

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.353 of 2008

IN

Civil Writ Jurisdiction Case No. 7352 of 2007

- =====
1. Bihar Industrial Area Development Authority, through its Managing Director, at Present East Gandhi Maidan 1st Floor, Udyog Bhawan Patna, Previous Indra Bhawan 6-7 floor Bailey Road, Patna
 2. The Managing Director, BIADA, Patna 6-7 floor Indra Bhawan Bailey Road Patna at Present East Gandhi Maidan 1st floor Udyog Bhawan Patna
 3. The Executive Director, BIADA, Patna 6-7 floor Indra Bhawan Bailey Road Patna at present East Gandhi Maidan 1st floor Udyog Bhawan Patna
- Appellant (respondent)

Versus

1. Deepak Paints Pvt.Ltd, C-16-17, Patliputra Industrial Estate, Patna 800013, through its Managing Director, Balaraj Kapoor, S/o- Late Prem Nath Kapoor, R/o Path, Alpana P.S. Patliputra Patna 800013.
- Respondent (Petitioner)
2. The State of Bihar
 3. The Industrial Development Commissioner, Govt. of Bihar, Patna.
- Respondent (Respondent)

with

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Letters Patent Appeal No. 1395 of 2009

IN

Civil Writ Jurisdiction Case No. 7066 of 2009

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1. Bihar Industrial Area Development Authority Udyog Bhawan, East Gandhi Maidan , Patna
 2. Managing Director, Bihar Industrial Area Development Authority Udyog Bhawan, East Gandhi Maidan , Patna
 3. Executive Director , Bihar Industrial Area Development Authority Branch Office, Hazipur, Distt- Vaishali

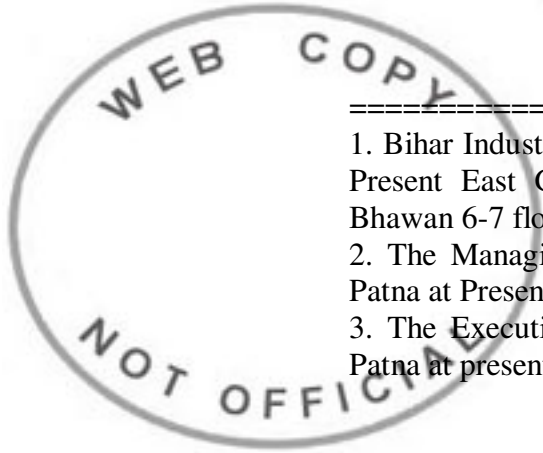
.... Appellant/s

Versus

1. M/S Swastik Hotel And Inns(P)Ltd., Industrial Area ,Hazipur Through Its Director , Nirmal Kumar Maitin
2. Niramal Kumar Maitin S/O Late Ram Chandra Prasad Maitin Resident Of Nepali Kothi, Opposite Gasolene Petrol Pump, P.S. S.K.Puri, Distt- Patna
3. The State Of Bihar Through Its Principal Secretary , Industries Government Of Bihar, Patna
4. The Principal Secretary- Cum -Appellate Authority, Department Of Industries Government Of Bihar, Patna
5. Bihar State Financial Corporation Fraser Road , Patna Through Its Managing Director

.... Respondent/s

with



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Letters Patent Appeal No. 1281 of 2010
IN
Civil Writ Jurisdiction Case No. 13808 of 2007

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1. Bihar Industrial Area Development Authority , Through Its Managing Director Patna
2. Bihar Industrial Area Development Authority Regional Office, Darbhanga Through Its Working Director, Shri Chandra Mohan Prasad

.... Appellant/s

Versus

1. M/S Durga Chemical Industries Through Its Proprietor Shailendra Kumar Thakur Petitioner No.2, Industrial Area, Donar, Darbhanga
2. Shailendra Kumar Thakur S/O Shri Shashi Nath Thakur Vill &P.O. Sajhaur, P.S.Bahera, Distt-Darbhanga
3. The State Of Bihar Through Its Chief Secretary Bihar, Patna

.... Respondent/s

with

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Letters Patent Appeal No. 699 of 2011
IN
Civil Writ Jurisdiction Case No. 16831 of 2009

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1. The Managing Director Bihar Industrial Area Devp.Authority, 6-7 Floor, "Indra Bhawan" Ram Charitra Singh Path, Bailey Road, Patna
2. The Executive Director, Bihar Industrial Area Development Authority, 6-7 Floor, "Indra Bhawan" Ram Charitra Singh Path, Bailey Road, Patna
3. The Secretary, Bihar Industrial Area Development Authority, 6-7 Floor, "Indra Bhawan" Ram Charitra Singh Path, Bailey Road, Patna

.... Appellant/s

Versus

1. Nisar Khan Alias Nisar Ahmad Khan S/O Late Zainul Abadin Khan Permanent Resident Of Village Bashtarwara, P.S.- Bastharwara, District- Darbhanga. At Present Resident Of 31 -C Raicharan Ghosh Lane, Kolkata- 700039, Proprietor Of M/S Bihar Rubber Product, Industrial Area, Fathua, P.S.- Fatuha, District- Patna
2. The State Of Bihar Through Secretary, Industries Department, Government Of Bihar, Patna

.... Respondent/s

with

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Letters Patent Appeal No. 1243 of 2014
IN
Civil Writ Jurisdiction Case No. 7262 of 2010

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1. The Bihar Industrial Area Development Authority through its Managing

Director, Indira Bhawan, Patna presently shifted to Udyog Bhawan, East to Gandhi Maidan, P.S. Gandhi Maidan, District AND Town, Patna
2. The Managing Director, Bihar Industrial Area Development Authority, Indira Bhawan, Patna presently shifted to Udyog Bhawan, East to Gandhi Maidan, P.S. Gandhi Maidan, District AND Town, Patna
3. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Darbhanga

.... Appellant/s

Versus

1. The State of Bihar through the Industrial Development Commissioner, Government of Bihar, Patna
2. The Industrial Development Commissioner, Government of Bihar, Patna
3. M/S Lakhi Gloves Industries, Industrial Area, Pandaul, P.S.- Pandaul, Distt.- Madhubani through its Proprietor, Chandra Kant Mandal, son of Paltan Mandal, resident of Vilve.- Sagarpur, Barki Pokhar, P.S.- Pandaul, Distt.- Madhubani

.... Respondent/s

with

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Letters Patent Appeal No. 1629 of 2014
IN
Civil Writ Jurisdiction Case No. 4928 of 2008

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1. Bihar Industrial Area Development Authority West Gandhi Maidan, Ydyaog Bhawan, Patna through its Managing Director.
2. Executive Director, Bihar Industrial Area Development Authority, Regioanal Office. Industrial Estate, P.O. MIC, P.S. Bela, District and Tower Muzaffarpur .
3. Managing Director, Bihar Industrial Area Development Authority, West Gandhi Maidan, Ydyaog Bhawan, Patna .

.... Appellant/s

Versus

1. M/s Jagjit Ispat Industries Pvt. Ltd. Industrial Area Bela , P.S. Bela Town and District Muzaffarpur though its Managing Director, Hari Singh son of Late Begi Singh resident pf Mohalla Rama Shankar Nagar , P.S. Mithanpura , Town and District Muzaffarpur.
2. The State of Bihar
3. Industrial Development Commissioner cum Secretary , Department of Industries, State of Bihar , Patna.
4. State Credit and Investment Corporation , Indira Bhawan, Patna though its Magaging Director.

.... Respondent/s

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Appearance :
(In LPA No. 353 of 2008 and Batch)

For the Appellants : Mr. S.D. Sanjay, Sr. Adv.
Mr. Alok Kumar Alok, Adv.
Mr. Mr. Manmohan Kumar, Adv.
Mr. Manik Ved Sen, Adv.

For the Respondents : Mr. Vikash Kumar, Adv.
Mr. Lalit Kishore, Sr. Adv.
Mr. Piyush Lall, Adv.
Mr. Rajeev Ranjan, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 18-03-2015

These appeals are preferred against the order dated 17.3.2008 passed by the learned Single Judge in C.W.J.C. No.7352 of 2007 and batch.

The Bihar Industrial Area Development Authority (hereinafter referred to as BIADA for short) was constituted under the Bihar Industrial Area Development Authority Act, 1974. The authority allotted the plots to the entrepreneurs after calling for applications, over the period. The 1st respondent herein, i.e. Deepak Paints Pvt. Ltd, was allotted plot No.C-16-17 and a lease deed was also executed. Similar lease deeds were executed in favour of the petitioners in various other writ petitions who, in turn, are shown as respondents in these Appeals.

On 17.5.2007, the Managing Director of the authority issued individual show cause notices to the respondents requiring them to explain as to why the leases be not cancelled, on the ground that they did not establish

the industries in the allotted plots or the industries established by them ceased to function as the case may be. The 1st respondent in L.P.A. No.353 of 2008 submitted reply on 21.5.2007. Thereafter a general show cause notice to all the similarly situated entrepreneurs was issued on 3.6.2007.

Ultimately, the Managing Director cancelled the leases and thereby the allotment of plots to the respondents through individual orders dated 7.6.2007.

Challenging the orders of cancellation, the writ petitions were filed. Several contentions were urged, such as that the Managing Director does not have the power and jurisdiction to cancel the leases and the Authority alone is competent; and that even where a lease is cancelled, the possession of the land cannot be resumed without following the procedure prescribed by law.

The writ petitions were opposed by the appellants. It was pointed out that on account of the failure of the respondents to establish industries or to continue to operate them, the very purpose of the allotment of plots was defeated. Through the order under appeal, the learned single Judge virtually accepted the contention of the appellants and allowed the writ petitions,



giving certain directions. Reference was made to a judgment delivered by a Division Bench of this Court in The Gait Public Library and Institute Versus The State of Bihar.¹ Hence, these appeals.

Sri Lalit Kishore, Principal A.A.G., submits on behalf of the appellants that the purpose of acquiring the land and creation of industrial estate is to promote industrial growth and to provide employment, but several entrepreneurs who were allotted the plots in the estates did not take any steps to establish industries at all. He submits that in certain cases, a semblance of structures was made, but they were put to use other than the one it was meant for. He contends that the directions issued by the learned single Judge run contrary to certain principles of law and, if followed, they would defeat the purpose of allotment of the land.

Shri S.D. Sanjay, learned Senior Counsel for the Respondents, raised a preliminary objection as to the very maintainability of the Appeals. He contends that when the common order was passed in a batch of about 70 writ petitions, the filing of one Appeal does not serve the purpose. Expanding further, he contends that the failure

1. 1995(1) P.L.J.R. 585



to file Appeals in other cases has resulted in the respective orders becoming final and thereby operating as *res judicata*. On merits also, he contends that the cancellation was done arbitrarily and contrary to the specific provisions of law. He contends that the provisions of the Bihar Industrial Area Development Authority Act would not override those of the Transfer of Property Act and even where a lease is cancelled or has expired, the possession of the land cannot be taken, without having recourse to law.

As regards the preliminary objection about the maintainability of one Appeal against the common judgment rendered in a batch of writ petitions, we would have certainly dealt with the same in detail, but for the fact that it has been the subject matter of several orders passed, over the period. When this very objection was raised at one point of time, this Court sustained it and permitted the appellants to file the individual appeals. Thereafter another order was passed, virtually permitting the present appeal to cover the rest of the writ petitions. At this length of time, we do not intend to address the same question, and treat the present appeals as holding good, for challenging the common order.



The respondents were allotted the land and thereafter lease deeds were executed. The show cause notices were issued proposing to cancel the leases and, accordingly, orders were passed. The grievance of the respondents was that the failure to establish the industries or to continue to operate, if established, was on account of factors beyond their control and, in certain other cases, the acts and omissions of the authority, have contributed for the same.

We are conscious of the fact that the purpose of leasing the land was only to permit industries to come up and thereby to generate employment as well as to earn income to the State. The credentials of allottees were examined before the allotments were made. In the recent past, certain developments have taken place which have their own effect upon the establishment of industries or viability of those which are already in existence. It is a matter of record that several State and Central Public Sector Undertakings have also been closed. When such is the fluidity of the situation, taking a stringent view that non-establishment of industries must result in cancellation of lease cannot be countenanced. Instead, time ought to have been granted either to establish

industries or to revive those which have become sick. In case the existing industries have become unviable, the lessee can be permitted to go for diversification. Sudden or abrupt cancellation of leases would not only put the lessees, but also various agencies, as well as the employees to serious hardship.

Under these circumstances, we dispose of the appeals by modifying the order passed by the learned single Judge to the following effect:

(A) The orders of cancellation of leases or allotment of the land to the respondents herein shall stand set aside, but they are given six months time from today either to establish the industries, wherever they are not established, or to revive the industries, if they were already established, but have become sick.

(B) If any of the respondents, i.e. the writ petitioners, intend to go for diversification, any application in that behalf shall be made within two months from today. The concerned authority shall take decision in one month thereafter. If permission for diversification is granted, reasonable time shall be granted by the concerned authority, for establishment or modification.

(C) In default, i.e. if industry is not

established or the closed one is not revived within the stipulated time, it shall be open to the authorities to resume the land for further allotment by inviting applications from the intending entrepreneurs, but not through individual allotments.

Such of the respondents who have either established the industries or have restarted the closed ones during the pendency of these appeals need not take any steps.

If any factors intervene for delayed commencement of production, it shall be open for the entrepreneurs to seek extension of time from the concerned authority.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

K.C.jha/-
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