

U.P. STATE INDUSTRIAL DEVELOPMENT
CORPORATION AND ANR.

A

v.

INGERSOLL RAND WADCO TOOLS LTD.
(Civil Appeal No. 2632 of 2005)

APRIL 30, 2009

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[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

Building Laws: Transfer charges – Demand for – High Court held that demand had no basis – On facts, held: Approach of High Court in dealing with issue was not correct – Matter remitted to High Court for consideration afresh.

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The respondent No. 1 filed writ petition challenging orders of appellant-corporation and for writ of mandamus seeking direction to the Corporation to approve the building expansion plan submitted by respondent no. 1 without insisting upon the payment of transfer charges.

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The High Court was of the view that there was merely change of name and there was no change in the corporate structure and therefore the demand as made had no legal basis.

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In appeal to this court, it was contended that the High Court proceeded on factually erroneous premises. In 1973, plot in question was allotted and lease deed was executed between Corporation and a private company. Thereafter that private company was changed to public limited company. Again in 1997, the said company was reconverted into a private limited company. The controversy was whether there was merely a change of name or there was structural change, bringing into existence different legal entities. According to the

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A appellant this aspect was lost sight of by the High Court who proceeded on the basis of alleged agreement between the appellant and the respondent no.1, when actually it was not so.

B Disposing of the appeal and remitting the matter to High Court, the Court

HELD: Apparently the High Court confused the factual scenario and proceeded as if originally there was an agreement between the appellant and the respondent

C No.1. Further the High Court recorded a finding that pursuant to the lease deed the writ petitioner company paid transfer consideration and the possession of the site was handed over to it and remained as it is. This was not the factual scenario. The approach of the High Court in
D dealing with the issues raised before it was not correct. [Paras 8 and 9] [84-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2632 of 2005.

E From the Judgment & Order dated 19.08.2003 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 26379 of 2000.

F R.P. Bhatt, P.N. Gupta and Vaibhav Jain for the Appellants.

Ajay Kr. Mishra, Vikram and Himanshu Munshi for the Respondents.

G The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Heard learned counsel for the parties.

H 2. In this appeal challenge is to the judgment of Division Bench of Allahabad High Court allowing the writ petition filed by respondent no.1. In the writ petition challenge was to the

impugned orders dated 6/1/2000, 15/4/2000 and 16/7/1999 A
passed by the respondent No.2, Regional Manager, U.P. State
Industrial Development Corporation, Ghaziabad (in short
'Corporation'). There was further prayer for writ of mandamus
directing the Corporation to approve the building expansion plan
submitted by the writ petitioner without insisting upon the B
payment of transfer charges.

3. The High Court was of the view that there was merely
change of name and there was no change in the corporate
structure and therefore the demand as made has no legal C
basis. Learned counsel for the appellant submitted that the High
Court has proceeded on factually erroneous premises. It
proceeded on the basis as if there was any agreement
between the Corporation and the present respondent No.1. It
is pointed out that on 20.8.1973 a plot No.37-A was reserved
and allotted to in the name of Sh. O.P.Wadhwa. A lease deed D
was executed on 22/10/1974 between the Corporation as
lessor and M/s. Wadco Tools Private Limited. One Kailash C.
Wadhwa, Director of Private Limited Company signed the
lease deed. Thereafter, 25% of the Paid up Share Capital of
Wadco Tools Private Limited was allotted to M/s. Stern Wanner E
Corporation, U.S.A. and the Private Company Limited was
converted in a Public Limited Company , i.e. Wadco Tools
Limited.

4. According to the appellant a closely held private F
company was changed to a public limited company. Thereafter,
on 10/7/1997 74% of share holding of Wadco Tools Limited
was transferred to the present respondent. The name of Wadco
Tools Ltd. was changed into Ingersoll Rand Wadco Tools Ltd.
Ingersoll Rand Wadco Tools Ltd. again was reconverted to a
private limited company on 10/7/1997. G

5. The controversy is whether there was merely a change
of name or there was structural change, bringing into existence
different legal entities.

6. According to the appellant this aspect has been lost H

A sight of by the High court who proceeded on the basis of alleged agreement between the present appellant and the writ petitioner, when actually it is not so.

B 7. Learned counsel for the respondent on the other hand submitted that ultimately it was a mere change of name and the application for approval of a plan. That did not authorize the Corporation to levy any transfer charges. It appears that the Corporation was of the view that the lease with Wadco Tools Private Limited was no longer in existence and if the respondent No.1 wanted any change it was required to enter into fresh agreement with the Corporation.

C 8. We find that apparently the High Court has confused the factual scenario and has proceeded as if originally there was an agreement between the appellant and the present respondent No.1.

D 9. Further the High Court has recorded a finding that as indicated in paragraph 7 of the writ petition, pursuant to the lease deed the writ petitioner company has paid transfer consideration and the possession of the site had been handed over to it and remained as it is. This is not the factual scenario. The approach of the High Court in dealing with the issues raised before it was not correct.

E 10. Therefore, without indicating the opinion on the merits of the case we set aside the impugned order and remit the matter to the High Court for fresh consideration. Needless to say that parties shall be permitted to place relevant material in support of their respective stand.

F 11. Since the matter is pending since long it would be appropriate if the writ petition is heard afresh and disposed of within a period of six months. We request the learned Chief Justice of High Court to allot the matter to an appropriate Bench so that it can be disposed of within the time indicated above.

G D.G. Appeal disposed of.

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