

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21864 of 2014

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M/s Tirhut Tannery (Private) Limited through its Director, Upendra Kumar Singh, son of late Bhola Nath Singh, resident of Village Chintamanpur, P.S. Pipra, Dist. East Champaran, presently residing behind Zenith Petrol Pump, Ramdayalu Nagar, C/o Prof. K.K. Singh, P.S. Kazi Mohammadpur, Post Office Ramna, Dist. Muzaffarpur.

.... Petitioner/s

Versus

1. The Chairman Bihar Industrial Area Development Authority, East Gandhi Maidan, Patna.
2. The Managing Director, Bihar Industrial Area Development Authority, East Gandhi Maidan, Patna.
3. The Secretary, Bihar Industrial Area Development Authority, East Gandhi Maidan, Patna.
4. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Adv.

For the BIADA : Mr. Rajeev Ranjan Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 07-01-2015

Heard learned counsel for the parties as with regard

to the following prayer made in this writ application:-

- "1(i) For issuance of writ in the nature of certiorari for quashing of Memo No. 2059 dated 20-09-2007 whereby the allotment of land in favour of the Petitioner Company in the Industrial Area, Muzaffarpur has been cancelled unilaterally, while the land was leased out for a period of 99 years in favour of the Petitioner, vide registered lease deed bearing No. 8969 dated 03.07.1980.
- (ii) For holding that the effect of a registered instrument cannot be nullified by the respondent authorities on the basis of an administrative order.
- (iii) For necessary direction to consider the case of the Petitioner for the Exit Policy, 2011 or the Exit

Policies thereafter for which the Petitioner had submitted applications but could not be considered on the ground of alleged cancellation of allotment of land."

Learned counsel for the petitioner in support of the aforementioned prayer has straightway relied of the judgment of the learned single Judge of this Court in the case of **Deepak Paints (P) Ltd. & Ors. Vs. The State of Bihar & Ors.** reported in 2008(2)PLJR 293 to contend that such order of cancellation of the allotment of the land of the petitioner is bad because in this case also such cancellation has been made under the order of the Managing Director who in the case of Deepak Paints (P) Ltd. (supra) had been found to be an incompetent authority to cancel the registered lease.

Learned counsel for the Bihar Industrial Area Development Authority on the other hand has submitted that not only this writ application assailing an order dated 20.09.2007 on 19.12.2014 after more than seven years of cause of action is grossly over-delayed but even otherwise is not maintainable on account of there being statutory alternative remedy by way of appeal in terms of Section 6(2)(a) of the Bihar Industrial Area Development Authority Act, 1974. In this regard, he has also placed reliance on a Division Bench judgment of this Court dated

24.9.2013 in LPA No. 738 of 2013 (M/s Shri Bhartiya Bandhua Industries P-8 Vs. The State of Bihar & Ors.) wherein the decision in the case of Deepak Paints (P) Ltd. (supra) has been distinguished.

In the considered opinion of this Court, if there is a statutory forum of appeal as is in the BIADA Act, filing of a writ application without exhausting the remedy of appeal could still be entertained if such order was wholly without jurisdiction. The issue of jurisdiction as decided in the case of Deepak Paints (P) Ltd. (supra) however now gets watered down if not altogether overruled in view of the judgment of the Division Bench in the case of M/s Shri Bhartiya Bandhua Industries P-8 (supra). Thus, it will be difficult for this Court to hold that the impugned order which was passed way back in the year 2007 is without jurisdiction.

When such an observation has been made, learned counsel for the petitioner seeks permission to withdraw this application with a liberty to file an appeal. He has also submitted that the appellate authority may be directed to consider the question of limitation in filing of the appeal sympathetically.

In the considered opinion of this Court, once the petitioner has sought to withdraw the writ application in order to

file its appeal before the appellate authority, this Court would not be required to say anything about condoning the delay in filing of the appeal but, then, it always goes without saying that if the petitioner would satisfactorily explain the delay as has been also sought to be done in the pleadings of this writ application, the appellate authority will definitely examine the matter judiciously both on the issue of limitation as also on merit.

With the aforementioned observation and direction, this writ application stands withdrawn.

(Mihir Kumar Jha, J)

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