

[2019] 14 S.C.R. 1

BIHAR INDUSTRIAL AREA DEVELOPMENT
AUTHORITY & ORS.

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v.

AMIT KUMAR & ORS.

(Civil Appeal No. 8219 of 2019)

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OCTOBER 22, 2019

[DEEPAK GUPTA AND ANIRUDDHA BOSE JJ.]

Industrial Development – Recovery of unearned increase – Entitlement to – An allotment was made to the allottee of a land for industrial purposes – A lease deed was entered into between the State of Bihar (rights were later transferred to Bihar Industrial Area Development Authority (BIADA)) and the allottee – A committee was constituted by the Government of Bihar to lay down the modalities and fees for transfer of industrial estates from allottees to some other persons – Pursuant thereto, BIADA fixed the cost of the land on the basis of the circle rate applicable for further transfer – High Court held that when the allottee of land further transferred land to some other entity, the BIADA was only entitled to recover the unearned increase on the basis of cost of land and development and not on the basis of the market value of the land or the circle rate of the land – Propriety of – Held: Not proper – The land was given to the original allottee at a price fixed by BIADA – When allottee transfers and get something more for the land or the market value as reflected in the circle rate is much more than the price at which the land was allotted to the allottee, there is no reason why the allottee should pocket all the unearned increase and BIADA, which was the original owner of the land should be deprived of a reasonable portion of the unearned increase from the value of the land – Therefore, fixing the cost of land on basis of the circle rate applicable by BIADA was legal and valid.

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Disposing of the appeal, the Court

HELD: 1. It is standard practice throughout this country, specially at the time when these leases were executed to set up industrial estates wherein lands were given at very low price and

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- A sometimes at subsidized rates to help in the setting up of industrial estates in the State. It was expected that establishment of these industrial estates with flourishing industries would generate a lot of employment and would also generate revenue both in the nature of direct and indirect taxes. The issue is whether when the allottee transfers the land for commercial reasons why should the Authority not get a reasonable portion of the unearned income earned by the allottee of the plot just by transferring the plot in question. The premium on the unearned increase is being charged only on the value of the land and not on the value of the transaction. Once an industry is set up it may have various components including the value of the immovable assets, the value of the machinery etc. and also the value of the goodwill which the company has generated. On the other hand there are companies which are loss making units where debts and liabilities due to employees and sundry creditors will have to be factored into while calculating the value of the total assets of the unit. Those are not to be taken into consideration while assessing the unearned increase of the cost of the land. [Para 10] [5-F-H; 6-A-B]
 - 2. The land was given to the original allottee at a price fixed by BIADA. When the allottee transfers and gets something more for the land or the market value as reflected in the circle rate is much more than the price at which the land was allotted to the allottee, there is no reason why the allottee should pocket all this unearned increase and BIADA, which was the original owner of the land should be deprived of a reasonable portion of the unearned increase from the value of the land. Therefore, this Court is not in agreement with the High Court that the unearned increase can be charged only on the basis of the BIADA value plus development charges and in opinion of this Court the policy of the BIADA fixing the cost of the land on the basis of the circle rate applicable is legal and valid. [Para 11] [6-C-D]
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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8219 of 2019.

From the Judgment and Order 11.05.2015 of the High Court of Judicature at Patna in LPA No. 68 of 2008 in CWJC No. 9696 of 2005.

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With A

C.A. Nos. 8220/2019, 8221/2019, 8222/2019.

Gaurav Agrawal, Ms. Anisha Upadhyay, Rajiv Tyagi, Neeraj Shekhar, Animesh Kumar, Sumit Kumar, Ashutosh Thakur, Ms. Ekta Bharati, Advs. for the appearing parties.

B The Judgment of the Court was delivered by

DEEPAK GUPTA, J. (ORAL)

1. Leave granted.

2. The legal issue involved in these appeals is whether the Patna High Court was right in holding that when the allottee of land, allotted for industrial purposes, further transferred the land to some other entity, the Bihar Industrial Area Development Authority (BIADA) was only entitled to recover the unearned increase on the basis of cost of land and development charges and not on the basis of the market value of the land or the circle rate of the land. C D

3. In view of the decision that we intend to take in these four cases before us, it is not necessary to give the facts of each case in detail. However, for the purposes of decision of these set of appeals, we may refer to the facts in C.A. No.8222/2019 (arising out of SLP(C) No.5251/2017). Clause 4(i) of the Lease Deed entered into between the State of Bihar and M/s. Orient Beverages Ltd. to which the land was granted on lease for a period of 99 years for a sum of Rs.42,000/- plus rent of Rs.87.50 per year, reads as follows:

F “Clause 4(i):-

That the lessee will not assign, mortgage, underlet or part with the possession over the land or any right or interest therein or in respect thereto without the previous consent of the lessor or its nominee.”

G 4. Clause 4(ii) of the Lease Deed provided that no transfer of lease shall take place unless specifically permitted by the State. The said clause reads as follows:

F “Clause 4(ii):-

H No change in the lease, proprietorship or partnership, if it is a private limited or unlimited company or a registered or an

A unregistered firm, shall be recognized without the previous written consent of the lessor or his nominee.”

5. It is not disputed that the rights of the State of Bihar have finally been transferred to the BIADA though,in between, there may have been some other authorities also but that is not relevant for the decision of this case.

6. In the year 1998, the original lessee M/s. Orient Beverages Ltd. applied for transfer of the leasehold rights in favour of M/s. Bharat Coca-Cola Bottling North East Pvt. Ltd. and a sum of Rs.17,50,000/- was paid as premium at the time of the said transfer. It appears that the transfer by Orient Beverages Ltd. in favour of Bharat Coca-Cola Bottling North East Pvt. Ltd. was made for a sum of Rs.2.02 crores. Later in the year 1999, a scheme of amalgamation was entered into between Bharat Coca-Cola Bottling North West Pvt. Ltd., Bharat Coca-Cola Bottling South East Pvt. Ltd. and Bharat Coca-Cola North West Pvt. Ltd. (transferee of the lease) and all these three amalgamated to form Hindustan Coca-Cola Bottling South West Pvt. Ltd. This scheme of amalgamation was approved by the Delhi High Court on 10.09.1999. The name of M/s. Hindustan Coca-Cola Bottling South West Pvt. Ltd. was changed to M/s. Hindustan Coca-Cola Beverages Pvt. Ltd. which is the respondent before us and the original writ petitioner before the High Court. Thereafter, a communication was sent to the appellant(s) that there was change in the name and the name should be changed in the record of the appellant-Authority and this permission was granted on payment of some nominal fees.

In the meantime, a Committee was constituted by the Government of Bihar to lay down the modalities and fees for transfer of industrial estates from the allottees to some other person. The relevant recommendations of the Committee are as follows:

(a) The Lease holders should have the right to transfer or sale the land by paying fee if land use is not changed;

(b) The amount recommended was 15% of the present market value in case of transfer or sale;”

7. On 18.12.2003, an office order was issued by the Appellant-Authority permitting change in the Constitution of the allottee after taking 15% of the circle rate for the land at the time and other dues payable. On 12.03.2004, a specific order was issued permitting

transfer of a land on payment of 15% of the prescribed rate. Thereafter, on 10.03.2005, a letter was issued by the appellant-Authority to the original writ petitioners that 15% of the market value of 1.75 acres of land works out to Rs.4,25,250/- . After some correspondence, this amount was deposited on 12.04.2007. Thereafter, it appears that a decision was taken to assess the 15% market value on the basis of the circle rate and not merely on the rate reflected in the transaction. Relying upon this latter decision of 15.05.2007, a fresh demand of Rs. 45,17,318/- was raised and after adjusting the amount already paid, balance payable was assessed as Rs.40,64,523/- . Aggrieved against this demand, M/s. Hindustan Coca-Cola Beverages Pvt. Ltd. filed a writ petition bearing CWJC No.5553 of 2013 before the Patna High Court.

8. We shall deal with the factual aspects of the case at a later stage but the legal issues raised before us are whether the appellant-Authority is entitled to recover unearned increase and if so on what basis. As far as the entitlement to recover unearned increase in the value of the transferred allotted land is concerned even the High Court has upheld this right of the appellant- Authority. However, the High Court has held that the calculation of this unearned increase will be on the basis of the value at which appellant-Authority allots the land plus development charges.

9. The contention raised by Mr. Gaurav Agrawal, appearing for the appellant-Authority, is that there is no reason why, when the transfers are normally made for commercial reasons, the appellant-Authority should not get its fair share in the total unearned increase in the value of the leased property.

10. We may note that it is standard practice throughout this country, specially at the time when these leases were executed to set up industrial estates wherein lands were given at very low price and sometimes at subsidized rates to help in the setting up of industrial estates in the State. It was expected that establishment of these industrial estates with flourishing industries would generate a lot of employment and would also generate revenue both in the nature of direct and indirect taxes. The issue is whether when the allottee transfers the land for commercial reasons why should the Authority not get a reasonable portion of the unearned income earned by the allottee of the plot just by transferring the plot in question. The premium on the unearned increase

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- A is being charged only on the value of the land and not on the value of the transaction. Once an industry is set up it may have various components including the value of the immovable assets, the value of the machinery etc. and also the value of the goodwill which the company has generated. On the other hand there are companies which are loss making units where debts and liabilities due to employees and sundry creditors will have to be factored into while calculating the value of the total assets of the unit. Those are not to be taken into consideration while assessing the unearned increase of the cost of the land.

- B 11. The land was given to the original allottee at a price fixed by BIADA. When the allottee transfers and gets something more for the land or the market value as reflected in the circle rate is much more than the price at which the land was allotted to the allottee, we see no reason why the allottee should pocket all this unearned increase and BIADA, which was the original owner of the land should be deprived of a reasonable portion of the unearned increase from the value of the land. Therefore we are not in agreement with the High Court that the unearned increase can be charged only on the basis of the BIADA value plus development charges and in our opinion the policy of the BIADA fixing the cost of the land on the basis of the circle rate applicable is legal and valid.

- C E 12. We shall now deal with the individual cases. As far as the first case i.e. Civil Appeal No.8219 of 2019 arising out of SLP(C) No.35887 of 2015 is concerned, we find that the Division Bench of the High Court of Patna vide order dated 09.03.2010 had directed that the arrangement made in respect of writ petitioner(s) shall not be disturbed. Therefore, though we decide the question of law in favour of appellant, but it will not be entitled to recover any amount from the respondent(s).

13. The appeal is disposed of accordingly.

- D G 14. As far as Civil Appeal No.8220 of 2019 arising out of SLP(C) No.28213 of 2016 is concerned, amalgamation took place on 10.09.1999. The transfer date, which is the material date, is 10.09.1999 and in our view in all cases the value of land for purposes of fixing the price should be the date of transfer and in this case it should have been 10.09.1999. Having held so, in view of the fact that the original writ petitioner paid the amount of Rs.4,25,250/- we do not want to

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open up the entire litigation for a small amount. The amount was demanded only on 10.03.2005 and was actually paid on 12.04.2007. The appellant shall be entitled to interest at the rate of 9% per annum on this amount of Rs.4,25,250/- for the period 10.03.2005 to 14.04.2007.

15. We direct that, on this amount, the interest be paid within two months. On payment of the interest, the formal lease deed be executed by the appellant-Authority in favour of the original writ petitioner(s) within two months of the deposit of interest. The appeal is disposed of accordingly.

16. In view of the order passed hereinabove, the CA No.8222 of 2019 arising out of SLP(C) No.5251/2017 is disposed of.

17. As far as Civil Appeal No.8221 of 2019 arising out of SLP(C) No.31141 of 2016 is concerned, land measuring 0.50 acres was allotted to the respondent on 07.12.2000. The allottee was M/s. Shankar Saw Mills through its proprietor Sukhdev Paswan. It is admitted case that the dues payable by Shankar Saw Mills were not paid for the period 2002 to 2007. The case of the appellant is that the payment could not be made because of the orders passed by this Court in the case of T.N. Godavarman vs. Union of India whereby the licence of Saw Mills throughout the country was stayed. It is not disputed that finally under a one time settlement scheme floated by the appellant-Authority, the original writ petitioner(s) paid all the dues as payable under the scheme on 30.07.2000. However, while paying this amount the writ petitioner(s) also prayed for permission of transfer of the land in favour of transferee company known as Samras Products Pvt. Ltd in which it was claimed that the appellant was a Director. There is no material before us to show what is the exact shareholding of Sukhdev Paswan in M/s. Samras Products Pvt. Ltd. Mr. Gaurav Agrawal, learned counsel, has submitted that as per the scheme of the Authority if the original allottee retained 51% of the shareholding in the company then it will not be treated to be a transfer and there is no liability to pay any unearned increase. There are no facts in this regard placed on record. Therefore, while setting aside the order of the Patna High Court on the legal issues, we remit the matter back to the Patna High Court where the parties may produce documents in this regard. If the documents, as existing, at the time of the initial incorporation of M/s. Samras Products Pvt. Ltd., indicate that Sukhdev

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A Paswan had more than 51% shareholding then obviously he is not liable to pay any transfer charges but if his shareholding is less than 51%then he will pay the unearned increase as decided by us heareinabove. Since we have remitted the matter, the Writ Petition No.4325 of 2009 shall be restored to its original number so that it is given due seniority for decision.

B 18. The appeal is disposed of accordingly.

Ankit Gyan

Appeal disposed of.