

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1012 of 2019

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M/s Shanti Steel Industries, A-4(P), Industrial Area, Donar Darbhanga through its Proprietor Chandra Mohan Singh, Son of Late Ramanand Singh (after the death of his mother Late Shanti Devi), resident of Belayakub, Ward No.15, Panchayat Dilawarpur, P.S. Bahadurpur, Dist.-Darbhanga, Pin No.846004 (Mob-8271955742)

... .. Petitioner/s

Versus

1. The Principal Secretary, Department of Industries, Govt. of Bihar, New Secretariat, Patna.
2. The Bihar Industrial Area Development Authorities (BIADA), Indira Bhawan, Ram Charita Path, Patna through its Managing Director.
3. The Managing Director, Bihar Industrial Area Development Authorities (BIADA), Ram Charita, Patna
4. The Executive Director, Bihar Industrial Area Development Authorities (BIADA), Regional Office, Darbhanga

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagannath Singh, Adv.
For the Respondent/s : Mr. Kumar Abhimanyu Pratap, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 27-02-2019 Heard learned counsel representing the petitioner and learned counsel on behalf of the Bihar Industrial Area Development Authority.

This writ application has been preferred for issuance of a writ of certiorari to quash the order dated 30.11.2018 (Annexure-8) passed by the Principal Secretary (respondent no.2) affirming the order dated 29.05.2018 passed by the Managing Director, Bihar Industrial Area Development Authority (in short 'BIADA').



It appears from perusal of the impugned order, as contained in Annexure-5, that the allotment of the plot in question has been cancelled stating therein that in course of inspection on 06.11.2017 it was found that the unit in question was not engaged in any production activity. The persons visiting the unit also came to know that the son of the allottee was arrested from the premises when he was found in possession of illicit liquor.

The appellate authority refused to interfere with the impugned order, as contained in Annexure-5, by holding that even if the benefit of doubt is given to the petitioner in respect of the allegations that the liquor was found in the premises but he was not at fault, it was established beyond doubt that he was using the premises for residential purposes and did not start any industrial activity in last 36 years.

Learned counsel representing the petitioner submits that the impugned orders are liable to be set aside as it would appear from perusal of Annexure-5 to the writ application that prior to passing of the impugned order the Managing Director had not given a chance of hearing in terms of Section 6(2)(a) of the BIADA Act, 1974. It is submitted that neither the copy of the inspection report nor any other kind of notice was given to



the petitioner calling upon him to show cause as to why the allotment be not cancelled. It is submitted that if the Managing Director, BIADA waited for seven months in taking a decision, as contained in Annexure-5, based on the inspection report dated 06.11.2017, there is no reason why he could not have given thirty days time to the petitioner to respond.

Learned counsel further submits that from perusal of appellate order it would appear that the appellate authority was though willing to give the benefit of doubt as regards the recovery of illicit liquor from the premises but then he dismissed the appeal because the petitioner's unit was allegedly not involved in production activity for last 36 years. By referring to the statements made in the writ application, learned counsel submits that the petitioner's firm is continuously working and is engaged in the works related to the steel industries. He has submitted that the petitioner had received several work orders, some of which have been enclosed as Annexure-3 series to the writ application. It is also stated that the petitioner has been paying electricity bills for commercial connection which is upto date. Copy of the electricity bills has also been brought on record. In sum and substance, the submission is that had an opportunity been given to the



petitioner to show cause, the petitioner would have placed all the materials before the Managing Director, BIADA to show that the cancellation of the allotment on the ground that the petitioner's firm is not engaged in industrial activity would not be just and proper. Thus, it is submitted that by not giving an opportunity of hearing, a prejudice has been caused to this petitioner inasmuch as an order having civil consequence has been passed.

On the other hand, learned counsel representing the BIADA submits that the submissions made on behalf of the petitioner are mere pretext to challenge the order impugned in the writ application. Learned counsel has also drawn the attention of this Court towards some of the earlier correspondences which were made during the year 2012 to 2016 in which also the BIADA had reminded the petitioner that he should not use the premises for any other purpose and for the reason that the petitioner is not using the premises for industrial purposes for which it has been allotted why allotment should not be cancelled. Learned counsel has however also drawn the attention of this Court towards reply of the petitioner dated 03.02.2012 available at page 24 of the writ application which was submitted to the BIADA. In the said reply, the petitioner



had invited the authorities of the BIADA to inspect the premises and had claimed that the premise is being used only for the industrial activity and for storage of the Almirah which is the business of the petitioner.

Learned counsel for the petitioner submits that the petitioner has denied receipt of the letters issued in the year 2015 and 2016 which have been brought on record on behalf of the BIADA.

Learned counsel for the 'BIADA' also submits that on the face of the aforesaid letters having been written to the petitioner, there was no requirement of issuance of any fresh notice to the petitioner.

Having heard learned counsel for the petitioner and learned counsel representing the BIADA, this Court comes to a conclusion that in the year 2012 when BIADA sent a letter observing that the petitioner is not engaged in any industrial activity, the petitioner replied immediately calling upon the authorities of the BIADA to inspect the premises. It also claimed that the premises is being used only for industrial purposes and because the Almirah business is the activity of the petitioner those Almirah are being stored in the premises. After receipt of the said letter of the petitioner, there is no material on



the record to show that the authorities of the BIADA ever visited the premises in question or called upon the petitioner in this regard. In the year 2015 vide memo no.665 dated 25.07.2015 the petitioner was informed that in course of inspection it was found that the allotted land is being used for residential purposes which is against the Rules of BIADA. On which date the inspection was conducted is not recorded in the letter. The petitioner has also denied the receipt thereof. The mode of dispatch of letters are not disclosed with any proof thereof. Again vide letter no.988 dated 10.12.2016 the petitioner was called upon to ensure that the premises is being used for industrial purposes, failing which action shall be taken for cancellation of allotment. The petitioner has again denied the receipt of the said letter. There is nothing on record to show on behalf of the BIADA that these letters were duly dispatched with proof thereof.

At this stage, this Court finds that almost one year after the last letter dated 22.12.2016, the BIADA is said to have conducted an inspection of the premises on 03.11.2017. An inspection report in this regard is said to have been submitted showing that the unit was found closed. In the impugned order, the date of inspection has been wrongly recorded as 06.11.2017.



It will be apparent from a perusal of Annexure-R/4 and R/5 where the date of inspection was recorded. It further appears that while submitting the inspection report it was also mentioned that in course of inspection the team came to know that son of the owner of the premises was arrested by the police with illicit liquor in the premises and he was sent behind the bar. Admittedly, neither the inspection report nor any notice calling upon the petitioner to show cause on the basis of the said inspection report was issued to the petitioner. Section 6(2)(a) of the BIADA Act, 1974 reads as under:-

“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.”

This Court is of the considered opinion that in the facts and circumstances of the case when the letters were being issued casually in the year 2012, 2015 and 2016 and no cancellation action was being taken pursuant to those letters of



2012, 2015 and 2016, when fresh inspection was conducted on 03.11.2017 and whatever had transpired in course of inspection were being made basis for cancellation of the allotment, the authorities of the 'BIADA' were obliged to comply with the aforesaid provision of law. This time they neither sent the inspection report to the petitioner nor any other opportunity in any form whatsoever was given to the petitioner to explain the circumstances. In the writ application, as stated above, the petitioner has made a number of claims supported by some documents claiming that the petitioner's unit is in production.

At this stage, this Court sitting in its writ jurisdiction is not supposed to take a view on those documents which have been enclosed with the writ application. In the opinion of this Court, the impugned order as contained in Annexure-5 and the appellate order as contained in Annexure-8 are liable to be set aside on the ground of violation of principles of natural justice. Those orders are accordingly set aside. The matter is remitted to the competent authority of the 'BIADA' to proceed afresh after giving a copy of the inspection report and an opportunity of hearing to the petitioner in accordance with law.

Let the whole exercise in this regard must be completed within a period of ninety days from the date of



receipt/production of a copy of this order.

The writ application is allowed with the observations
and directions made above.

(Rajeev Ranjan Prasad, J)

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