

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4702 of 2011

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M/s Maharaja Zarda Factory, Industrial Area-Bela, (M.I.C.) Muzaffarpur Industrial Complex, Bela, P.O. & P.S. Bela, District Muzaffarpur through its partner Asranul Yaquin

.... Petitioner

Versus

1. The State of Bihar, through Principal Secretary, Industrial Department, Bihar, Patna
2. The Principal Secretary, Industrial Department, Bihar, Patna
3. Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, P.O. and P.S. Gandhi Maidan, Patna through Its Managing Director
4. Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, P.O. and P.S. Gandhi Maidan, Patna
5. The Executive Director, Bihar Industrial Area Development Authority Udyog Bhawan, Gandhi Maidan, P.O. and P.S. Gandhi Maidan, Patna
6. Development Officer, Bihar Industrial Area Development Authority, Regional Office, Muzaffarpur Industrial Complex, Bela, P.O. & P.S. Bela, District Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Sriram Krishna, Advocate

For the State : Mr. Kumar Manglam, AC to GP 15

For Respondent No.5: Mr. Girijesh Kumar,
Mr. Abhishek Raj, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 15-10-2015

The present writ petition has been filed for quashing the office order dated 27.08.2007 contained in Memo No. 1909 passed by the Executive Director, Bihar Industrial Area Development Authority (for short, "BIADA") cancelling the allotment of industrial plot No.D-17 settled vide registered sale deed in favour of the petitioner.

2. The short facts as mentioned in the writ petition disclose that the petitioner's industrial unit started production on 10.02.1988 and thereafter registered as an SSI undertaking with the



Industries Department in the year 1989 for manufacturing '*Zarda* and *Qiwam*'. A registered lease deed for a period of 99 years between the petitioner and BIADA was executed on 24.08.1989. The unit continued being in regular production without any gap. However, the petitioner was informed on 09.07.2010 that the registered lease deed dated 24.08.1989 had been cancelled by the respondent-authority by the impugned office order contained in Memo No.1909 dated 27.08.2007.

3. Learned counsel for the petitioner submits that the impugned order is arbitrary and mechanical, having been passed without due application of mind, considering that the lease has been cancelled for the reason that the petitioner had not commenced production and had not shown any interest in establishing the industrial unit on the land which was contrary to the intent and purpose of the lease. It is further stated that considering the nature of the goods produced by the petitioner's industrial unit as well as the prevalent environmental conditions, functioning of the industrial unit is possible only for about 5-6 months year. This is not a case where the petitioner had obtained the land on lease and had taken no action whatsoever for establishing its industrial unit rather the petitioner's industrial unit has been in regular production for the past over two decades.

4. Learned counsel for the respondent-BIADA invites

attention to the counter affidavit and supplementary counter affidavit to submit that the petitioner's industrial unit was found closed in course of inspection on 19.08.2007 and hence, the lease deed has rightly been cancelled.

5. In reply, learned counsel for the petitioner submits that neither any notice of such inspection nor any copy of the consequent inspection report was ever served upon the petitioner and in any event, the mere fact that the industrial unit might have been closed during the monsoon season does not detract from the fact that the petitioner's industrial unit was in fact in regular production year after year.

6. Ordinarily, this Court would not interfere in matters involving the disputed questions of fact. There is no clear material placed on record to indicate whether the petitioner's industrial unit has been in production for the greater part of each year or not.

7. Be that as it may, the petitioner's case in any event is not in any worse situation than the petitioners of LPA No.353 of 2008 (*Bihar Industrial Area Development Authority & others Vs. Deepak Paints Pvt. Limited and others*) and analogous cases wherein the Hon'ble Division Bench of this Court took note of the prevailing circumstances in respect of the relevant industrial units which had not come into production or had become sick, resulting in cancellation of their land-lease. It was observed that "taking a stringent view that

non-establishment of industries must result in cancellation of lease cannot be countenanced” rather that “time ought to have been granted either to establish industries or to review those which have become sick. In case the existing industries have become unviable, the lessee can be permitted to go for diversification”.

8. This Court is of the view that the case of the present nature is squarely covered by the decision of the Hon’ble Division Bench of this Court, referred to above.

9. In the above circumstances, the impugned order dated 27.08.2007 passed by the Executive Director, BIADA is set aside and the writ petition is disposed of on the same terms and in line with the decision of the Division Bench of this Court in LPA No. 353 of 2008 and other analogous cases. The petitioner is at liberty to approach the respondent-BIADA with a fresh representation within a period of three weeks from the date of receipt/production of a copy of this judgment. In case such a representation is filed by the petitioner, the same shall be considered and disposed of by a speaking order in accordance with law expeditiously keeping in view the observations and directions in the aforesaid letters patent appeals.

(Vikash Jain, J)

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