

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14410 of 2013

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1. M/S Rajdhani Trade Impex A Partnership Firm Having Its Place Of Business At Plot No. 7 B Type In The Fatuha Industrial Area, Fatuha District Patna Through One Of Its Partners Shri Munendra Kumar Sinha, S/O Late Jaipatti Singh, R/O Station Road, Fatuha, District- Patna

.... Petitioner/s

Versus

1. The Bihar Industrial Area Development Authority, Through Its Managing Director, Udyog Bhawan, Gandhi Maidan, Patna
2. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, Patna
3. The Executive Director, Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, Patna
4. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate

For the Respondent/s : Mr. Piyush Lall, Advocate.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 10-05-2016

Heard Mr. Kejriwal for the petitioner and Mr. Piyush Lall for the respondent- Bihar Industrial Area Development Authority (for short ‘ the BIADA ’).

Affidavits, counter affidavit(s) and rejoinder to the counter affidavit(s) have been filed by the parties.

There is no dispute that on an application filed by the petitioner (a partnership firm) an area of 3480 sq. ft was allotted by the BIADA in favour of the petitioner in 1987 for setting up of industry. For diverse reasons the industry could not become operational/functional which promoted the BIADA to take steps for



cancellation of the allotment of land. The cancellation was ordered in 1995. The petitioner filed Title suit no 40 of 1998 which, on contest, was dismissed on 5.10.2012. The same was challenged before the appellate Court vide Title Appeal no. 83 of 2012. As of now, the Title appeal does not survive as the same was dismissed as not pressed or for non removal of defects vide order dated 28.4.2015. In the year 2013, the petitioner claims to file an application before the Udyami Adalat of which the Chairman of BIADA is the head. A report was called for from the BIADA and vide a proceeding (Annexure-12), the Udyami Adalat did not take any decision on the case of the petitioner on the ground that a litigation was pending in the Court . It has been asserted that thereafter the petitioner again represented before the Managing Director of BIADA. In the meanwhile, the present writ petition was also filed in which on 27.11.2013 the Court permitted the petitioner to approach the Chairman of the BIADA against rejection of the claim of the petitioner who may consider the same in accordance with law. It is stated that the Chairman of the BIADA in the light of the order of this Court, considered the claim of the petitioner and did not pass any favourable order on the ground that the petitioner did not show concrete source of finance to rehabilitate the industrial unit and make it operational. Again a representation is said to have been filed before the Udyami Adalat which is pending consideration.



Mr. Kejriwal submits that in the meanwhile, the petitioner has invested huge fund in the milk chilling plant which the petitioner proposes to establish on the industrial plot which is also a small scale industry. Diverse civil works have been carried out and, in fact, the milk chilling plant has been made operational. In the light of the order passed by this Court in LPA No. 353 of 2008 and other analogous matters the petitioner is entitled to the grant of at least 06 months time to demonstrate before the Managing Director of the BIADA that the changed industrial is now functional. The petitioner shall also in the meantime seek permission for diversification / change of the nature of the business etc. from the BIADA for which formalities are almost complete. The petitioner also undertakes to clear all the dues of BIADA including the fees for registration of transfer of business etc. of the BIADA.

Mr. Lall, on the other hand, states that there is a verdict of the Civil Court against the petitioner in Title suit no. 40 of 1998 which stand affirmed by the appellate Court as Title Appeal filed by the petitioner is dismissed on account of non removal of defects or non pressing of the Title Appeal. A lis between the parties having already decided the BIADA may not give any indulgence to the petitioner in the light of the order of the Division Bench by this Court in batch of appeal(s). It is also submitted that in face of the decree of the trial Court and the dismissal of the appeal the present

writ petition is not maintainable.

On a consideration of the submissions of the parties, in my considered view, the contention of the counsel for the petitioner is fit to be accepted that under wrong legal advice suit was filed. The Act itself provides a remedy against cancellation by filing appeal before the appellate authority against any order of cancellation of allotment/lease of plot by the Managing Director of the BIADA. The BIADA Act is a special Act and the remedy provided therein ought to have been pursued by the petitioner. That apart, this Court vide order dated 27th November, 2013 had directed the Chairman of the BIADA to give a fresh consideration on the claim of the petitioner during pendency of the writ petition. The consideration made on the claim of the petitioner indicates the same was not denied on the ground that a decree was passed in the case of the petitioner in favour of the BIADA. The Chairman of the BIADA, on consideration, found that the petitioner was unable to convince the authority about the availability of the funds/resources for quick rehabilitation of the industrial unit. It is asserted before this Court that diverse civil works have already been carried out and the chilling plant established by the petitioner over the plot is functional/operational. In the case of **Bihar Industrial Area Development Authority & Ors. vs. Deepak Paints Pvt. Ltd. & Ors. (LPA No 353 of 2008)** a Division Bench of this Court in somewhat comparable circumstance held as under:-

“(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.”

The prime purpose of the existence of BIADA is to assist the entrepreneurs in establishing /developing industries within the State of Bihar. Land is one of the primal requirement along with other facilities provided thereto. If the petitioner is ready and willing to get the industrial unit re-established then the technical objection on which the prayer has been opposed would not serve the ends of justice.

Taking into account the aforesaid facts emerging

from the record , this Court allows the application in the following manner:-

The order cancelling the allotment of the land/plot in the industrial area in favour of the petitioner shall remain in abeyance for a period of 06 months from today. In the meanwhile, the petitioner shall apply for change in the business and pay the outstanding dues of the BIADA within one month. The respondent BIADA shall allow the said application of the petitioner. The petitioner shall within a period of 06 months provide adequate material/proof to the respondent BIADA in order to satisfy that the unit has become operational /functional in all respects. If the respondent -BIADA is convinced then the order of cancellation shall, by a specific order shall be either recalled or withdrawn, otherwise the respondent- BIADA shall be entitled to repossess the allotted land of the petitioner in accordance with law.

(Kishore Kumar Mandal, J)

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