

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1991 of 2019

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M/S Keshri Agro Food Industry, Plot No. D-11(P), Industrial Area, Buxar,
through its proprietor Baijnath Keshri, S/O Sri Daddan Prasad Keshri
Resident of Village- Nadwan, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Industry department, Govt. of Bihar, Patna.
2. The Managing Director, B.I.A.D.A, Udyog bhawan, East Gandhi Maidan, Patna.
3. The Development Officer, Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, Patna.
4. The Area In-Charge, Bihar Industrial Area Development Authority, Industrial Area, Buxar.
5. The Industry Extension Officer, District- Industry Centre, Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sriram Krishna, Adv.
For the State	:	Mr. Indrashewar Pd. Mandal, AC to GA 3.
For the BIADA	:	Mr. Abhimanyu Pratap, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 26-02-2019 On 04.02.2019 when this writ application was taken

up for consideration, after hearing learned counsel for the

parties, this court passed the following order:-

*“Learned counsel for the petitioner is
permitted to remove the defects, if any, by
11.02.2019.*

*Let the Interlocutory Application be
taken on the record which will be numbered by
the Registry as according to learned counsel for
the petitioner he had taken efforts to file the same
in the Registry but failed as no number could be
provided.*



This writ application has been preferred seeking quashing of the order dated 17.12.2018 passed by the Principal Secretary, Industry Department, Government of Bihar in Appeal Case No. 31 of 2015 whereby the appeal preferred by the petitioner against the order of the Industry Extension Officer who in capacity of the Magistrate In-Charge of Buxar Sub- Division on 20th August, 2015 asked the appellant to vacate the premises has been dismissed. Although, in the prayer portion of the writ application, the petitioner has given an impression that the appeal which has been disposed of by the impugned order passed by the Appellate Authority was preferred by the petitioner also against the order of cancellation of allotment of land issued by the Managing Director, BIADA, the same cannot be taken as a valid ground for interference as it appears that the order by which the allotment of plot was canceled was subject matter of appeal before the Chairman of BIADA vide Appeal Case No.235 of 2007 which was disposed of on 26.10.2007 vide order as contained in Annexure '1' to the present writ application.

It appears that when the cancellation order was challenged by the petitioner, in the year, 2007 itself, it was found that the petitioner had not established the Industry and he had given the Appellate Authority to understand that the Industry shall be established within a period of four months. The then Appellate Authority took



note of the fact that the plot in question was made available to the petitioner in November, 2005 itself. Taking a lenient view in favour of the petitioner the Appellate Authority had given him time till 31.12.2007 to establish the Industry and start production. The order of cancellation dated 01.08.2007 was kept in abeyance till such time.

It appears that, thereafter, the authorities of the 'BIADA' visited the unit to find out as to whether the unit was in running condition or not, photographs were also taken by the authority of BIADA. It was found that there is no industrial activity going on in the plot and only some trucks were parked in the premises. The Industry Extension Officer was kept as Magistrate In-Charge of Buxar Sub-Division who asked the petitioner on 20th August, 2007 to vacate the premises.

At this stage, the petitioner once again filed an appeal giving rise to Appeal Case No.31 of 2015 and while seeking quashing of the notice dated 20.08.2015 issued by the Industry Extension Officer calling upon the petitioner to vacate the land in question by 04.09.2015, the petitioner also prayed for quashing of the order of BIADA as communicated vide Memo No.2892/D dated 01.08.2007 whereby the allotment of the land in favour of the petitioner had been earlier canceled.

It appears that from the impugned order passed by the Principal Secretary, Department of Industries who is the Chairman of



BIADA that after filing of the appeal in the year, 2015 the matter remained pending. As observed in the impugned order, the petitioner did not appear on the date fixed in the matter as a result whereof the Appellate Authority proceeded to dispose of the appeal on the basis of the materials available on the record in absence of the petitioner. While disposing of the appeal, the Appellate Authority has recorded the following findings:-

“i. The unit was allotted land in the year 2005 for starting Agro food industries. The land was measuring 5000 Sq ft but the unit did not start any industrial activity and hence his allotment was cancelled.

ii. It also appears that the significant amount of dues are pending against the unit.

iii. It seems that the Appellant had already approached the then Appellate Authority who vide order dated 26th October, 2007 allowed the Appeal and gave the Appellant 4 months time to start the unit. However he failed to start his unit even after the opportunity given by the then Appellate Authority.

iv. In his Appeal application he has mentioned that in compliance to the order of the Appellate Authority he has started the unit and the unit is ‘running’. In his appeal application he talks about certain photographs showing that he has made some construction on the area. It appears that these photographs were already considered by the then Authority



in BIADA.

v. It also appears from the photograph submitted by BIADA that there is no industrial activity going on in the plot and some trucks were parked in the premises.

vi. He has also not enclosed any evidence to suggest that he has arranged the necessary bank loans etc. or clearances to start his unit of Agro Industries.”

Sri Ram Krishna, learned counsel representing the petitioner has assailed the impugned order on the ground that the Appellate Authority was wrongly informed by the BIADA that the unit is not in running condition. Learned counsel submits that in fact the industrial activities are going on in the premises in question. Learned counsel further submits that the date of hearing of the case was informed to the petitioner subsequent to the disposal of the case. It is submitted that specific statement in this regard has been made in Paragraph nos. 18 and 19 of the writ application. It is also submitted that during the intervening period some payments have also been made to ‘BIADA’.

Kumar Abhimanyu Pratap, learned counsel representing BIADA submits that he would file a counter affidavit within one week.

Let the name of Kumar Abhimanyu Pratap, learned counsel who appears for BIADA appear in the cause list.

List this matter on 12th February, 2019 under the heading “For Orders”.

In the meantime, the status quo as of



now shall be maintained.”

A counter affidavit has been filed on behalf of Bihar Industrial Area Development Authority (hereinafter referred to as ‘BIADA’) wherein a stand has been taken with the help of Annexure ‘R/1 Series’ to the counter affidavit that notice for hearing of the appeal bearing Appeal Case No.31 of 2015 had been uploaded on the Department’s website as also separate notice was sent to the petitioner through Speed-Post. It is further stated that while disposing of the earlier appeal being Appeal Case No.235 of 2007 the then Appellate Authority had directed to keep the order of cancellation of allotment in abeyance till 31.12.2007 to facilitate the petitioner to start production but the petitioner failed to start the industrial activities on the land and also failed to deposit the outstanding dues.

As this Court wanted specific date on which the notice with regard to the date of hearing of the appeal was uploaded, a supplementary counter affidavit has been filed on behalf of respondent nos.2 to 5. It is stated therein that the notice of adjournment of Appeal No.31 of 2015 on 07.02.2018 and the next date of hearing of appeal was uploaded on the Department of Industries, Government of Bihar website on 07.02.2018.

Learned counsel for the petitioner has pleaded before



this Court that no adequate opportunity of hearing was given to the petitioner as the petitioner being a layman could not have come to know from the website about the date fixed in the matter.

This Court has gone through the records and upon perusal thereof it is found that the allotment of land was made in the year, 2005. The allotment was cancelled in the year, 2007 whereafter the petitioner had moved in an appeal before the then Appellate Authority who had had given an opportunity to the petitioner to start production in the unit and the cancellation order was kept in abeyance for a considerable period. The finding of the authorities are that the petitioner failed to start production in the unit in question and had also failed to deposit the dues of the 'BIADA'. It also appears to this Court that the petitioner had accepted the order dated 26.10.2007 passed by the then Appellate Authority and had never challenged the same. Under these circumstances, when he failed to start production within the given period by the Appellate Authority, the 'BIADA' was fully justified in taking action for the recovery of the industrial plot. At this stage, in the year, 2015 the petitioner challenged the action of 'BIADA' in the matter of taking over the possession of the industrial plot but he was not vigilant in



pursuing his remedy before the Appellate Authority. The plea of learned counsel for the petitioner that the petitioner being a layman could not have come to know about the date fixed in the matter through the website of the Industries Department would not be acceptable to this Court. It is now a valid mode of communication and if this plea is allowed to be taken, it will open a series of litigation on this ground alone. On the face of findings of the authorities of 'BIADA' and that of the Appellate Authority, there is no other reason made out to interfere with the impugned order(s).

This application has thus no merit, it is dismissed.

(Rajeev Ranjan Prasad, J)

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