

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.310 of 2014

In
Civil Writ Jurisdiction Case No. 9747 of 2013

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Mahendra Prasad, S/o Late Baleshwar Sah, R/o Village- Ekawana, P.S. -
Simre, District- Buxar at present proprietor, M/s Durga Rice Mill, Industries
Buxar.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary -cum- Industrial Development Commissioner, Department of Industries, Govt. of Bihar.
2. The Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
3. Regional Incharge -cum- Magistrate, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
4. Development Officer, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
5. Bihar State Financial Corporation, Fraser Road, Patna through its Managing Director.
6. M/s Krishna Grih Udyog, Sri Radhe Shyam Sahu, S/o Late Sheopujan Sahu, At present Sohani Path, P.O. + P.S. + District - Buxar – 822101.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Adv. with Mr. Vikash Kumar
For the Respondent/s	:	Mr. Kumar Priya Ranjan, SC-23
For the private Respondent	:	Mr. Bajrangi Lal

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

7 08-04-2015 Mr. Rajendra Narain, learned senior counsel

appearing on behalf of the petitioner, Mr. Kumar Priya Ranjan,

learned counsel appearing for the Bihar Industrial Area

Development Authority (hereinafter referred to as 'the BIADA')

and Mr. Bajrangi Lal, learned counsel appearing for the private

respondent are in attendance and have been heard.

This civil review application has been filed by the

petitioners praying for review of the judgment and order dated

23.7.2014 passed in CWJC No.9747 of 2013, whereby the writ petition was dismissed.

The petitioner filed this review petition on gathering certain information subsequent to the disposal of the writ petition. The issue raised by Mr. Rajendra Narain, learned senior counsel appearing for the petitioner stands recorded in the order dated 14.1.2015 of this Court and are as follows:

- “(a) The private respondent is not the adjacent plot holder of the plot in question which is bearing No.J-25(p); and
- (b) In terms of the policy decision of the BIADA dated 30.4.2012 present at Annexure-7 to the review application, preference has to be given to the adjacent plot holder and since the petitioner is adjacent plot holder of Plot No.J-25(p) as well as the fact that the private respondent is nowhere in the picture, hence the order passed in the writ petition upholding the decision on the premise that the private respondent was an adjacent plot holder, is upon suppression of factual position by the BIADA.”

It was argued by Mr. Narain that the order passed in



the writ petition is to be reviewed on grounds that the Court had proceeded on a premise that both the petitioner and the private respondent are adjacent plot-holders of Plot No.-J-25(p) which is not the correct position and secondly a policy decision of BIADA dated 30.4.2012 present at Annexure-7 to the review application gives a premium to an adjacent land-holder in case of any surplus land being found in plot adjacent to his plot. It was argued by Mr. Narain that since the correct position had not been addressed before this Court during the course of consideration of the writ petition that it was disposed of without interfering with the decision of the BIADA when in fact it is the petitioner alone who has a right to claim plot no.J-25(p) which lies south to the plot held by the petitioner.

A counter affidavit has been filed on behalf of the BIADA and the private respondent also has appeared through Mr. Bajrangi Lal.

I have already outlined the two issues raised by Mr. Narain to seek review of the order. It stands clarified that respondent no.6 does not have a plot adjacent to the plot in question i.e. plot no.J-25(p) but then a question would arise whether this would be sufficient for review of the order passed in the writ petition and whether the petitioner would draw any



advantage from this fact or from the policy decision enclosed at Annexure-7. Although it has been strenuously argued by Mr. Narain that Clause-2 of the policy decision placed at Annexure-7 invests a right in the petitioner to claim the plot no.J-25(p) which remains in excess after its allotment in favour of another person but such arguments have been contested by Mr. Priya Ranjan, learned counsel appearing for the BIADA to submit that the provision does not reflect as such and the right over any surplus area in a plot only vests in the concerned plot-holder and none else. According to Mr. Priya Ranjan, since the plot in question is Plot no.J-25(p) and the petitioner is holder of plot no.J-26 then even the provision of Clause-2 of the policy decision would not come to his aid for any right whatsoever only vests in the person who has been allotted the remaining portion of Plot No.J-25.

Mr. Narain, learned senior counsel appearing for the petitioner with respect to Clause-2 of the policy decision of the BIADA has submitted that when the policy decision does not debar the adjacent plot holder from claiming any surplus land, it would impliedly mean that if the person allotted Plot No.J-25 does not opt for the same it should be offered to the person holding the adjacent plot i.e. the petitioner and should not be



offered to a third party for it would be in the violation of the policy decision itself. He further submits that since the application made by the petitioner claiming the surplus portion was filed much prior to the filing of any application by the respondent no.6 he definitely had a privilege over respondent no.6.

I have heard learned counsel for the parties and I have perused the records.

Though it stands recorded in the order of this Court dated 23.7.2014 passed in CWJC No.9747 of 2013 that the respondent no.6 and the petitioner are holders of plots allotted by BIADA and the plot in dispute lies in between the plot of the petitioner and that of the respondent no.6 but that is not the correct position rather the respondent no.6 became plot-holder only after allotment of the plot in question i.e. Plot No.J-25(p). As I have already indicated this can be a sufficient reason for review of the order only in case the other issue raised by the petitioner draws in his favour. In my opinion though this is an error recorded in the order but unless the petitioner is able to establish that his right stood curtailed by such error which has gone to benefit the private respondent and that the action of the BIADA in not placing the policy decision on record has

prejudiced his interest, this would not be a sufficient ground to recall the order passed in the writ petition.

The admitted position as it exists is that the petitioner is a holder of Plot No.J-26 and the surplus area lies in plot No.J-25 which has been allotted to a third party. Clause -2 of the policy decision placed at Annexure-7 reads as under:

“ ”

“2. ऐसा देखा जा रहा है कि आवंटन के उपरान्त भौतिक स्वामित्व देते समय कभी-कभी भूखण्ड में आवंटन से अधिक भूमि पाई जाती है । वह भूमि किसी दूसरे इकाई को आवंटित नहीं की जा सकती । ऐसे मामलों में पी0सी0सी0 द्वारा प्रबंध निदेशक वियाडा को प्राधिकृत किया गया कि वे उक्त भूमि का आवंटन उस इकाई को कर दें तथा आगामी पी0सी0सी0 की बैठक में इसे घटनोत्तर स्वीकृति हेतु रखा जाए।”

I wonder to think as to how Mr. Narain can draw any advantage from the said clause when all that is mentioned in the said paragraph is that a surplus land arising out of an allotment to a particular person should not be allotted to any third party rather should be allotted in favour of the person holding the remaining portion of plot. Meaning thereby that if at all the surplus land could have been claimed by any allottee, it is the holder of plot no.J-25 and none else. In absence of any provision in the policy decision which would indicate that the surplus land

if not claimed by the plot holder, would be allotted to the adjacent plot-holder, the petitioner cannot draw any advantage.

Under these circumstances where the holder of plot no.J-25 is not claiming the surplus land, the discretion exercised by the BIADA for allotting approximately 2200 sq. ft. of the said plot in favour of respondent no.6 would suffer from no infirmity. In my opinion such allotments being in the nature of commercial venture it is the exclusive discretion of the BIADA as to the selection and the settlement of the entrepreneurs and unless the discretion exercised is perverse, it need not be interfered with. That the case of the petitioner has been considered by the Project Clearance Committee which fact is reflected not only from the counter affidavit filed in the writ petition but also in the present proceedings and the discretion went in favour of the private respondent, this Court is not persuaded to order for review of the order passed in the writ petition.

The review application is accordingly dismissed.

(Jyoti Saran, J)

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