State Of Bihar (Now St.Of Jharkhand) ... vs Tata Iron on 9 May, 2019

Equivalent citations: AIRONLINE 2019 SC 365, 2019 (204) AIC (SOC) 7 (SC), (2019) 2 WLC(SC)CVL 482, (2019) 7 SCALE 776, 2019 (7) SCC 99, 2020 (138) ALR SOC 40 (SC)

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Bench: M.R.Shah, L. Nageswara Rao

Non -Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 3861 of 2014

State of Bihar (Now State of Jharkhand)
Through the Sub Divisional Officer .... Appellant

Versus

Tata Iron …. Respondent

JUDGMENT

L. NAGESWARA RAO, J.

1. The Certificate Officer, Jamshedpur issued a notice for recovery of a sum of Rs.5,97,97,527.92/- towards interest on arrears of rent payable by the Respondent on 10.05.1994. The objection raised by the Respondent was rejected by an order dated 23.01.1996. The Respondent filed a Writ Petition challenging the demand and the order dated 23.01.1996 of the Certificate Officer in the High Court of Bihar at the Ranchi Bench (now Jharkhand), which was allowed. This Appeal arises out of the said judgment of the High Court.

2. Land was acquired and conveyed to the Respondent between the years 1912-1929 under the Land Acquisition Act, 1894 for setting up an industry. The Respondent established an integrated steel plant, allied manufacturing units, township, civic amenities for its staff, hospitals, schools, parks, etc. The entire township came up gradually which was renamed as Jamshedpur.

3. The Bihar Land Reforms Act was enacted in the year 1950 (for short "the BLR Act") and by a Notification dated 01.01.1956 all lands of the Respondent Company stood vested in the State Government. Section 2B was inserted in the BLR Act in the year 19611 exempting the lands which were acquired for an industrial undertaking from the application of the BLR Act. By virtue of the said amendment, the Respondent's lands were exempted from vesting under the BLR Act. Thereafter, Section 2B of the BLR Act was deleted in the year 1972 vide the Bihar Land Reforms (Amendment) Act, 19722 (for short "Amendment Act, 1972"). Consequently, the lands of the Respondent again stood vested in the State. Amendment Act, 1972 was assailed by 1 Vide Bihar Land Reforms (Amendment) Act, 1960, Act 02 of 1961. the Respondent by way of a writ petition in this Court. The implementation of the Amendment Act, 1972 against the Respondent was stayed by this Court. Later, the Writ Petition was withdrawn by the Respondent and the State of Bihar amended the BLR Act in the year 1982 by enacting the Bihar Land Reforms (Amendment) Act, 1982 (for short "Amendment Act, 1982"). Sections 7D and Section 7E of the BLR Act were substituted by the Amendment Act, 1982 and the Respondent was treated as the deemed lessee of the State Government for the lands held by it subject to the payment of fair and equitable rent which was to be determined by the State Government.

4. An Agreement for lease was entered into between the Appellant and the Respondent on 01.08.1984. It was agreed that the lands together with the buildings and structures as were being used for the purposes of factories or mills or godowns by the Respondent were saved to the company under Section 7 of the BLR Act on payment of rent at the rate of Rs.200/- per acre per year effective from 01.01.1956. Clause (xii) of the Agreement provided that all rents and dues from the Respondent company to the State Government for the period from 01.01.1956 to 31.03.1984 particularly in respect of clauses (i), (ii), (iii), (v), (vi), (ix) and

(x) therein shall be paid in three equal annual installments with interest. The first installment had to be paid on or before 31.12.1984 and the interest would be calculated at the rate of 9.5% from 01.01.1956 to 31.12.1974 and at the rate of 13% from 01.01.1975 to 31.03.1984. According to Clause (xv), the existing hats, Melas, Bazaars, Jalkars, fisheries and other Sairats were to be settled by the State Government with the Respondent company on a fixed jama for a period of five years at a time and the Respondent had to carry on the management and administration thereof on payment of the entire amount of the fixed jama to the State Government. The entire amount realized towards the above mentioned items by the Respondent for the period between 01.01.1956 and 31.03.1984 was agreed to be paid by the Respondent to the State Government in three equal installments with the first of such installment due on or before 31.12.1984. The interest on such dues was to be paid at the rate of 9.5% per annum for the period between 01.01.1956 and 31.12.1974 and at the rate of 13% per annum for the period between 01.01.1975 and 31.03.1984.

5. A formal lease deed was executed on 01.08.1985 incorporating the terms of the Agreement for Lease dated 01.08.1984 (for short "Lease Deed"). A demand was raised by the State Government for payment of Rs.1.95 Crores as rent along with interest as per Clause (xii) of the Lease Deed on 11.09.1985. A further demand of Rs.2.19 Crores was made on 18.10.1985 towards rent coupled with interest in terms of Clause (xv) of the Lease Deed. The Respondent complied with the demand and made the payments.

6. On 29.10.1993, a letter was written by the Secretary, Department of Revenue and Land Reform, Bihar (for short "the Secretary") to the Deputy Commissioner, Jamshedpur in which it was stated that the Government was suffering heavy losses due to the absence of the words "per annum" for calculation of interest in Clause (xii) of the Lease Deed. After obtaining legal opinion, the Secretary directed the Deputy Commissioner, Jamshedpur to re-calculate the interest on the arrears of rent payable under Clause (xii) of the Lease Deed on a yearly basis in the same manner as done for the rent on the lands under Clause (xv) and realize the same from the Respondent. A certificate proceeding was issued by the District Collector, Jamshedpur under the Bihar and Orissa Public Demands Recovery Act, 1914 (for short "Public Demands Act") by which the Respondent was directed to pay Rs.5.97 Crores towards interest calculated on per annum basis in respect of the lands under Clause (xii) of the Lease Deed. The Respondent filed a Writ Petition against the said demand before the High Court of Bihar, Ranchi Bench (now Jharkhand). The contention raised on behalf of the Respondent that the demand cannot be said to be a public demand under the Public Demands Act was rejected by the learned Single Judge of the High Court. The learned Single Judge observed that the demand for the payment of interest on rent payable under the Lease Deed entered into pursuant to the BLR Act would certainly fall within the sweep of Item

(vii) of Schedule I read with Section 6(3) of the Public Demands Act. Writ Petition No. 2761 of 1994 was dismissed as being not maintainable but liberty was granted to the Respondent to raise all objections relating to their liability to pay in accordance with the provisions of Section 9 of the Public Demands Act. The Certificate Officer was directed to consider the objections notwithstanding any delay in filing the same without being influenced by the observations made by the High Court. The judgment of the learned Single Judge was affirmed by the Division Bench in the LPA No.276 of 1995 (R) filed by the Respondent.

7. On 23.01.1996, the Certificate Officer rejected the objections that were filed by the Respondent. Questioning the legality and validity of the demand and the Order of the Certificate Officer by which the objections were rejected, the Respondent filed a Writ Petition before the High Court of Bihar, Ranchi Bench (now Jharkhand). The High Court stayed the execution of the demand subject to the Respondent depositing Rupees One Crore before 30.03.1996 and furnishing a Bank Guarantee for the remaining amount. In compliance of the interim order of the High Court, we are informed by the learned Senior Counsel for the Respondent that an amount of Rupees One Crore was deposited in the High Court on 28.03.1996. The High Court by the impugned judgment allowed the Writ Petition filed by the Respondent and concluded as follows:

> "48 (i)The wording contained in clause (xii) and clause
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> (xv) would clearly convey the meaning that clauses (xii) would indicate that interest in respect of the said clause can be calculated only on "lump sum" basis and not "per annum" basis as there is no use of words "per annum" in clause (xii) like that of clause (xv) and therefore, the impugned demand for interest "per annum" in respect of clause (xii) is illegal.

(ii) The impugned demand is not a "public demand" within the meaning of section 3(6) of the Bihar and Orissa Public Demands Recovery Act, 1914 as the demand in question is concerned with the interpretation of clause (xii) and hence the demand is not realizable in certificate proceedings."

8. Guided by the decisions of this Court on the interpretation of contracts in Delhi Development Authority v. Durga Chand,3 Provash Chandra Dalui v.

Biswanath Banerjee,4 20th Century Finance Corporation Ltd. v. State of Maharashtra,5 and Union of India v. Shiv Dayal Soin & Sons (P) Ltd., 6 the High Court 3 (1973) 2 SCC 815 : AIR 1973 SC 2609 ¶19 and 21 4 (1989) 1 SCC Suppl. 487: AIR 1989 SC 1834 5 (2000) 6 SCC 12 ¶ 12 6 (2003) 4 SCC 695 was of the opinion that the contract must be construed as a whole and that the meaning of the words contained in the contract has to be formed on the facts and circumstances of each case in the light of the terms and conditions of the contract. According to the High Court, the words expressly mentioned in one place but not in another place must be taken to have been deliberately omitted on the well settled principle of Expressio Unius Est Exclusio Alterius. The High Court found that Clause (xii) and Clause (xv) pertain to two different types of lands. Clause (xii) relates to properties falling in Clauses (i), (ii), (iii), (v), (vi), (ix) and (x) of the Lease Deed wherein the Respondent developed the lands by setting up industries, buildings, structures, roads, civic amenities, hospitals, etc. whereas Clause (xv) dealt with the lands settled by the Government on a fixed jama on a period of five years at a time. Lands covered in Clause (xv) were being utilized for hats, bazaars, melas, Jalkars , fisheries and other Sairats from which the Respondent was earning money. Taking into account the difference in the nature of the lands and their utility, the High Court held that the word "per annum" was intentionally included in Clause (xv) of the Lease Deed and excluded from Clause (xii) of the Lease Deed. The High Court observed that the State cannot travel beyond the terms and conditions of the Lease Deed and issue a demand for payment of interest under Clause (xii) by calculating the same on a yearly basis.

9. The High Court accepted the submission made on behalf of the Respondent that the demand that was made by the Certificate Officer was not a public demand within the meaning of Section 3(6) of the Public Demands Act. The High Court remarked that Sections 7D and 7E of the BLR Act did not provide for payment of interest and the interest charged by the State of Bihar was pursuant to an agreement. As the demand was purely contractual, it cannot be termed as a "public demand", according to the High Court.

10. The judgment of the High Court was criticized by the learned Senior Counsel for the Appellant, Mr. Sunil Kumar, on more than one count. Being aware of the earlier judgment of the High Court wherein the very same demand was held to be a public demand under the Public Demands Act by another Division Bench of the same High Court, a different view could not have been taken by the Division Bench. If the Division Bench was not in agreement with the judgment of the earlier Division Bench the only course open to it was to refer the matter to a larger Bench. The learned Senior Counsel for the State further submitted that the word "rent" has not been defined in the BLR Act. He submitted that the words and expressions used in the BLR Act but not defined thereunder would have the same meaning as per the definitions in the Bihar Tenancy Act, 1885 or the Chota

Nagpur Tenancy Act, 19087. As the Chota Nagpur Tenancy Act, 1908 was applicable to the lands in question, the word "rent" as defined in Section 3(xxviii) of the Chota Nagpur Tenancy Act, 1908 would apply to the facts of the case. "Rent" as defined in the said Act includes any rent lawfully payable by a tenant to his landlord on account of the use or occupation of the land held by the tenant and includes all dues (other than personal services) which were recoverable under any enactment for the time being in force as if they were rent. The learned Senior Counsel contended that in view of the definition of "rent" in the Chota Nagpur Tenancy Act, 1908 which includes all dues recoverable under any 7 Section 2(t), BLR Act enactment, it cannot be said that the demand made by the State of Bihar was not a public demand. On the interpretation of Clauses (xii) and (xv) of the Lease Deed, he stated that the mere omission of the words "per annum" in Clause (xii) would not make any difference and the Government committed an inadvertent error in the calculation of interest payable under Clause (xii) in the year 1985 which was corrected later.

11. Mr. Gopal Jain, learned Senior Counsel for the Respondent, argued that the High Court was right in its interpretation of Clause (xii) and Clause (xv) of the Lease Deed by taking into account the intention of the parties. He submitted that the revised demand made in the year 1994 was a unilateral decision of the Government contrary to the terms of the Lease Deed. The demand made by reading the words "per annum" into Clause (xii) of the Lease Deed is wholly impermissible.

12. The well known rule of interpretation of Contracts is that the deed ought to be read as a whole in order to ascertain the true meaning of its several clauses and a word of each Clause should be so interpreted as to bring it into harmony with the other provisions of the deed, if that interpretation does no violence to the meaning of which they are naturally susceptible.8

13. Lord Hope speaking for the Supreme Court of the United Kingdom stated the principles of interpretation as follows 9:

> "The court's task is to ascertain the intention of the parties by examining the words they used and giving them their ordinary meaning in their contractual context. It must start with what it is given by the parties themselves when it is conducting this exercise. Effect is to be given to every word, so far as possible, in the order in which they appear in the clauses in question. Words should not be added which are not there, and words which are there should not be changed, taken out or moved from the place in the clause where they have been put by the parties. It may be necessary to do some of these things at a later stage to make sense of the language. But this should not be done until it has become clear that the language the parties actually used creates an ambiguity which cannot be solved otherwise." 8 Chamber Colliery Ltd. v. Twyerould (Note) (1893) (1915) 1 Ch. 268, per Lord Watson 9 Multi-Link Leisure Developments Limited v. North Lanarkshire Council (Scotland) [2010] UKSC 47

14. The well known principles of interpretation of a contract were correctly appreciated by the High Court. The question that falls for our consideration in this case is whether the demand of interest made by the Certificate Officer for the arrears of rent payable under Clause (xii) of the Lease Deed was valid or not.

15. It is relevant to refer to Section 7D and Section 7E of the BLR Act.10 The Agreement dated 01.08.1984 and the 10 7D.Land and buildings 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 building 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 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, 7A, 7B and 7C.

(3) If the claim of the industrial undertaking as to possession over the lands, buildings and structures thereon, referred to in sub-section (1) or to the extent of such 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.

7E. 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. -[If any portion out of the land acquired for an industrial undertaking under the Land Acquisition Act, 1894 (Act I 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 subject to payment of Lease Deed dated 01.8.1985 was entered into pursuant to the abovementioned provisions of the BLR Act. Clause (xii) of the Lease Deed pertains to lands which have been developed by the Respondent by establishing industries and other civic amenities whereas Clause (xv) relates to lands which were being used for commercial purposes. The Respondent was making money from the use of lands that were covered under Clause (xv) for which reason the " jama" was also fixed for the lands falling under Clause (xv) for five years at a time. Interest being calculated on a yearly basis as per Clause (xv) is clearly due to the lands being used for commercial purposes wherefrom the Respondent was getting returns. The exclusion of the words

"per annum" in Clause

(xii) was intentional and the Appellant cannot be permitted to read those words into Clause (xii) for the purpose of issuing a demand of additional amount towards interest. A plain reading of the Lease Deed as a whole would make it fair and equitable rent as 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.

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 sub-lease expires before the expiry of the lease granted under sub-section (1) then in that condition at the time of renewal of the sublease, the State Government shall have power to revise the amount of rent payable to State Government by the lessee. clear that the payment of interest on rent chargeable under Clause (xii) is essentially different from that under Clause

(xv). The principle of Expressio Unius Est Exclusio Alterius is squarely applicable to the facts of this case. For the above reasons, we are in agreement with the finding of the High Court that the District Collector, Jamshedpur was not right in issuing a demand for payment of Rs.5.97 Crores towards interest on the arrears of rent for the lands covered under Clause (xii) of the Lease Deed.

16. However, the conclusion of the High Court that the demand does not fall within the sweep of the Public Demands Act is not correct. Being aware of the earlier decision of the High Court on this point, an error was committed by the High Court in taking a completely different view. If the High Court was not in agreement with the earlier decision, the only course open to it was to refer the matter to a larger Bench. That apart, in Clause (xx) of the Lease Deed, the Respondent and the Appellant agreed that recoveries of arrears of rent may be affected under the Public Demands Act. It is not open to the Respondent to contend that the demand made for payment of interest under the Lease Deed as not a public demand in view of Clause (xx) of the Lease Deed. "Public demand" has been defined in Section 3(6) of the Public Demands Act as under:

> "3. Definitions. ... ... (6) "Public demand' means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon upto the date on which a certificate is signed under Part II." Item No.7 of Schedule I of the Public Demands Act is as follows:
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> "Any demand payable to the Collector by a person holding any interest in land, pasturage, forest-rights, fisheries or the like, whether such demand is or is not transferable, when such demand is a condition of the use and enjoyment of such land, pasturage, forest right, fisheries or other things."

17. Item No.7 of Schedule I covers any demand payable by a person holding any interest in land. Therefore, interest on rent payable for the lands would, in our opinion, be recoverable under Item

No.7 of Schedule I read with Section 3(6) of the Public Demands Act.

18. The judgment of the High Court is upheld though we are not approving the conclusion of the High Court that the demand is not a public demand under the Public Demands Act. The amount of Rupees One Crore deposited by the respondent in the High Court on 28.03.1996 pursuant to the interim order shall be returned to the respondent.

19. For the aforementioned reasons, the Appeal is dismissed.

.....J. [L. NAGESWARA RAO] .....J. [M.R.SHAH] New Delhi, May 09, 2019.