

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1038 of 2016

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1. Bihar Industrial Area Development Authority, Patna Udyog Bhawan, East Gandhi Maidan, District and Town, Patna through its Managing Director.
 2. The Managing Director, Bihar Industrial Area Development Authority, Patna Udyog Bhawan, East Gandhi Maidan, District and town, Patna
 3. The Secretary, Bihar Industrial Area Development Authority, Patna Udyog Bhawan, East Gandhi Maidan, District and town, Patna

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Industrial, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industrial, Government of Bihar, Patna.
3. Jai Matadi Incorporation Pvt Ltd. Dhiraj Commercial Complex Boring Road, P.S S.K. Puri, District Patna, through its Director, Sri Dev Jyoti, Son of late Amitabh Chatterjee.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan Prasad

For the Respondent/s : Mr. AJAY, GA12

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 19-04-2018

Heard both sides.

The petitioners have filed this writ petition for quashing the order dated 12.11.2015 passed in Appeal Case No.27/2015 by the Principal Secretary, Department of Industrial, Government of Bihar, Patna, the respondent no.2, by which the respondent no.2 allowed the appeal of respondent no.3 and set aside the order of cancellation of allotment. The respondent no.2 further directed the Bihar Industrial Area Development Authority, Patna (BIADA), the petitioner no.1 to give effect to the allotment by taking necessary steps for getting the



plot vacated from the possession of PHED within a period of three months.

The requisite and relevant facts for disposal of the writ petition are- that the respondent no.3 Jai Matadi Incorporation Pvt. Ltd. Dhiraj Commercial Complex, Boring Road, P.S. S.K. Puri, District –Patna submitted an application for allotment of an industrial plot in Patliputra Industrial area at Patna for establishment of Five Star Hotel and Restaurant. The Project Clearance Committee, hereinafter referred as PCC of BIADA, in its meeting held on 30.04.2012 took a decision in principle to allot an area of 11447 sqft, situated in the Patliputra Industrial Area, presently in possession of the Public Health Engineering Department (PHED), after getting vacant possession from PHED. The BIADA had taken step for getting the vacant possession of the land from PHED but in the meantime a policy relating to allotment of industrial area plots came in question in Public Interest Litigation before the High Court in C.W.J.C. No.13587 of 2011. After disposal of the said writ application, the petitioners preferred S.L.P.(C) No.14147 of 2012 while the Apex Court was in seisin of the matter, directed the State Government of Bihar to come with a clear policy with regard to the allotment of industrial plots. The State Government in pursuance of the provision as contained under Section 14(1) of the BIADA Act, came with a policy and issued



Notification No.4990 dated 26.11.2013 and Notification No.5390 dated 19.12.2013, laying down the policy for allotment of industrial plots. It has been decided in pursuance of aforementioned policy decision that the industrial plots cannot be allotted for the establishment of Hotel and Restaurant. The Project Clearance Committee of BIADA took decision on 24.05.2014 (Annexure-3) that the plot allotted to Jai Mata Di Incorporation Pvt. Ltd. for establishment of Hotel and Restaurant was not vacated by P.H.E.D. The BIADA needs the land for construction of office building and BIS building. It is resolved that multi-storey building can be constructed in which the offices of Bureau of Indian Standard and P.H.E.D can be allotted the space and took decisions to cancel the proposed order of allotment dated 30.04.2012 in favour of Jai Matadi Incorporation Pvt. Ltd.

The respondent no.3 filed appeal before the Principal Secretary, Department of Industrial, Government of Bihar, Patna, the respondent no.2. The respondent no.2 set aside the order of the Project Clearance Committee of BIADA on 12.11.2015 and the order of allotment dated 30.04.2012 made in favour of the respondent no.3 was restored.

The respondent no.3 filed counter affidavit and stated that the respondent no.3 being desirous and eligible for opening of a Five



Star Hotel in the district of Patna made an application before the BIADA in the prescribed format on 27.03.2012. The Bihar State Pollution Control Board also granted clearance. Thereafter the BIADA allotted the land to the respondent no.3 in its decision on 30.04.2012. The respondent no.3 took all necessary steps for establishment of Five Star Hotel in pursuance of the proposed allotment made in favour of the respondent no.3. The Industries Department and BIADA also took all necessary steps for getting the land vacated from the possession of PHED. When the possession of land was not given to the respondent no.3, the respondent no.3 filed C.W.J.C. No.3356 of 2014 for directing the respondent authority to get the same vacated from the illegal occupation of PHED and to hand over the vacant possession of the land to the respondent no.3. During the pendency of aforesaid writ petition, the PCC of BIADA held its meeting on 24.05.2014 and decided to cancel the allotment of the land to the respondent no.3 for the purpose of construction of multi storey building for office of BIADA and PHED. The respondent no.3 filed appeal before the Principal Secretary, Department of Industrial, Government of Bihar, Patna, in Appeal Case No.27/2015 and the Principal Secretary set aside the order of cancellation of allotment in favour of the respondent no.3 vide order dated 12.11.2015.

Learned counsel for the petitioners submits that from the



resolution of the Project Clearance Committee dated 30.04.2012, it would appear that the PCC resolved to allot the land to respondent no.3 after vacation of the land from the possession of PHED. When the land was not vacated for years and the BIADA also felt necessity of the land for construction of building for offices of BIADA and for the purpose of allotting the same to BIS and PHED, who have been in possession of the land. The resolution for allotment has been cancelled. It is submitted that no allotment letter was ever issued in pursuance of the resolution of PCC of BIADA dated 30.04.2012. It is further submitted that of course the State changed its policy for allotment of plot in the industrial development area and BIADA also required the plot for its own need, the P.C.C. vide its resolution dated 06.06.2014 cancelled the resolution dated 30.04.2012 by which the allotment was proposed to be made in favour of the respondent no.3. Learned counsel for the petitioners further submits that the respondents have got no vested right as no letter of allotment was issued. There is no provision of Appeal against the order. Section 6(2) of Bihar Industrial Area Development Authority Act, 1974 provides appeal against the order of cancellation made by the BIADA, if the allottee did not take effective steps within a fixed period to establish the industry. Therefore, the order passed by the Principal Secretary, Department of Industrial, Government of Bihar, Patna, is without



jurisdiction.

Controverting the submission of learned counsel for the petitioners Mr. Teg Bahadur Singh, learned counsel for the respondent no.3 submits that the order of Department of Industrial, Government of Bihar, Patna does not suffer from any illegality and same does not require any interference by this court. It is submitted that in pursuance of the resolution of the P.C.C. of BIADA dated 30.04.2012, by which the BIADA resolved to allot the plot to the respondent no.3 after getting the same vacated from the possession of PHED, many communications were made for getting the lands vacated from the occupation of P.H.E.D. and when the BIADA failed to get the lands vacated, the respondent no.3 filed many representations before the concerned authority and also filed C.W.J.C. No.13587 of 2011 in this court for the direction to the respondents but in the meantime, the P.C.C. resolved to cancel the resolution dated 30.04.2012 by which the plot was proposed to be allotted to the respondent no.3. Learned counsel for the respondent no.3 further submits that the resolution dated 06.06.2014 by which the resolution dated 30.04.2012 has been cancelled, does not speak the reasons of changing the industrial policy and the allotment of plot within the industrial development authority. Resolution simply says that the BIADA itself requires the plot for construction of multi storey building to run its offices and for



allotment of spaces for running the offices for BIS and PHED. It is submitted that the order cancelling the proposed allotment is not at all sustainable. It is further submitted the petitioners after the order passed by the Principal Secretary withdrew C.W.J.C. No.13587 of 2011 and this Court also directed to give effect to the order of respondent no.2 but the petitioners filed this writ petition, against the order of respondent no.2.

Learned counsel for the respondent no.3 placed his reliance on the judgment of Apex Court in the case of **Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner & Ors**, reported in **AIR 1978 SC 851**, in which, it has been held that “*when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise*”.

On the basis of submissions of both sides, the sole question arises for consideration is whether the Principal Secretary, Department of Industrial, Government of Bihar, Patna, has got jurisdiction to hear appeal against the cancellation of resolution for the proposed allotment in favour of the respondent no.3?

In this context, the provisions as contained under Section 6 (2)(a) of BIADA Act, 1974 provides Power and Duties of the Authority under the Act. Sub section 2(a) reads as follows:- “*In case*



necessary effective steps are not taken within the fixed period to establish the industry, the authority shall in such condition, cancel the allotment of allotted plot/shed and also forfeit the amount deposited in this connection. 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 dispose it of within two months from the date of receipt of the appeal”. On plain reading of the provision as contained in Section 6(2)(a) of the BIADA Act, the authority of BIADA is vested with the power to cancel the allotment made in favour of a person for establishment of industries, if the allottees have not taken any effective steps for establishment of industry within the fixed period to establish the industries, and if the authority cancels the allotment on ground of non compliance or for not taking proper steps within fixed period by the allottee for the establishment of the industry, the authority may cancel the plot and in that event the allottee has remedy to file appeal before the State Government but from perusal of the fact of the present case and on perusal of resolution dated 30.04.2012, it is apparent that the plot measuring 11447 sqft in the Patna Industrial Area Development Authority, was proposed to be allotted to the respondent no.3 for establishment of a



Five Star Hotel subject to condition of vacation by the PHED as the office of the P.H.E.D. was running from the building on the plot. The BIADA could not be able to get the land vacated from the possession of P.H.E.D. Later on, BIADA also requires the space/plot for construction of building for running its own offices besides the space for offices of P.H.E.D. and B.I.S. The P.C.C. of BIADA has cancelled the resolution by which the allotment was proposed in favour of the respondent no.3 on the ground of its own necessity which has been stated in the order of cancellation. Therefore, I find that the BIADA has got good ground to cancel the resolution making proposal for allotment in favour of the respondent no.3. The respondent no.3 has got no allotment letter issued in his favour. Therefore, it is not a case of cancellation of allotment on the ground that the allottee has not taken effective step for establishment of industries. In absence of this ground, the Principal Secretary, Department of Industrial, Government of Bihar, Patna, has got no jurisdiction to entertain appeal of the proposed allottee and thus this order of the Principal Secretary, respondent no.2 is without jurisdiction. This aspect of the matter is not in question in C.W.J.C. No. 13587 of 2011, which was field by the respondent for direction to the petitioners to issue letter of allotment after getting the land vacated but the same was withdrawn.

Having considered the facts aforesaid, I find that the order



passed by the Principal Secretary, Department of Industrial, Government of Bihar, Patna is illegal, without jurisdiction and not sustainable.

Thus, the order dated 12.11.2015 passed by the Principal Secretary, Department of Industrial, Government of Bihar, Patna in Appeal Case No.27/2015 is set aside and accordingly, this writ petition is allowed.

(Prabhat Kumar Jha, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.05.2018
Transmission Date	NA

