihar and the company regarding the operation

and effect of the Bihar Land Reforms (Amendment) Act, 1972. The company filed a writ application in the Supreme Court (original jurisdiction) bearing No. 201 of 1973 challenging the validity of the Act, wherein stay orders with certain conditions were granted by the Supreme Court staying implementation of the Act against the Company. Subsequently, in view of enactment of the Bihar Land Reforms (Amendment) Act, 1982, the company withdrew the writ petition, having accepted that the estate of the company stood vested in the state of Bihar under the B.L.R. Act, 1950, as amended till date.

An agreement for lease was made on 4th August, 1984 between the Governor of the State of Bihar on one part and the Company on the other part for a period of 40 years from 1st January, 1956 i.e. upto 1st January, 1996. One of the clause of agreement related to collection of "Jama" (Rent) of the existing Hats, Melas, Bazars, Jalkars, Fisheries and other Sairats.

In respect to "Jama" (Rent) of the existing Hats, Melas, Bazars, Jalkars etc. for the period from 1st January, 1956 to 31st March, 1984, it was agreed upon by Company that the entire amount realised towards such item by the Company shall be paid to the Government in three equal annual installments along with interest on such dues @ 9.5% per annum for certain period and @ 13% per annum for subsequent period.

This writ petition arises out of a certificate proceeding initiated against the appellant for recovery of "Jama" (rent) for the period from 1st January, 1956 to 31st March, 1984 with interest.

3. According to appellant, it has deposited the total "Jama" (Rent) for the period in question with interest, whereas, according to respondents, the entire "Jama" (Rent) of existing Hats, Melas, Jalkars etc. for the period from 1st January, 1956 to 31st March, 1984 has not been paid. The Certificate Case No. I (sairat) of 1997-98 has been instituted for realisation of such dues with interest amounting to Rs. 12,22,78,729.89 paise (Twelve crore-twentytwo lacs seventyeight thousand seven hundred twentynine and eightynine paise) under the provisions of P.D.R Act, 1914.

4. It appears that the appellant-Company deposited some amount towards rent realised from Hats, Melas, Bazars, Jalkars, Fisheries and other Sairats from the individuals for the period from 1st January, 1956 to 31st March, 1984. However, the rent realised by the company during the period from tenants of shop premises constructed by the Company and rented to others has not been deposited.

5. According to appellant-Company, the rent realised from tenants of Company built shop premises do not form part of the lease agreement dated 4th August, 1984. It is not liable to deposit the rent so realised from tenants of Company built shop premises.

On the other hand, according to State, the Company also liable to refund the rent realised from tenants of Company built shop premises along with interest as per

Agreement dated 4th August, 1984.

6. The appellant took plea before the Certificate Officer that the shops are part of the civic amenities so it is not liable to deposit rent realised as per Section 7D of Bihar Land Reforms Act, 1950 (B.L.R.Act, 1950) which has overriding effect over other provisions including Section 4(a) & (b) of B.L.R.Act, 1950. It was pleaded that the civic amenities like "health" would include availability of medicine etc.; "housing" would include availability of day to day necessities, such as clothes, groceries, vegetables, fruits etc.; "welfare" would include ration commodities, entertainment for children's sports and "education facilities" would include shops for books and stationary items etc.

7 Mr. R.K. Jain, learned senior counsel for the appellant submitted that the amount as sought to be recovered is not a public demand as per P.D.R. Act, 1914 and the demand is beyond the limitation period as also beyond the agreement.

Learned Senior Council for the appellant also placed reliance on a D.O. letter No. 1967 dated 16/17th October. 1984 written by one Shri K.P. Sinha, the then Land Reforms Commissioner, to Shri G.S. Kanj, the then Deputy Commissioner, Singhbhum, Chaibasa. Therein, Shri K.P. Sinha, the Land Reforms Commissioner, Bihar informed that there was no mention about the Company built shop premises in the agreement in question and on discussion with representative of the appellant, it was agreed that the company built shop premises would be treated in the same way as the Government would treat the shops of Zamindars vested with the Government like Patna market, Bhagalpur market etc. pertaining to which cases were pending before the Patna High Court.

8. The submission of Mr. R.K. Jain, Senior Counsel for the appellant that the aforesaid letter dated 16/17th October, 1984 written by Shri K.P. Sinha is the clarification made by the State Government cannot be accepted merely because Shri K.P. Sinha is one of the signatory on behalf of the State. The letter dated 16/17th October, 1984 is not an instrument issued by the State either in terms with Article 166 of the Constitution of India or the Rules of Executive Business. The terms of agreement reached between the State and the appellant on 4th August, 1984 cannot be modified by letter written by one officer to another.

9. Learned Advocated General referred to Clause-XV of agreement dated 4th August, 1984 to suggest that it is in two parts. One in respect to prior period from Ist January, 1956 to 31st March, 1984 and the other relates to subsequent five years period for which separate agreement was to be made. According to learned Advocate General, the entire amount realised by the appellant-Company from Hats, Melas, Bazars, Jalkars, Fishers and other Sairats between Ist January, 1956 to 31st march. 1984, irrespective of right, title and owner of shop premises the total amount so realised between 1st January. 1956 to 31st March, 1984 was required to be deposited with the State in three equal annual installments with interest.

10. In this case, there are two issues required to be determined, namely :

(a) Whether the rent realised by the Company from Company built shop premises between 1st January, 1956 to 31st March, 1984 is to be deposited with the State with interest as per Agreement dated 4th August, 1984 or not ;

and

(b) Whether the certificate case in question is maintainable or not.

For determination of the issues, it is appropriate to notice the relevant of Agreement dated 4th August, 1984, as quoted hereunder :

"Clause-XV

That the existing hats, melas, bazars, Jalkars, Fisheries and others Sairats shall be settled by the Government with the Company on a fixed Jama for a period of five years at a time and the Company shall carry on the management and administration thereof on payment of the entire amount of the fixed Jama to the State Government by the Company. Provided that the State Government shall have the right to revise the fixed Jama for such settlements after every three years. The entire amount realised towards such items by the Company since 1.1.1956 upto 31.3.1984 shall be paid to the Government in three equal annual installments, the first of such installments being paid on or before 31st December, 1984 and alongwith the last installment, interest on such dues at the rate of 9.5% per annum for the period 1.1.1956 to 31.12.1974 and at the rate of 13% per annum from 1.1.1975 to 31.3.1984 shall be paid."

11. From plain reading of Clause-XV aforesaid, it is evident that the entire amount realised by the Company since Ist January, 1956 upto 31st March, 1984 towards Hats, Melas, Bazars, Jalkars, Fisheries and other Sairats is to be paid by the Company to the Government in three equal annual installments with interest as stipulated.

The word "Bazar" as in Section 4 of B.L.R. Act, 1950 held to be synonymous with "Markets" by a Full Bench of Patna High Court in [Mosemmat Bibi Sayeeda and Others, etc. Vs. State of Bihar and Others](#), . The aforesaid judgment has also been affirmed by the Supreme Court while dismissing the appeal of [Masammat Bibi Sayeeda and Others etc. Vs. State of Bihar and Others](#),

Section 4 of B.L.R. Act, 1950 stipulates consequences of the vesting of an estate or tenure in the State. As per subsection (a) to Section 4, the estate or tenure including the interests of the proprietor or tenure-holder in any building or part of the building comprised of such estate or tenure and primarily as Office or Cutchery for the collection of rent of such estate or tenure and his interest in trees, forests, fisheries, jalkars, hats, bazars melas and ferries and all other sairati interests shall vest absolutely in the State free from all encumbrances with effect from the date of vesting. The proprietor or tenure-holder shall cease to have any interest in such

estate or other than the interest expressly saved by or under the provisions of the Act, 1950.

So far as company built shop premises are concerned, there is nothing on the record to suggest that they are situated over land acquired for industrial undertaking. No such pleading has been made by the appellant either before the Certificate Officer or before this Court. In fact, the company built shops premise are part of the hat/bazar.

Section 7D of B.L.R. Act, 1950 relates to land and buildings etc. acquired for an industrial undertaking and utilised for providing civic amenities, namely health, housing, welfare, power house and educational facilities. The Company built shop premises situated within the hats bazars being not part of the civic amenities i.e. health, housing, welfare, power house, and educational facilities, the appellant cannot derive any advantage of Section- 7D of B.L.R. Act, 1950.

In the agreement dated 4th August, 1984, a separate provision made in respect to "civic amenities" at Clause-VIII whereas in respect to shops whether private or Company built situated in hats/bazars or melas, separate provision made at Clause-XV of the Agreement 1984. At Clause-VII of agreement dated 4th August, 1984 while the parties agreed that the Company may use the Vacant land for factory production process and to provided "civic amenities" to the town and housing facilities to the employees of the Company, it was specifically mentioned that the said Clause-VII shall not be applicable on the land covered by hats, melas, bazars, fisheries and sairats.

Thus, the appellant-Company cannot derive any advantage on the ground that a shop is company built shop and the other shop built by someone else for the purpose of payment of rent realised by the Company between Ist January, 1956 to 31st March, 1984 a per Clause-XV of the Agreement dated 4th August, 1984.

The first question is, accordingly, answered in favour of the State.

12. Admittedly, the Estate for tenure including the interests of the proprietor or tenure-holder on a building or part of the building for collection of rent of such estate or tenure in fisheries, jalkars, hats, bazars etc. vested absolutely in the State free from all encumbrances u/s 4 (a) of the Act. It can be recovered under the P.D.R. Act, 1914. Clause-XX of agreement dated 4th August, 1984 also show that the appellant-Company -agreed that recovery of arrears of land rent and other charges for the services rendered by the Company may be effected under P.D.R. Act, 1914.

Taking into consideration the aforesaid fact, the learned single Judge vide judgment dated 15th April, 2000 in C.W.J.C. No. 891 of 2000 (R) held the certificate case maintainable. I find no reason to reason to differ with the finding of the learned single Judge.

13. The learned Advocated General rightly pointed out that under Article 7 of Schedule-I of P.D.R. Act, 1914, any demand payable to the Collector by a person holding any interest in land, pasturage, forest-rights, fisheries or the like, whether such interest is or is not transferable can be recovered under the P.D.R. Act, 1914. In the case of Ram Chandra Singh v. State of Bihar 1987 PLJR 47 a Full Bench of the Patna High Court also held that under Article 7 of Schedule-I, the Collector can recover the agreed settlement amount from a settle of that under P.D.R. Act, 1914 even in absence of duly executed lease deed. The provision is not to be construed in isolation but in the larger mosaic of the other Articles of Schedule-I.

14. In this background, I have no hesitation to hold that the certificate proceeding in question is maintainable being well within the jurisdiction of the Certificate Officer.

The second question is, accordingly, answered in affirmative in favour of the State and against the appellant.

15. I find no merit in the letters patent appeal. It is, accordingly, dismissed. However, in the facts and circumstances, there shall be no order as to costs.