

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7803 of 2014

Kanti Kumar, Son of Late Paras Nath Srivastava, Resident of 11/2 Rajiv Nagar, Police Station Digha, District- Patna, Proprietor M/s Paras Fabri Tech.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Industry Department, Government of Bihar, Patna
2. Principal Secretary, Industry Department, Government of Bihar, Patna
3. The District Magistrate, Patna
4. Director Industry, Industry Department, Government of Bihar, Patna
5. The Industrial Development Commissioner-cum-Appellate Authority, Department of Industries, Government of Bihar, Patna
6. The Managing Director, Bihar Industrial Area Development Authority, Indira Bhawan, Bailey Road, Patna
7. The Assistant Development Officer, Indira Bhawan, Bailey Road, Patna
8. M/s Behar Engineering Corporation through its proprietor Kedar Nath Singh, Son of Late Bharat Singh, Resident of 58-D, S.K. Puri, P.S.- S.K. Puri, District and Town- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chittaranjan Sinha, Sr. Adv. Mr. Sanjeet Kumar, Adv. Mr. Roy Kamal, Adv.
For the BIADA	:	Mr. Piyush Lal, Adv.
For the Respondent NO. 8:	:	Mr. Rajiv Kumar Verma, Sr. Adv. Mr. R.K. Sinha, Adv.
For the State	:	Kumari Amrita, Adv.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

Date: 13.04.2018

The present writ application has been filed for



quashing the letter dated 19.09.2013 issued by the In-charge, Director, Bihar Industrial Area Development Authority {hereinafter referred to as BIADA}, whereby and whereunder the representation filed by the petitioner on 25.04.2013 for handing over physical possession of Plot NO. C-17, situated in Industrial Area, Patliputra, Patna in terms of order and judgement dated 17.03.2008 has been rejected on a misconceived ground that further action can be taken only after the disposal of LPA No. 353 of 2008. (BIADA Vs. Ms. Dipak Paints & Ors & Analogous cases. The petitioner has thus, made a further prayer for issuance of a direction to the concerned respondents to handover physical possession of Plot no. C-17 which is being withheld despite judgement and order dated 17.03.2008 passed in CWJC No. 5730 of 2007 (Kanti Kumar Vs. State of Bihar and Other Analogous cases).

The brief facts/history of the present litigation are detailed hereunder.

1. That the plot in question of Patliputra Industrial Area Development Authority was allotted to one Bihar Engineering Corporation (respondent no. 8) vide order dated 01.06.1973, but having failed to fulfil the terms of agreement, vide order dated 16.10.2001 (Annexure-3) the allotment in favour of respondent 8 was cancelled and thereafter the BIADA Vide



its order dated 22.08.2003 allotted the aforementioned land, re-numbered as Plot no. 30 in favour of the petitioner, who is the proprietor of the firm namely M/s. Paras Fabri Tech.

2. The said order of cancellation and order of allotment was challenged by respondent no.8 in CWJC No. 2056 of 2004, but the same was rejected and the LPA No. 1112 of 2005 preferred against the same was also rejected vide order dated 05.12.2006.

3. The petitioner-proprietor of M/s Paras Fabri Tech was also given physical possession of the land by the Area In-charge on 22.10.2003.

4. However, the petitioner came to face certain serious hindrances, as delay in grant of fresh electricity connection by the Electricity Board, as the dues had not been paid by the earlier allottee. Ultimately, the Electricity Board vide order 28.10.2005 (Annexure-5) approved the electricity connection of the petitioner.

5. That the petitioner's unit was never closed thereafter, and production continued at the site/land in question which stands confirmed by the Inspection Report made by the Area In-charge, Development Officer, Executive Director in their



Inspection Report dated 13.12.2006 and 29.01.2007 (Annexure-9 series).

6. However, the BIADA cancelled the allotment of Plot in question on alleged ground of non-production vide its order dated 02.09.2006 (Annexure-12). The same came to be challenged under the provisions of the BIADA Act before the Appellate Authority, but the authorities without considering the grounds raised in the Memo of Appeal and the accompanying circumstances pointed out by the petitioner, rejected the Appeal of the petitioner vide its order dated 29.01.2007 (Annexure-13).

7. Constrained by the aforementioned order of rejection passed by the Appellate Authority, the petitioner moved this court in CWJC No. 5370 of 2007 (Kanti Kumar Vs. State of Bihar & Ors.) for quashing the order dated 02.09.2006 as well as the Appellate order dated 29.01.2007 which was heard along with and disposed of by a common order dated 17.03.2008 in analogous cases (*Dipak Paints (P) Ltd. Vs State of Bihar & Ors.*) by *Hon'ble Mr. Justice Ajay Kumar Tripathi* by which the orders of cancellation of the respective allottees was set aside. As such, the BIADA preferred an intra



Court appeal bearing LPA No. 353 of 2008 (Bihar Industrial Area Development Authority & Ors Vs. Dipak Paint Pvt. Ltd. & Ors.), challenging the order dated 17.03.2008, which, after the filing of the present application has been disposed of and modified on 18.03.2015 in the intra court appeal with the following terms:-

“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 lease 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”.

8. It is needful to recapitulate at this stage that the case of respondent no. 8 had attained finality after disposal of LPA 1112 of 2005 which was dismissed as withdrawn vide order dated 05.12.2006 with a liberty to approach the BIADA. The aforesaid liberty granted to respondent no. 8, was availed by him but the appellate authority upheld the order of cancellation vide its order dated 20.02.2007 (Annexure –C to the Counter affidavit filed by BIADA). However, respondent no. 8 with an ulterior motive once again filed CWJC 7358 of 2007 with the prayer for quashing the news item publish in the daily newspaper, namely, Hindustan” issued on 07.06.2007, whereby BIADA had issued an auction notice of the plot in question. In the said writ application, the respondent no. 8 did not seek to challenge the order of rejection of the cancellation of lease of respondent no. 8, or the order rejecting the Appeal by the Industries Commissioner of Bihar, Patna, who is the Appellate Authority. Instead in the said writ application, the respondent no. 8 sought to challenge the advertisement which erroneously came to be included in the batch of writ applications, wherein the powers of the



Managing Director to cancel the lease/allotment were under challenge and were disposed of on a pure question of law along with Dipak Paints (P) Ltd. and other analogous petitions. Thus, the disposal of his writ application along with other analogous cases holds no relevance as the order of cancellation of lease of respondent no. 8 had reached its finality. The respondent no. 8 had exhausted all his remedies for re-allotment of the land in question and the order of cancellation of plot, having not been challenged or set aside by the any Appellate Court, binds the party till it exists or is set aside by the higher court.

The BIADA (respondent no. 6) had resisted the present writ application, stating that the contention of the petitioner that the possession of the land in question be restored in his favour, is not tenable because the same had been allotted to him as well as to respondent no. 8 and cancellation orders of these two allotments had been set aside by the Hon'ble Court vide order dated 17.03.2008 passed by the Hon'ble Court in CWJC No. 7352 of 2007 and the Appeal being LPA NO. 353 of 2008 against the same, was pending and therefore, any decision for restoration would be taken after disposal of the said Appeal. The petitioner's prayer that the possession of the land in question be restored by the



BIADA in his favour was also not tenable as the LPA filed against the aforementioned order was pending at the time of filing of the writ petition.

Learned counsel for the BIADA submitted that the contention of the petitioner in support of the above prayer, as raised in the writ petition is that it was allotted, the land in question by BIADA vide order dated 22.08.2003 (Annexure- 4 series to the writ petition) and the allotment was cancelled by BIADA by order dated 02.09.2006 (Annexure- 12 to the writ petition) and the appeal against the order of cancellation was dismissed by order dated 29.01.2007 (Annexure- 13 to the writ petition). Against the two orders aforementioned, the petitioner filed CWJC No. 5370 of 2007 in which the Hon'ble Court by order dated 17.03.2008 (Annexure- 2 series to the writ petition) was pleased to allow the said writ petition. The appeal filed by BIADA against the same, being LPA No. 353 of 2008 has since also been disposed of by the Hon'ble Division Bench by order dated 18.03.2015 (Annexure- H to the counter affidavit of respondent no. 6) with a direction that the land be restored back to the allottees and they be granted six months time to start production. Thus, the petitioner on the basis of these two orders of the Hon'ble Court had prayed that the land in question be restored



back in its favour.

Opposing the said prayer of the petitioner, learned counsel for the BIADA further submitted that the contention of respondent No. 8 is that the land in question should be restored back to it and not to the petitioner as the Respondent no. 8 was the original allottee of the said land and lease was executed for the same between itself and the BIADA. The stand of Respondent no. 8 was that since this Hon'ble Court has laid down the law vide order dated 17.03.2008 passed in the writ petition filed by the petitioner, that the managing Director had no power to cancel the allotment and take possession of the land for which a lease deed had been executed, therefore, the order of cancellation of its land and lease by the BIADA were illegal. It was thus, contended by respondent no. 8 that no right has accrued in favour of the petitioner being a subsequent allottee since the allotment was made after the order of cancellation, which in itself was illegal. It was pointed out by the respondent no. 8 that the order dated 17.03.2008 was upheld with modification by order dated 18.03.2015 passed by this Court in LPA NO. 353 of 2008.

Learned counsel appearing on behalf of the BIADA however contended that the contention of the respondent no. 8



cannot be sustained for the following reasons:-

- (A) Respondent no. 8 was initially allotted the land in question i.e. Plot NO. C/17 having an area of 10000 sq ft. at Industrial Estate, Patna by the Bihar State Small Scale Industries Development Corporation by letter dated 17.12.1972 and a lease was executed between it and this Corporation on 02.06.1973 . After the Patna Industrial Area Development Authority was constituted under the Bihar Industrial Area Development Authority Act, 1974 the lands of the Corporation were transferred to the said authority on directions of the Industries Department, Government of Bihar, Patna.
- (B) On orders of the Managing Director, PIADA , the above land allotted to respondent no. 8 was cancelled by the PIADA vide letter dated 16.10.2001 (Annexure-3 to the writ petition) on the ground that the industrial unit after coming in production had stopped the same and has not restarted production.
- (C) In the year 2004 respondent no. 8 filed CWJC No. 2056 of 2004 challenging the above order of



cancellation of allotment dated 16.10.2001. It also challenged the allotment letter No. 34 dated 07.01.2003 by which the said land had been allotted to M/s Paras Fabri Teck arrayed as respondent No. 10 in the said writ petition. The present writ petitioner i.e Kanti Kumar is the proprietor of M/s Paras Fabri Teck.

(D) The Hon'ble Court by order dated 19.8.2005 (Annexure-7 to writ petition) was pleased to dismiss C.W.J.C No.2056 of 2004. Respondent No. 8 challenged the dismissal of its writ petition by filling L.P.A. No.1112 of 2005. The Hon'ble Court by order dated 5.12.2006 (Annexure A to counter affidavit of Respondent No.6) was pleased to dismiss the appeal as withdrawn with an observation that if respondent No.8 renews his prayer by way of fresh representation for disposal of its earlier representation dated 11.7.2003 the same would be considered and disposed of by the respondent No.3 i.e. the Secretary Industries cum Chairman, BIADA.

E. That in compliance of the above order dated 5.12.2006 of the Hon'ble court, the Secretary Industries cum



Chairman, BIADA took up the representation dated 4.1.2007 of respondent No.8 in the form of an Appeal. By order dated 20.2.2007 (Annexure C to the counter affidavit of respondent No.6), the order of cancellation of allotment of respondent no. 8 dated 16.10.2001 was upheld with an observation that in case the appellant requests the Authority to re-allot the land in question then the Authority would consider the same as per the law.

- F. It was submitted that it would be evident from the above facts, that the issue of cancellation of allotment and lease of respondent no.8 and the land being subsequently allotted to the petitioner, attained finality in terms of order dated 19.08.2005 passed by the Hon'ble Court in CWJC No. 2056 of 2004 as well as in terms of order dated 05.12.2006 passed by the Hon'ble Court in LPA No. 1112 of 2005 as the same was dismissed as withdrawn. As this appeal was dismissed as withdrawn the order of the Hon'ble Single Judge, on merits, stood affirmed and on "merger" of the said order into the order dated 05.12.2006, became final and binding on the parties. Furthermore, the Appellate



authority, in compliance of order dated 05.12.2006 of the Hon'ble Court, also dismissed the Appeal (i.e. treating the representation of respondent no. 8 dated 04.01.2007 as an appeal) against the order of cancellation of its allotment and lease and by order dated 20.02.2007, held the cancellation to be correct and the only liberty given to the respondent no. 8, was to apply afresh for allotment of the land again, which would be considered by BIADA.

- G.** The respondent no. 8 did not prefer any writ petition, challenging this appellate order and thus, this order, upholding the cancellation, also attained finality against the respondent no.8. Thus, the respondent no.8 cannot claim any right on the said land as an issue which ought to have been and not raised in an earlier proceeding would be barred by the Principle of Constructive Res judicata.

Reference in this regard was made by learned Senior Counsel to a judgement reported in AIR 1981 J & K (Abdul Salam Vs. State of J & K). Paragraph Nos. 6 to 10 & 13 reads as hereunder.

6. “That a decision in the writ



petition operates as res judicata in a subsequent civil suit inter parties, if the cause of action is the same, is now well settled by the Supreme Court in AIR 1965 SC 1153 and is not questioned by learned counsel for the parties. The argument of Mr. T.S. Thakur, learned counsel for the appellant, however, is that the decision in the earlier writ petition cannot operate as res judicata in the subsequent civil suit because the proposition of law on which it was founded has since been considered erroneous by the Supreme Court (Refer AIR 1970 SC 150 and AIR 1978 SC 597). It is urged that since the law declared by the Supreme Court must always be presumed to be the law of the land, the earlier decision in the writ petition which was founded on erroneous view of law could not operate as res judicate.

7. Whether an earlier erroneous judgment can operate as res judicata or not was considered by the Supreme Court in Mohan Lal Goenka v. Benoy Kishna Mukherjee AIR 1953 SC 65 and their lordships opined that even an erroneous decision on a question of law operates as a res judicata between the parties to it because correctness or otherwise of a judicial decision has no bearing upon the question whether or not the decision operates as res judicata.

8. Again, in Perumal Nadar v. Ponnu Swami Nadar AIR 1971 SC 2352 their Lordships declared the law on the point as follows :

“It is true that in determining the application of the rule of res judicata the court is not concerned with the correctness or otherwise of the earlier judgement. The matter in issue, if it is one purely of fact, decided in the earlier proceedings by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceedings between the same parties may not, for the same reason, be



questioned in a subsequent proceeding between the same parties. But where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same for the expression “the matter in issue” in Section 11 Code of Civil Procedure, means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue”.

9. In State of Madhya Pradesh v. Mulamchand AIR 1973 Madhya Pradesh 293 where the precise question came up for consideration it was laid down as follows:

“If a decision on question of law applicable to the given facts has attained finality it will operate as res judicata even if the question was interpreted in ignorance of a binding precedent or if in a subsequent binding precedent the law has been interpreted otherwise. Therefore the subsequent declaration of the Supreme Court in a different proceeding (on the same cause of action) as to requisite compliance with and mandatory nature of Article 299 (1) does not affect the operation of the earlier decision of the L.P.A. as res judicata in a subsequent suit on the same cause of action.”

10. From a review of the aforesaid judgment it stands established that in any case in which it is found that the matter directly and substantially in issue had been directly and substantially in issue in a former suit or writ petition and has been heard and finally decided by a competent Court principles of res judicata cannot be ignored. Even an erroneous judgment is nonetheless a binding judgement inter parties, so long as it is not reviewed or reversed by a higher court. Once a final judgment has been obtained, the same matter cannot be canvassed anew in another action. This is the



core of the rule, the court is not concerned with the correctness or otherwise of the earlier judgment.

12.

13 Therefore, I am of the opinion, that a judgement inter partes of a competent court in a previous writ petition would operate as res judicata in a subsequent suit between the same parties, where the issues directly involved in the two proceedings are the same, irrespective of the fact whether or not the decision in the earlier writ petition was founded on a view contrary to the one subsequently expressed by the Supreme Court in a different case as is canvassed by Mr. Thakur. I would accordingly, answer the second question in the affirmative and hold that the subsequent suit filed by the appellant was barred by the principles of res judicata. The judgement under appeal has been correctly decided and calls for no interference. This appeal must accordingly fail.

(H). It was further pointed out by the learned Senior counsel for the BIADA that Respondent no.8 also preferred another writ petition i.e. CWJC No. 7358 of 2007, in which, admittedly, he did not challenge the above order of cancellation of its allotment vide order dated 16.10.2001 or even the appellate order dated 20.02. 2007 approving this cancellation. **This writ petition was filed against notice dated 07.06.2007 published by BIADA in newspaper,** by which it called for application for auction of plots of lands at Industrial Area, Patna, the allotment of which had been cancelled



or were in process of being cancelled and which notice also included the land in question. These admitted positions are evident from the writ petition of CWJC No. 7358 of 2007, the original records of which were called for by the Hon'ble Court in this writ petition as well as from

(i) paragraph Nos. 28 and 29 of the counter affidavit of respondent no. 8 and

(ii) paragraph No. 22 of representation dated 11.11.2009 of respondent no. 8 (annexed at Annexure –G to the counter affidavit of respondent no. 6).

(I). This second writ petition i.e. CWJC No. 7358 of 2007 was disposed alongwith the batch of writ petition by order dated 17.03.2008 the first writ petition of this batch being CWJC No. 7352 of 2007, Deepak Paints P Ltd. Vs. The State of Bihar and others. In this order the Hon'ble Court noted that "it is not looking into individual facts" and was only testing the powers of the Managing Director, BIADA to cancel the allotment of land for which lease had been



executed. The Hon'ble Court held that

(a) the Managing Director, BIADA under Section 6 (2) (a) of the BIADA Act had no such power and the same vested in the Board of Directors of BIADA and

(b) possession of leased land cannot be taken without moving a competent court of civil jurisdiction. The Hon'ble Court also held that the Managing Director, BIADA in view of Rule 3 of the BIADA Rules, 1981 only had power to cancel the initial allotment i.e. allotment of land with no lease being executed for the same. After laying down the law the Hon'ble Court was also pleased to direct the Board of Directors of BIADA to take steps to carry out these directions issued by it.

(J). The common appeal being LPA No. 353 of 2008, BIADA Vs. Deepak Paints P. Ltd. And others, filed by BIADA, against the common order dated 17.03.2008 passed in the case of Deepak Paints P. Ltd. and analogous writ petitions including CWJC No. 7358



of 2007, (filed by respondent no. 8) was disposed of by the Hon'ble Division Bench by order dated 18.03.2015 whereby the order dated 17.03.2008 was modified in the manner as stated thereinabove.

In this context reference was also made to the ratio of the decision reported in **(2014) 4 SCC 434, R. Unnikrishnan & Anr. Vs. V.K. Mahanudevan**. Paragraph Nos. 19 to 23 and specially paragraph no. 22 reads as follows:-

19. "It is trite that law favours finality to binding judicial decisions pronounced by courts that are competent to deal with the subject-matter. Public interest is against individuals being vexed twice over with the same kind of litigation. The binding character of the judgement pronounced by the courts of competent jurisdiction has always been treated as an essential part of the rule of law which is the basis of the administration of justice in this country. We may gainfully refer to the decision of the Constitution Bench of this Court in Daryao v. State of U.P. where the Court succinctly summed up the law in the following words: (AIR p. 1462, paras 9 & 11)

"9..... It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation.

11..... The binding character of judgement pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law



obviously is the basis of the administration of justice on which the Constitution lays so much emphasis.”

20. That even erroneous decisions can operate as res judicata is also fairly well settled by a long line of decisions rendered by this Court. In Mohanlal Goenka v. Benoy Kishna Mukherjee this court observed : (AIR p. 72, para 23)

“23. There is ample authority for the proposition that even an erroneous decision on a question of law operates as ‘res judicata’ between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as ‘res judicata’”

21. Similarly, in State of W.B. v. Hemant Kumar Bhattacharjee, this court reiterated the above principles in the following words: (AIR p. 1066, para 14)

“14. ... A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides.”

22. The recent decision of this Court in Kalinga Mining Corpn. V. Union of India is a timely reminder of the very same principle. The following passage in this regard is apposite: (SCC pp. 267-68, para 44)

“44. .. In our opinion, if the parties are allowed to reagitate issues which have been decided by a court of competent jurisdiction on a subsequent change in the law then all earlier litigation relevant thereto would always remain in a state of flux. In such circumstances, every time either a statute or a provision thereof is declared ultra vires, it would have the result of re-opening of the decided matter within the period of limitation



following the date of such decision.”

23. In Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy, this Court held that for the application of the rule of res judicata, the court is not concerned with the correctness or otherwise of the earlier judgement. The matter in issue if one purely of fact decided in the earlier proceedings by a competent court must in any subsequent litigation between the same parties be recorded as finally decided and cannot be reopened. That is true even in regard to mixed questions of law and fact determined in the earlier proceedings between the same parties which cannot be revised or reopened in a subsequent proceeding between the same parties. Having said that we must add that the only exception to the doctrine of res judicata is “fraud” that vitiates the decision and renders it a nullity. This Court has in more than one decision held that fraud renders any judgement, decree or order a nullity and non est in the eye of the law. In A.V. Papayya Sastry v. State of A.P. “fraud” was defined by this Court in the following words: (SCC pp. 231-32, para 26)

“26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss [and cost] of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of ‘finality of litigation’ cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants.”

Thus, the BIADA asserted that the case of the respondent no. 8 was squarely falling within the purview of the above judgements and his claim was barred by the Principle of



Constructive Res Judicata.

Learned Senior Counsel for the BIADA further submitted in reply that respondent no. 8 cannot place any reliance on these two orders dated 17.03.2008 passed in the case of Deepak Paints P. Pvt. Ltd. or the order dated 18.03.2015 passed in LPA of Deepak Paints to claim that the order of cancellation of allotment dated 16.10.2001 was bad and BIADA could not have taken possession of the land without moving civil court of competent jurisdiction as the law in this regard stands settled by the Apex Court.

In this context learned counsel for the BIADA relied upon a decision of the Supreme Court reported in **(2011) 7 SCC 493, ITC Ltd. Vs. State of U.P. & Ors.** Paragraph Nos. 25 (i) 30 to 33 and 43 reads as follows:-

25

(i) Where allotment has been followed by grant of a lease (which is duly executed) and delivery of possession in favour of the lessee, whether the leases could be unilaterally cancelled by the lessor ?

30. A lease governed exclusively by the provisions of the Transfer of Property Act, 1882 ("the TP Act", for short) could be cancelled only by filing a civil suit for its cancellation or for a declaration that it is illegal, null and void for the consequential relief of delivery back of possession. Unless and until a



court of competent jurisdiction grants such a decree, the lease will continue to be effective and binding. Unilateral cancellation of a registered lease deed by the lessor will neither terminate the lease nor entitle a lessor to seek possession. This is the position under private law. But where the grant of lease is governed by a statute or statutory regulations, and if such statute expressly reserves the power of cancellation or revocation to the lessor, it will be permissible for an authority, as the lessor, to cancel a duly executed and registered lease deed, even if possession has been delivered, on the specific grounds of cancellation provided in the statute.

31. Noida Authority is an authority constituted for the development of an industrial and urban townships (also known as Noida) in Uttar Pradesh under the provisions of the Act. Section 7 empowers the Authority to sell, lease or otherwise transfer whether by auction, allotment or otherwise, any land or building belonging to it in the industrial development area, on such terms and conditions as it may think fit to impose, on such terms and conditions and subject to any rules that may be made.

32. Section 14 provides for forfeiture for breach of conditions of transfer. The said section empowers the Chief Executive Officer of the Authority to resume a site or building which had been transferred by the Authority and forfeit the whole or part of the money paid in regard to such transfer, in the following two circumstances : (a) non-payment by the lessee, of consideration money or any instalment thereof due by the lessee on account of the transfer of any site or building by the Authority; or (b) breach of any condition of such transfer or breach of any rules or regulations made under the Act by the lessee.

33. Sub-section (2) provides that where the Chief Executive Officer of the Authority resumes any site or building under Sub-section (1) of Section 14, on his requisition,



the Collector may cause the possession thereof to be taken from the transferee by use of such force as may be necessary and deliver the same to the Authority. This makes it clear that if a lessee commits default in paying either the premium or the lease rent or other dues, or commits breach of any term of the lease deed or breach of any rules or regulations under the Act, the Chief Executive Officer of Noida Authority can resume the leased plot or building in the manner provided in the statute, without filing a civil suit. The Authority to resume implies and includes the Authority to unilaterally cancel the lease.

43. The limited question under consideration is whether the State Government can cancel the allotments and consequently the lease. Section 41(3) shows that the State Government, can examine the legality or propriety of any order of Noida Authority and pass appropriate orders. If the State Government in exercise of its revisional jurisdiction finds that the allotments were irregular or contrary to the regulations or policies of Noida Authority and directs cancellation, the allotments become invalid and leases also become invalid. Consequently, Noida Authority can resume possession, without intervention of a civil court in a civil suit.

It was urged by the BIADA that the issues of correctness of cancellation of allotment of land to it for which lease had been executed by order dated 16.10.2001 by the BIADA or taking back possession of the land by BIADA without moving the civil court were not the issues in the second writ petition filed by it i.e. CWJC No. 7358 of 2007. Therefore, these two orders of the Hon'ble Court cannot govern issues which were



not raised before it by respondent no. 8 nor any relief could have been granted on these two issues by the Hon'ble Court in favour of respondent no. 8. It is settled law that no relief can be granted if the same has not been prayed for and the principle of moulding of relief is applicable to cases where relief has been sought for as against where no relief has been sought for.

Secondly, the issue of correctness of cancellation of allotment of land to it by order dated 16.10.2001 by BIADA and its re-allotment to the petitioner on 22.08.2003 with possession being handed over on 22.10.2003, had already attained finality in view of the earlier two orders of the Hon'ble Court dated 19.08.2005 and 05.12.2006 which could not have been and was neither sought to be re-opened by the respondent no. 8 in the second writ petition i.e. CWJC No. 7358 of 2007.

Thirdly, the legal issue whether the Managing Director, BIADA had power to cancel the allotment of land where lease had been executed was not raised by the respondent no. 8 in the first writ petition i.e. CWJC No. 2056 of 2004 when it had challenged the cancellation order dated 16.10.2001 and therefore, this legal issue in so far as it concerns respondent no. 8 could not have been raised by it in the second writ petition i.e.



CWJC No. 7358 of 2007 as it would be barred by the principle of constructive *res judicata* and by the principle of estoppels of issue.

Thus, it was finally contended that an order which is binding between the parties cannot be re-opened even if a contrary law is decided subsequently i.e. if an order even if wrongly decides an issue between the parties the same cannot be re-opened subsequently, on the ground that it was badly argued or inadequately considered and the order of the Hon'ble Division Bench dated 05.12.2006 passed in LPA No. 1112 of 2005 was not brought to the notice of the Hon'ble Division Bench while passing order dated 18.03.2015 in LPA No. 353 of 2008 i.e. LPA of Deepak Paints case. Thus, the later order dated 18.03.2015 which was passed in ignorance of the earlier order dated 05.12.2006 cannot be a binding precedence and would be per incurium in so far as it relates to its direction that the orders of cancellation of lease or allotment of land shall stand set aside as contained in Para No. (A) of this order dated 18.03.2015.

It was further argued that so far as it concerns the respondent no. 8 and BIADA, it has been held by the Hon'ble Supreme Court that in cases where statutory lease is executed and



the statute provides for cancellation and taking back possession of the leased land, then in such case the possession of cancelled leased land can be taken back without moving the civil court by the lessor authority and the principle that possession of leased land cannot be taken back without moving civil court is not applicable in such cases. As such, in view of the law laid down by the Hon'ble Supreme Court the respondent no. 8 cannot take advantage of the law laid down in the case of Deepak Paints P. Pvt. Ltd.

Reverting back to the grievance of the petitioner, it was submitted by the learned counsel for the BIADA that the relief as prayed by the petitioner also could not be entertained as

(i) After the land allotted to respondent no. 8 was cancelled on 16.10.2001, it was allotted to M/s Paras Fabri Teck vide letter dated 22.08.2003 (Annexure- 4 series to the writ petition). Possession of this land was handed over to M/s Paras Fabri Teck through its proprietor Kanti Kumar i.e. petitioner of the present writ petition on 22.10.2003 (Annexure -4 series to the writ petition)

(ii) As the industrial unit of petitioner was closed and it did not re-start production, therefore, the allotment of



the said land was cancelled by the Authority vide order bearing Memo No. 1530 dated 02.09.2006 (Annexure-12 to the writ petition) on orders of the Managing Director, BIADA. This order of cancellation was issued following two show cause notices vide letter Nos. 2148 dated 30.11.2005 and 899 dated 11.05.2008 to it, calling upon it to explain as to why the said allotment be not cancelled as it was not in production.

(iii) M/s Paras Fabri Teck filed an appeal before the Secretary Industries-cum-Chairman BIADA against the above order of cancellation of allotment of land in question vide order dated 02.09.2006. The Appellate Authority vide order dated 29.01.2007 (Annexure-13 to the writ petition) rejected the same.

(iv) The petitioner, thereafter, filed CWJC No. 5370 of 2007 praying to quash the above order of cancellation of allotment of the land in question dated 02.09.2006 as also the above appellate order dated 20.01.2007.

(v) This writ petition i.e. CWJC NO. 5370 of 2007 was heard alongwith the writ petition of Deepak Paints



P. Pvt. Ltd. and were allowed by the above common order dated 17.03.2008. The appeal filed by the BIADA against the common order dated 17.03.2008 i.e. LPA No. 353 of 2008 was disposed of by the Hon'ble Court by order dated 18.03.2015 modifying the order dated 17.03.2008 to the extent as stated therein.

(vi) The petitioner on strength of these two orders of the Hon'ble Court dated 17.03.2008 and 18.03.2015 claims that the land in question should be restored back to it.

Learned counsel for the BIADA, thus, submitted in reply, that the Hon'ble Court in the case of Deepak Paints P. Pvt. Ltd. by order dated 17.03.2008 has laid down the law that in case where no lease has been executed between the BIADA and allottee for the land allotted to it and only letter of allotment has been issued i.e. where it is a case of "initial allotment" only, then in such cases the Managing Director, BIADA in terms of Rule 3 (1) of the BIADA Rules, 1981 has the power to cancel the allotment. In the present case admittedly no lease was executed between BIADA and M/s Paras Fabri Teck/Kanti Kumar with respect to the land in question, therefore, it was a case of initial



allotment only and the Managing Director, BIADA was competent to cancel the allotment of the land in favour of the petitioner by order dated 02.09.2006.

It was further submitted that the Hon'ble Court in the case of Deepak Paints (P) Pvt. Ltd. by order dated 17.03.2008 laid down the law that in case where lease has been executed between the BIADA and the allottee, its possession can only be taken back by BIADA through civil court. In the present case admittedly, no lease was executed between BIADA and M/s Paras Fabri Teck/Kanti Kumar with respect to the land in question therefore, BIADA was competent to take back possession of the land without moving the civil court and in terms of section 6 (2) (a) and (b) of the BIADA Act the possession of the land, on its cancellation reverts back to BIADA.

It was argued that the BIADA Act of 1974 underwent an amendment in the year 1992. The statement of aims and objects of the amending Act 27 of 1992 gives the background why the said amendment was necessitated, they are quoted herein below:-

***“Statement of Aims and Objects:-
Section 6(2) of the Bihar Industrial Area
Development Authority Act, 1974 provides
adequate power to the Authority for cancellation
of allotted plots but it does not provide specifically
about taking possession after cancellation of
allotment order/lease deed. As a result of this it***



has become difficult to take possession of the cancelled plots/sheds due to various legal provisions.

As such to overcome various legal hurdles, it has become necessary to amend Section 6(2) of the Bihar Industrial Area Development Authority Act, 1974. The objective of the bill is to enact the above said provisions.

The legislators, therefore, incorporated the following amendments under Section 6 (2) to read:-

“2(a) In case necessary effective steps are not taken within the fixed period to establish the industry the authority shall in such condition cancel the allotted plot/shed and also forfeit the amount deposited in this connection. (emphasis mine) The authority shall before cancelling the allotment allow one month time to the allottee to put up his case. The allottee on being dissatisfied with the order of the authority may file an appeal to the State Government within one month and the State Government shall, after due consideration disposed of within two months from the date of receipt of appeal.

2(b) The Authority shall, after cancellation of allotment of the plot/shed take possession of the said plot.”

Furthermore the Hon’ble Court in the case of Deepak Paints P. Pvt. Ltd. by order dated 17.03.2008 specifically held that it was not examining the individual facts relating to the batch of writ petitions before it but was examining only the issue of law relating to power of M.D. BIADA to cancel leased land under Section 6 (2) of the BIADA Act and after laying down the law the Hon’ble Court was pleased to direct the Board of Directors



to take steps for carrying out the directions issued by it. It was further submitted in reply that when the case of the petitioner is examined in light of the order of the Deepak Paints P. Pvt. Ltd, case, it would be evident that the allotment in favour of the petitioner was cancelled by order dated 02.09.2006 on orders of the Managing Director, BIADA i.e. the competent authority, as in its case no lease had been executed and it was a case of initial allotment only and possession of the land reverted back to BIADA in terms of the statutory provisions i.e. Section 6 (2) (a) and (b) of the BIADA Act. Apart therefrom, even on merits, the industrial unit was not in production and therefore, the same was a valid ground for cancellation of the allotment in terms of the condition contained in Para No. 11 of the allotment letter dated 22.08.2003 and Section 6 (2) (a) of the Act.

It was, thus, submitted that in terms of the law as laid down in the batch case of Deepak Paints in which the petitioner was also a party and the directions issued thereunder, the order of cancellation of allotment of petitioner was valid and justified and no right of the petitioner remained to claim that the land be restored back to him and the writ petition was fit to be dismissed.



It was further contended by learned counsel for the BIADA, that in the above context, the order dated 17.03.2008 passed in the case of Deepak Paints (P) Pvt. Ltd., having been modified by the Hon'ble division Bench in the LPA of Deepak Paints P. Pvt. Ltd. case by order dated 18.03.2015, the position of law (i.e. the Managing Director having power to cancel allotment in case of initial allotment and it not being required of BIADA to move civil court to take possession back in case of initial allotment) as laid down in order dated 17.03.2008, does not change in view of the order dated 18.03.2015 passed in the LPA of Deepak Paints because the Hon'ble Division Bench gave no finding on the issues of law as decided and laid down in the order dated 17.03.2008 passed in the case of Deepak Paints. Therefore, the principle of “merger” does not apply to these issues of law as decided on 17.03.2008. Despite the order dated 18.03.2015 passed in Appeal, the said principles of law as regard the power of Managing Director still continues to hold force.

In this context reference was made to the ratio of the decision reported in **(2000) 6 SCC 359, (Kunhayammed & Ors Vs. State of Kerala)**. Paragraph Nos. 7, 10, 12 , 42 and 44 reads as follows:-

7. The doctrine of merger is neither a



doctrine of constitutional law nor a doctrine statutorily recognised. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system. On more occasions than one this Court had an opportunity of dealing with the doctrine of merger. It would be advisable to trace and set out the judicial opinion of this Court as it has progressed through the times.

10. In Gojer Bros. (p) Ltd. v. Ratan Lal Singh, this Court made it clear that so far as merger is concerned on principles there is no distinction between an order of reversal or modification or an order of confirmation passed by the appellate authority. In all the three cases the order passed by the lower authority shall merge in the order passed by the appellate authority, whatsoever be its decision whether of reversal or modification or only confirmation. Their Lordships referred to an earlier decision of this Court in U.J.S. Chopra v. State of Bombay wherein it was held:

“A judgement pronounced by the High Court in the exercise of its appellate or revisional jurisdiction after issue of a notice and a full hearing in the presence of both the parties ... would replace the judgement or the lower court, thus constituting the judgement of the High Court the only final judgment to be executed in accordance with law by the court below.”

12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior



forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.

Their lordships further explained at para 42.

42. "To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individually.

44. To sum up, our conclusions are :

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred



by Article 136 of the Constitution is divisible into two stages. The first state is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution of Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the



country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.

In this context reference was also made to the ratio of the decision reported in **(2002) 8 SCC 361, S. Shanmugavel Nadar vs. State of Tamil Naidu**. Paragraph Nos. 10 to 14 and specially at paragraph no. 15 are as follows:-

10. "Firstly, the doctrine of merger. Though loosely an expression merger of judgement, order or decision of a court or forum into the judgment, order or decision of a superior forum is often employed, as a general rule the judgment or order having been dealt with by a superior forum and having resulted in confirmation, reversal or modification, what merges is the operative part i.e. the mandate or decree issued by the court which may have been expressed in a positive or negative form. For example, take a case where the subordinate forum passes an order and the same, having been dealt with by a superior forum, is confirmed for



reasons different from the one assigned by the subordinate forum, what would merge in the order of the superior forum is the operative part of the order and not the reasoning of the subordinate forum; otherwise there would be an apparent contradiction. However, in certain cases, the reasons for decision can also be said to have merged in the order of the superior court if the superior court has, while formulating its own judgment or order, either adopted or reiterated the reasoning, or recorded an express approval of the reasoning, incorporated in the judgement or order of the subordinate forum.

11. Secondly, the doctrine of merger has a limited application. In State of U.P. v. Mohd. Nooh the Constitution Bench by its majority speaking through S.R. Das, C.J. so expressed itself,

“while it is true that a decree of a court of first instance may be said to merge in the decree passed on appeal therefrom or even in the order passed in revision, it does so only for certain purposes, namely, for the purposes of computing the period of limitation for execution of the decree”

A three-judge Bench in State of Madras v. Madurai Mills Co. Ltd held : (AIR pp 683 -84, para 6)

The doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior authority and the other by a superior authority, passed in an appeal or revision, there is a fusion or merger of two orders irrespective of the subject-matter of the appellate



or revisional order and the scope of the appeal or revision contemplated by the particular statute. The application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction.

It was further submitted in the above context of this order dated 17.03.2008 passed in the case of Deepak Paints (P) Pvt. Ltd. having been modified by the Hon'ble Division Bench in the LPA by its order dated 18.03.2015 the position of directions issued therein would now merge as it is a settled law that there can be only one decree operating at a given point of time. This is evident from the fact that by order dated 17.03.2008 passed in the case of Deepak Paints, it was directed that the Board of Directors, BIADA would carry out the principles of law laid down by applying them to individual facts of the writ petitioners in the batch of Deepak Paints case, whereas by order dated 18.03.2015 passed in the LPA of Deepak Paints at Para (A) the Hon'ble Division Bench directed that order of cancellation of leases or allotment of land, to respondents shall stand set aside and they were given six months time to establish or revive their respective industries.



It was, thus, asserted by learned counsel for the BIADA that after the order dated 17.03.2008 the above change in position by virtue of the directions issued by this Court vide order dated 18.03.2015, would not be applicable to the case of the present writ petitioner for the reasons that

(a) both these orders show that both the Hon'ble Courts were concerned only with cases in which lease had been executed.

(b) the issue of law with respect to cases of initial allotment and power of Managing Direction, BIADA to cancel such allotment was decided by order dated 17.03.2008 in context of reliance placed by BIADA on Rule 3 (1) of BIADA Rules, 1981 to justify cancellation of allotment where lease had been executed which was not upheld by order dated 17.03.2008. This principle of law continues to hold field as the same was not even considered or decided by order dated 18.03.2015 and

(c) once this law was laid down that, the Managing Director, BIADA had power to cancel allotment land where only allotment letters had been issued and no lease was executed i.e. case of initial allotment and the order



dated 18.03.2015 in appeal did not hold it to be a bad law or upset it, the direction issued by it in Para (A) of the order dated 18.03.2015, in so far as it also mentions “orders of cancellation of lease or allotment of land to respondents shall stand set aside” cannot be held to include case of initial allotment also.

Accordingly, it was contended that such an approach would be in contradiction on the face of it in terms of the law laid down in order dated 17.03.2008, and the consequential direction issued even in Appeal at Para (A) of the order dated 18.03.2015, cannot be read to have been extended to “orders of cancellation of allotment” also and would be limited only to “Orders of cancellation of allotment” where lease had also been executed. Thus, it was submitted that at best it could have been read to extend to cases of initial allotment also only if it had been mentioned at this Para (A) as “orders of cancellation of initial allotment”. Thus, absence of this word “initial” at Para (A) of order dated 18.03.2015, also shows that the words “orders of cancellation of lease or allotment of land, to respondents shall stand set aside” were limited only to cases where lease had been executed and not to cases of “initial allotment”.



Thus, it was concluded and submitted that the petitioner as well as respondent no. 8 had no right to claim that the land in question be restored back to it on the above position of law and directions issued by orders dated 17.03.2008 and 18.03.2015 and the writ application is fit to be dismissed.

Per contra, the respondent no. 8, namely, M.S. Bihar Engineering Corporation has seriously contested the matter and stated that the prayer of the writ petitioner has become infructuous in view of the fact that LPA No. 353 of 2008 has now been disposed of on 18.03.2015 (Annexure- H). So far as the prayer of the writ petitioner to handover physical possession of Plot No. C-17 arises, the same is no longer tenable under law and this Court vide order dated 17.03.2008 passed in CWJC No. 7352 of 2007, has already held that since the steps taken by the Managing Director or his subordinates in the direction of cancellation to lease, re-possession, re-settlement or auctioning has been declared as illegal exercise of power, any third party interest created subsequent thereto by such illegal acts of BIADA, will not create any right, title and interest in the leased property. Since the writ petitioner has not challenged the aforesaid finding given by this Court, hence the said finding is operative against him and there is no merit in the writ application and therefore, the same should be



dismissed.

It was contended by the respondent no. 8 that Industrial Plot No. 30, measuring an area 10,000/- Sq. ft. situated in the Industrial Estate, Patliputra colony Patna was allotted to M/s Behar Engineering Corporation, respondent no. 8 under letter no. 16250 dated 17.12.1972 for establishment of industry for general fabrication and a lease deed was also executed on 02.06.1973 in favour of the respondent no. 8 for 99 years and physical possession over the land was also given. After taking over the physical possession over the Industrial Plot No. 30, the proprietor of the Unit invested a lot of money over the development of the land, building was constructed and shed was installed. Plant and Machinery were also installed over the land. The unit started its production and supply to the government department as well as private concern. The Unit was also duly registered with the Small Scale Industries in "SSI" but to certain unforeseen circumstances, the production work of the unit got slowed down whereupon, the Managing Director of BIADA, illegally and arbitrarily under its letter no. 1091 dated 16.10.2001 cancelled the lease as well as allotment of Industrial Plot No. 30. Thereafter, the said plot was allotted in favour of Respondent no. 8 though the power of cancellation under Section 6 (2) of the Bihar Industrial Area



Development Authority Act, 1974, was available only with the Board of Directors of the Bihar Industrial Area Development Authority headed by its Chairman.

After receipt of the letter dated 16.10.2001, respondent no. 8 filed an application before the then Managing Director to recall its order dated 16.10.2001, but no heed was taken on the request of the respondent no. 8.

Thereafter, respondent no. 8 filed several applications/representations dated 22.10.2001 and 11.02.2003 before the Appellate Authority, Industrial Development Commissioner, Industries Department, Government of Bihar, Patna against the cancellation order dated 16.10.2001 because the lease cancellation order was not in accordance with law. Moreover while the application dated 22.10.2001 filed by respondent no. 8 was pending before the Appellate Authority for its consideration and decision, in the meanwhile Industrial Plot No. 30, after renumbering as Plot No. C-17 was illegally and arbitrarily allotted in the name of the petitioner Sri Kanti Kumar proprietor of M/s Paras Fabri Tech vide order dated 22.08.2003 (Annexure- 4, Page 54 of the brief). The petitioner was also given possession over the land along with the articles, machine and materials of respondent



no. 8 were also handed over to the petitioner on 22.10.2003.

As such, Respondent no. 8 moved before this Hon'ble Court vide CWJC No. 2056 of 2004 against the illegal action of the authorities of BIADA, and this Hon'ble Court vide order dated 19.08.2005 (Annexure -7 Page 62 of the brief) dismissed the writ application on the following reasons:-

- (i) The petitioner has by passed the statutory remedy available to him under the Act. Hence the writ application is not maintainable.
- (ii) The petitioner has not moved this Court with clean hands and has tried to mislead the court by creating a document to take it down the garden path.
- (iii) The petitioner approached this belatedly.

It is relevant to mention here that respondent no. 8 in the representation dated 11.02.2003 had also challenged the cancellation order, which was the subject matter of the writ



application.

Against the order dated 19.08.2005 passed in CWJC No. 2056 of 2004, respondent no. 8 moved before this Hon'ble Court vide LPA NO. 1112 of 2005 and this Court vide order dated 05.12.2006 (Annexure A to the counter affidavit filed by respondent no. 6) passed the following order. This appeal is, accordingly, dismissed as withdrawn. However, it is observed that in case, the appellant renews its prayer by way of a fresh representation addressed to the respondent no. 3 accompanied by the requisite fees for disposal of his earlier representation dated 11.02.2003, the same would be considered and disposed of by the respondent no. 3 by speaking order after condoning the delay, if any. Hence the order passed by the Hon'ble Single Judge merged with the order dated 05.12.2006 passed by the Hon'ble Division Bench in LPA No. 1112 of 2005.

In compliance of the order dated 05.02.2005 passed in LPA No. 1112 of 2005, respondent no. 8 moved before the appellate authority by filing fresh representation/appeal before the Appellate Authority i.e. the Industrial Development Commissioner, Industries Department, Government of Bihar, Patna.



In the meanwhile, the allotment given to the writ petitioner was also cancelled after the decision of Board of Directors vide order dated 02.09.2006 (Annexure-12) . Against the order of cancellation dated 02.09.2006, the petitioner moved before the appellate authority.

On the direction of the appellate authority, a report was called for from BIADA, which was submitted on 24.01.;2007. However, the appellate authority after perusing the report submitted by the Officers of the BIADA vide order dated 29.01.2007 (Annexure- 13) dismissed the Appeal filed by the writ petitioner (Kanti Kumar) holding that the unit was not in function.

Therefore, as per the direction given by the appellate authority respondent no. 8 filed an application in the office of BIADA on 26.02.2007 and 28.03.2007 for fresh decision and allotment of the plot no. 30 in favour of M/s Behar Engineering Corporation enclosing the copy of the order passed by the appellate authority. However, the BIADA did not take up the request and grievance of the respondent no. 8, in spite of direction dated 20.02.2007 given in the appellate authority.

In the meanwhile, on 7th of June, 2007 without considering the direction of the appellate authority as well as



request and grievance of the respondent no. 8, a news was published in the daily news paper for auction of Plots including the land of respondent no. 8 in capital city of Patna. After publication of auction notice in the news paper this respondent once again moved before this Court vide CWJC No. 7358 of 2007 challenging the sale notice apart from the other reliefs. Several writ applications were also filed before this Court in which several allottees had challenged their respective cancellation orders.

All the writ petitions were taken up together alongwith CWJC No. 7352 of 2007 (Deepak Paints (P) Ltd. and its analogous cases) and after hearing the counsel of the parties this Court vide order dated 17.03.2008 disposed of all the writ applications on question of law with certain directions.

It was further held that the principles of law laid down by this Court shall cover all the cases, accordingly. The writ petitions were disposed of with a direction upon the Board of Directors of BIADA headed by the Chairman to take steps for carrying out the directions of the Court.

After obtaining the copy of the order dated 17.03.2008 passed by this Court respondent no. 8 filed a representation along



with copy of the order in the office of BIADA on 30.04.2008, and when no information was given to this petitioner then several reminders were also given. However, under letter No. 3674 dated 09.07.2008 (Annexure – F of counter affidavit of respondent no. 6) on the decision of the Board of Directors of BIADA, the Development Officer, BIADA allotment of the land and lease deed has been restored in favour of the respondent no. 8 with a condition that the order will be governed by the order passed by the Hon'ble High Court/Hon'ble Supreme Court in LPA or SLP . However aforesaid letter was not served to the respondent no. 8.

Similarly, under letter no. 3728 dated 10.07.2008 (Annexure F/1 of the counter affidavit of respondent no. 6) on the decision of the Board of Directors of BIADA, the Development Officer, BIADA allotment of the same land and lease deed was purportedly restored in favour of the writ petitioner, perhaps deliberately in order to favour the writ petitioner, with condition that his order will be governed by the order passed by the Hon'ble High Court/Supreme Court in LPA or SLP though no lease was ever executed by BIADA in favour of the writ petitioner. Under RTI an information was supplied to this respondent no. 8 under letter dated 30.07.2009 enclosing two letters dated 09.07.2008



and 28.07.2009.

Against the order dated 17.03.2008 passed in CWJC No. 7352 of 2007 (Deepak Paints (p) Ltd and its analogous cases) BIADA moved before this Court vide LPA No. 353 of 2008.

After receipt of the aforesaid letter no. 3674 dated 09.07.2008 along with letter dated 30.07.2009, respondent no. 8 contacted the office of BIADA for restoration of physical possession over the land whereupon an information was given to this respondent no. 8 that the BIADA has moved this Court vide LPA No. 353 of 2008 and physical possession over the land will be given after disposal of the LPA.

It was thus, argued by Respondent no. 8 that the lease deed having been executed in his favour, they had a preferential claim over the plot in question and not the present petitioner, as any third party rights created by the BIADA in derogation of law, could not have any legal sanction.

Having heard learned counsel for the parties, I have considered the rival submissions advanced by the petitioner, the BIADA and also learned counsel for the respondent no.8.

Before proceeding to decide the case of the petitioner,



it is important to determine the right of the respondent no. 8, who has seriously contested the matter and resisted the prayer of the petitioner for grant of possession of the plot in question. Accordingly, it is necessary to consider as to whether in the given facts and circumstances and the history of litigation between him and the BIADA, the right of the respondent no. 8 with regard to the plot in question subsists over the right of the petitioner.

It was urged that Respondent no. 8 was originally granted the lease for the plot which is now sought to be handed over to the petitioner but having failed to follow the stipulations in the lease deed, was subjected to an order of cancellation. No sooner the same was cancelled, the petitioner was allotted the land in question. It further appears that against the aforementioned cancellation order, the respondent no. 8 preferred a writ application which was dismissed by this Court and the Intra Court Appeal preferred against the said order also met with a similar fate with liberty to the respondent no. 8 to move the appellate authority. In the Appeal which was filed by them before the Appellate Authority, no relief was given, save and except, the permission to the respondent no. 8 to apply afresh in accordance with law. The same orders were not challenged by



the respondent no.8. Instead he filed another writ application, challenging an advertisement which had been issued by the BIADA for allotment of lands with regard to those pieces of land which had been earlier allotted and cancelled and were again available for allotment. It is needful to indicate here that in the meantime, petitioner's allotment had also been cancelled and he had come in a writ application against the cancellation order in which he duly succeeded. The petitioner's case was considered alongwith batch of analogous cases laid by the Dipak Paints (P) Pvt. Ltd. Vs. State of Bihar, wherein by a common order dated 17.03.2008, the Court set aside the cancellation orders. The said order was challenged in an Intra Court Appeal by the BIADA being LPA No. 353 of 2008, which was disposed of with certain modifications, giving liberty to the entrepreneurs to revive the units in the manner indicated in the said judgment.

However, this Court is unable to comprehend as to how respondent no. 8 could either avail the benefit of the judgment passed by the learned Single Judge in the cases which were disposed of along with Dipak Paints (P) Pvt. Ltd. The right of the respondent no. 8 stood extinguished once he lost in the writ Court followed by his withdrawal in L.P.A. No. 1112 of 2005. Subsequently, his right was again considered by the Appellate



Authority of the BIADA wherein he again lost his claim but failed to challenge it in any further appeal. The writ which he had filed bearing C.W.J.C. No. 7358 of 2007 and which was disposed of along with Dipak Paints (P) Pvt. Ltd. was to challenge the issuance of the fresh advertisement issued by the BIADA and did not involve the challenge to the cancellation order. Thus, orders passed earlier was final and binding as against Respondent no. 8 and the advantage of the judgment of Dipak Paint (P) Pvt. Ltd. cannot accrue in his favour.

In the opinion of this Court, as founded on consideration of various judgments already cited above in which it has been stated by the BIADA as well as the petitioner, the case of the respondent no. 8 stands barred by the principle of constructive *res judicata* as has been decided in the case of **Perumal Nadar Vs. Ponnu Swami Nadar AIR 1971 SC 2352** (*supra*) wherein it has been held that if it is found that if a decision in a question of law applicable to the given facts has attained finality, it will operate as *res judicata* and even if the question was interpreted in ignorance of a binding precedent or if in a subsequent precedent the law has been interpreted otherwise. Once a final judgment has been obtained, the same



cannot be canvassed anew in another action.

12. Therefore, I am of the opinion, that a judgement inter partes of a competent court in a previous writ petition would operate as res judicata in a subsequent suit between the same parties, where the issues directly involved in the two proceedings are the same, irrespective of the fact whether or not the decision in the earlier writ petition was founded on a view contrary to the one subsequently expressed by the Supreme Court in a different case as is canvassed by Mr. Thakur. I would accordingly, answer the second question in the affirmative and hold that the subsequent suit filed by the appellant was barred by the principles of res judicata. The judgement under appeal has been correctly decided and calls for no interference. This appeal must accordingly fail.

In the present case, it is clear that the matter which was urged by the respondent no. 8 in the first writ application being C.W.J.C. No. 2056 of 2004, affirmed in L.P.A. No. 1112 of 2005 was again agitated in the subsequent writ indirectly by challenging the advertisement. Thus, the writ of the respondent no. 8 which was disposed of along with Dipak Paints (P) Pvt. Ltd, had the matter directly and substantially in issue which had been heard and finally decided on an earlier occasion. Even if it would be urged that the earlier decision was erroneous, this Court finds and holds that such judgment would nonetheless have a binding effect intra parties, so long as it is not reviewed or reversed by a higher Court. Once the final judgment has been



obtained, the same matter cannot be canvassed anew in another action. This is the core of the rule of *res judicata* and the court is not concerned with the correctness or otherwise of the earlier judgment. In this context the provision of the Civil Procedure Code are amply clear:

Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and out to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matter of claim or defence.

Thus, the case of respondent no. 8, as rightly pointed out by the BIADA, has no leg to stand on and his resistance to the present writ application must accordingly fail.

Coming back to the right of the petitioner, the prayer in the present application is limited to handover of possession of the lands by the BIADA, in view of the judgment rendered in C.W.J.C. No. 5370 of 2007, which had been filed for quashing of the order dated 02.09.2006 as well as the order of the appellate authority dated 29.01.2007. The case was decided by a Bench of this Court



on 17.03.2008 by a common order in the case of the Dipak Paints (P) Pvt. Ltd. Vs. State of Bihar & Ors. and its analogous cases. In the aforesaid case, the power of the Managing Director, to cancel the lease was considered and the cancellation orders passed by the Managing Director were held to be bad and the writ applications were allowed. This order came to be challenged before the Division Bench of this Court in an Intra Court Appeal which has now been disposed of, affirming the order of the learned Single Judge but modifying it to a certain extent as has been referred to above. Thus, in accordance with the conditions as laid down, the order of cancellation of lease or allotment of the land to the respective respondents stood set aside with liberty to them to either establish the industries within a period of six months, wherever they were not established or to revive the industries, if they had already been established but had become dysfunctional/sick for some reasons.

A further direction/modification was issued in favour of the writ petitioners, respondents in the appeal, that if they intend to go for diversification, any application in that behalf should be made within a period of two months from the date of the order before the concerned authority, who was directed to take a decision in the same, within one month thereafter. In case,



diversification was permitted the respondents/writ petitioners would be granted reasonable time to make such diversification. The Court also directed that in case such industry was not established or 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. Thus, in accordance with the order, the resumption of the land would be permissible only after giving the entrepreneurs an opportunity till six months for reviving the unit but those who had already established the unit or had restarted the closed ones, during the pendency of the Appeal need not take any steps. Liberty was afforded to such entrepreneurs to seek extension of time from the concerned authorities. If any factors intervene for delayed commencement of production, thus, in view of the directions contained in the Division Bench judgment, the resumption of land from the petitioner could be affected only after giving him an opportunity of reviving his unit and/or permitting him to restart production.

It is not known as to when the property in question which is the subject matter of the present dispute was taken back from the petitioner after the impugned order of cancellation of lease and/or when the BIADA took back possession of the same.



However, the BIADA has contended that they were not bound to restore possession to the petitioner in view of the fact that the order of the LPA Court does not cover such petitioners particularly, the present petitioner as no lease had been effected/executed in his favour. As such, the petitioner has no case for restoration of possession or revival of his unit. Such arguments by the BIADA is fit to be rejected as the language in the judgment of the LPA Court is clear that it extends both to lease as well as allotment orders. Even if no lease had been effected in favour of the present petitioner, the order of the cancellation which was the subject matter of the writ has not only been set aside by the writ court but in the intra Court Appeal also, the order passed by the writ court has been affirmed. As such, in the considered opinion of this Court, the petitioner has to be given full opportunity of reviving his unit by resuming production within the time frame fixed by the Court in accordance with the direction issued in the Appeal.

So far as the contention of the respondent no. 8 is concerned that the BIADA could not have taken back possession in cases where lease had been executed, the law in this matter has already been settled by the Apex Court where in case of statutory lease granted by the Managing Director, the authority could resume the land in question without taking recourse to the process



of Court. The judgement of the Apex Court is clear in this matter in the case of ITC Ltd. Vs. State of U.P. reported in 2011 (7) SCC 493 at paragraph 30 it has been specifically stated as follows:-

“But where the grant of lease is governed by a statute or statutory regulations, and if such statute expressly reserves the power of cancellation or revocation to the lessor, it will be permissible for an authority, as the lessor, to cancel a duly executed and registered lease deed, even if possession has been delivered, on the specific grounds of cancellation provided in the statute”.

Thus, according to this judgement the lease hold of the respondent no. 8 could have been cancelled by the authority. In the instant case, the respondent had challenged the order of cancellation and his case had attained finality by the decision of the Appellate Authority. No such challenge had been placed to the cancellation order passed by the appellate authority of the BIADA and thus, his cause and right stood extinguished. Furthermore, the right of the respondent no. 8 could not be restored in the following writ which he had filed being C.W.J.C. No. 7358 of 2007 as in this, the challenge was made only to the advertisement issued subsequently. The decision which came alongwith Dipak Paints (P) Ltd. and other analogous cases related to the power of the Managing Director, which was not under challenge and it was only the advertisement dated 07.06.2007 for auctioning of the plot in



question which had been challenged by him in the aforesaid writ. Thus, the decision rendered in the case of the Dipak Paints (P) Pvt. Ltd and its analogues case was *per incurium* so far as it relates to the respondent no. 8 and could not render any advantage to him.

However, the order of the writ court would accrue to the benefit of the present petitioner as he was also challenging the cancellation order of the Managing Director and the directions/modifications in the Intra Court Appeal accrue in favour of the present petitioner, taking into consideration the Doctrine of Merger as dealt with earlier.

It appears from the records of the case, that the petitioner had been dispossessed from his property after the cancellation order passed by the Managing Director and, therefore, in order to resume production and revive his unit, it would be necessary and in the interest of justice that the possession of the land be restored to him by the BIADA so as to enable him to follow the guidelines of the order passed by the Division Bench. It is directed accordingly.

Thus, for the foregoing reasons as stated and dealt with in the preceding paragraphs, the impugned letter dated 19.09.2013 (Annexure-1) is quashed and the petitioner's prayer for restoration



and handover physical possession of Plot NO. C-17 situated in Industrial Area, Patliputra Patna is allowed. It is directed that the authorities shall take necessary steps towards handing over of physical possession of the aforementioned plot to the petitioner. The said exercise should be completed within a period of six weeks from the date of receipt/production of a copy of this order.

In the result, the writ application stands allowed.

No costs.

(Anjana Mishra, J)

Jagdish/-

AFR/NAFR	AFR
CAV DATE	09.05.2017
Uploading Date	09.05.2018
Transmission Date	N/A

