

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24441 of 2018

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Sarvashree Unique Wheat and Allied Agro Product Private Limited Industrial Area, Samastipur through its Managing Director, Dinesh Prasad, Son of Late Baleshwar Sah, Resident of Mathurapur, Samastipur, Police Station-Warisanagar, District- Samastipur

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Industry, Government of Bihar, Patna
2. The Managing Director, Bihar Industrial Area Development Authority, Udhog Bhawan, East Gandhi Maidan, Patna-4
3. The Secretary, Bihar Industrial Area Development Authority, Udhog Bhawan, East Gandhi Maidan, Patna-4
4. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Darbhanga
5. The Area Incharge, Industrial Area, Samastipur

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar, Advocate

For the Respondent/s : Mr.Rajiv Roy, GP.1

Mr. Piyush Lal, AC to G.P.1

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 25-02-2019 Heard learned counsel for the petitioner and learned counsel representing the Bihar Industrial Area Development Authority.

This writ application has been preferred challenging the order dated 19.11.2018 passed in Appeal Case No. 21 of 2014 by which the Appellate Authority while disposing of the appeal preferred by the petitioner has imposed certain conditions whereunder the petitioner is not only obliged to clear the pending dues of Bihar Industrial Area Development Authority (hereinafter referred to as the 'BIADA') with interest, he is also required to pay the cost as demanded by the 'BIADA'



of the previous structure. Apart from that the appellate authority has directed the petitioner to submit a bank guarantee of Rs. 3 Lakhs for a period of two years along with affidavit to 'BIADA' that the appellant will start business within four months from the date of the order and shall remain in continuous operations. On submission of the bank guarantee along with affidavit, the 'BIADA' has been directed to restore the allotment in favour of the appellant and then the physical possession of the plot shall also be handed over to the petitioner.

Learned counsel for the petitioner has while assailing the impugned order taken this court through the allotment letters and then wanted to assail the demand of the 'BIADA' as regards the cost of plants and machinaries and the previous structure as per the valuation then informed to the petitioner vide Annexure-3/1 to the writ application. Valuation report has been sought to be challenged in course of hearing.

Learned counsel for the petitioner also submits that the allotted land bearing Plot No. 38 to 41(p) are the part of Saket Industries. Saket Industries was allotted 10890 Sq.ft. land and till date no corrected Plot has been allotted and no physical possession handed-over to the petitioner.

On the other hand, learned counsel representing the



‘BIADA’ submits that this writ application suffers from non-rejoinder of necessary party as according to him Saket Industry is not a party to the Writ Application. It is also submitted that the petitioner while challenging the appellate order in the present writ application cannot be allowed to take an objection as to the valuation report which is of the year 2007-08. It was never under challenge. It is further submitted that if the petitioner had purchased the unit, he would be liable to pay the cost of the plants and machinaries as also the old structure. It is further submitted this matter was not agitated by the petitioner before the appellate authority. It is pointed out that before the appellate authority petitioner categorically submitted that he would re-start the business within six months, therefore the plea that petitioner was not handed over the corrected plot is only a pretext to conceal his own failure.

Having heard learned counsel for the petitioner and learned counsel representing the ‘BIADA’, this court finds force in the submission of learned counsel representing the ‘BIADA’ inasmuch as perusal of the records nowhere shows that issue of valuation or not handing over possession of the corrected plot were ever issued before the appellate authority. If those were not the issues for consideration before the appellate authority this



court will refrain from going into that dispute.

It further appears that before the appellate authority the petitioner had agreed to deposit a bank guarantee of Rs. 50,000/- but the appellate authority while passing the impugned order directed the petitioner to submit a bank guarantee of Rs. 3 Lakhs, which seems to be onerous. In course of argument in several cases today what has transpired from the submissions of learned counsel for the 'BIADA' is that the allotment letter does not provide for imposition of any such condition and there is no law conferring power upon the appellate authority to impose such conditions on his own. This court is, thus, willing to modify that part of the order by which the appellate authority had directed the petitioner to submit a bank guarantee of Rs. 3 Lakhs.

In the opinion of this court, *prima facie* it appears that the appellate authority while taking a view in the appeal could not have imposed a condition which was neither part of the allotment letter nor was by virtue of any law on the subject. It, however, appears that petitioner had himself offered to deposit a bank guarantee of Rs. 50,000/-, and, therefore, this court is willing to modify that part of the order of the appellate authority by which the petitioner has been directed to deposit a bank



guarantee of Rs. 3 Lakhs, to the extent that it should be read as a bank guarantee of Rs. 50,000/- in terms of his undertaking. Rest of the order passed by the appellate authority needs no interference.

This Writ Application stands disposed of with the modification in the appellate order as stated hereinabove.

(Rajeev Ranjan Prasad, J)

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