IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.699 of 2018
In
Civil Writ Jurisdiction Case No.1038 of 2016

==

Jai Mata Di 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

... ... Appellant/s

Versus

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
4. The State of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Patna
5. The Principal Secretary, Department of Industries, Government of Bihar, Patna.

... ... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. Shashi Anugraha Narayan Sinha, Sr. Adv.
		Mr. Maruth Nath Roy, Adv.
For BIADA	:	Mr. Priya Ranjan, Adv.
For the Respondent/s	:	Mr.Yogendra Prasad Sinha -AAG 7

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-05-2019

Heard Shri Shashi Anugrah Narayan Sinha, learned Senior Counsel for the appellant, Shri Kumar Priya Ranjan, learned counsel for the Bihar Industrial Area Development Authority (hereinafter referred to as the 'BIADA') and Shri Yogendra Prasad Sinha for the State.

2. This appeal questions the correctness of the

impugned judgement dated 19th April, 2018 whereby a learned Single Judge has allowed the writ petition filed by the BIADA, Patna and has quashed the order dated 12th of November, 2015 passed in Appeal Case No.27 of 2015 by the Principal Secretary, Department of Industries, Government of Bihar. The order of the Principal Secretary had set aside the order of the Project Clearance Committee of BIADA whereby the Committee had cancelled/withdrawn the earlier clearance of the proposal of allotment of a certain piece of land to the appellant for commercial purposes.

3. The short facts for the purpose of this appeal are that the allotment process took the shape of a decision on 30th of April, 2012 by the Project Clearance Committee which is a committee constituted under the Bihar Industrial Area Development Authority (Financial Service and Technical) Regulations, 2007. The said Regulations have been framed with the approval of the State Government in exercise of the powers under Section 5 of the Bihar Industrial Area Development Authority Act, 1974 (hereinafter referred to as 1974 Act) read with Section 15 thereof. The function of the Project Clearance Committee has been prescribed in Clause 1.4.2 of the said Regulations which is extracted hereinunder:

"**1.4.2 Powers and Function of Project**

Clearance Committee-

(i) The Project Clearance Committee (PCC) shall consider the projects and other expenditure proposals as appearing in Sec. 4.1

(ii) All proposals will be submitted to the concerned authority having delegated powers provided for final approval. In case the designated authority does not agree with the recommendations of the PAC, she/he shall record the reasons for such disagreement.

4. Under the same Regulation, under Chapter 4, the financial and tendering powers and procedures have been prescribed in a chart and at Item No. 'K' and 'L' the competent authority to sanction allotment of land in an Industrial Area or cancellation of any plot already allotted is the Managing Director.

S. No.	Type of Expenditure /Approval	Proposed Limit	Tendering Process	Whether to go to PCC or not	Competent Authority to Sanction
K	Allotment of land in Industrial Area	(i) Of all kinds	(i) not required	(i) Yes	(i) MD
L	Cancellation of plots already allotted	(i) Of all kinds	(i) not required	(i) No	(i) MD

5. We may at this stage also refer to the provisions of the parent Act. Section 3 of the 1974 Act as amended in 2017 reads as under:

3. Industrial Areas Development Authority- Aims and Object

(1) The State Government may at any time after commencement of this Act constitute by notification, an Authority for any area or areas for development and promotion of industry.

Explanation I – The State Government may set up one or more Authorities, or one Authority for one or more areas in the State under this Act such an Authority will be known as "(name of the area) Industrial Area Development Authority".

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with powers to acquire, hold and dispose of properties, both movable and immovable, and to contract and do all things necessary for the purposes of this Act and shall by the said name sue and be sued.

(3) (i) Any such Authority shall consist of a Chairman, a Managing Director and five other Directors who shall be appointed by the State Government and who shall hold their office on terms and conditions to be prescribed in this behalf, at the pleasure of the State Government.

(ii) The Chairman of the Authority shall be a Government servant not below the rank of a Secretary or Commissioner or any other person who may be nominated by the Government.

(iii) The State Government may, if it is found to be expedient, appoint the same person as Chairman and Managing Director of the Authority.

(4) The Managing Director shall be a whole time officer and the Chief Executive of the Authority and shall perform, among others, the following duties under, the general guidance of the Chairman-

(a) He shall receive all the money on behalf of the Authority and issue receipt and maintain proper account for the same;

(b) He shall draw money from the fund of the Authority for disbursement of salaries, allowances and meeting the expenses of the Authority;

(c) He shall authenticate any order of the Authority;

(d) He shall perform any order only that may be assigned to him by the Authority or the State Government from time to time.

> (4a) The Authority may, by general or special order in writing delegate to any officer of the Authority subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary.

6. The authority constituted under Section 3 also prescribes that the Chairman of the authority shall be a Government servant not below the rank of a Secretary or Commissioner or any other person who may be nominated by the Government. There is no dispute between the parties that the Chairman of the authority is the Principal Secretary, Department of Industries. The Managing Director is to be a whole time officer and the chief executive of the authority. He is to perform his duties as defined in the aforesaid Section under the guidance of the Chairman.

7. The general duties and powers of the authority are contained in Section 6 of the Act. Section 6 is extracted hereinunder:

> **6. General duties and powers of the Authority**
>
> **(1)** Subject to the provisions of this Act, the Authority shall be responsible for the planned development of the Industrial Area (including preparation of the Master Plan of the area) and promotion of industries in the area and other amenities incidental thereto.
> **(1a)** The Authority shall be the implementation agency for industrial planning of industrial area as mentioned in Section 4A.
> **(2) The Authority shall be responsible for** planning, development and maintenance of the Industrial Area and amenities thereto and **allotment of land** or factory shed or building or parts of buildings, **execution of lease, modification and cancellation of such allotment** of lease, realization of fees rent

charges and matters connected thereto.

(a) In case necessary effective steps are not taken within the fixed period to establish the Industry or all dues, rent, charges of the Authority have not been paid within time or unregistered product is manufactured or any construction contrary to the approved plan has been carried out or an activity injurious to industries has been engaged into; the Authority shall in such condition cancel the 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 of within two months from the date of receipt of Appeal.

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

(c) The Authority shall regularly identify unutilized buildable area in each plot with regard to the building regulations. The Authority shall issue notices to the plot holders in the Industrial Area calling upon them to furnish details in a prescribed form. Upon the submission of the report if the Authority is satisfied that the plot holder has notutilized the maximum buildable area of his plot even after 3 years or any other period notified by the State Government, from the date of taking over the possession for the purpose for which the land was allotted, the unutilized portion shall be cancelled for accommodating another industry. The portion of the plot that is not being utilized by an allottee/ lessee be demarcated and taken over by the Authority for accommodating a new allottee/lessee.

(d) Commencement of business on allotted plot or area: No person shall commence business until an Occupation Certificate is issued by the Authority after implementation of Detailed Project Report filed by the allottee, and in accordance with the Development Control Regulations of the Authority. The Authority shall permit any deviations in the Detailed Project Report, provided such deviations shall be intimated and approved by the Authority before any such deviation implementation has commenced on the plot.

(3) The State Government may from time to time entrust the Authority with any other work that is connected with planned development or maintenance of the Industrial Area and its amenities and matters connected thereto.

(3a) Authority may formulate Allotment Policy, Transfer Policy, **Exit Policy, Cancellation Policy** or such other Policy for better management of Industrial Area.

(4) (a) The Managing Director of the Authority shall have the powers of the Collector under section 2 (1) of the Bihar Public Land Encroachment Act, 1956, for purposes of removal of encroachment on road, houses, gullies, any land in the development areas and properties of the Authority.

(b) Any person who encroaches upon road, houses, gullies, any land in the development areas and properties of the Authority or continues to possess or squat upon the cancelled plot or a portion of the plot shall be treated as encroacher and the Authority shall take necessary action in terms of this Act.

(5) The State Government may, by notification in the Official Gazette, vest the Authority with powers under any other Act for planning development and maintenance of civic amenities like housing and schools and vacation of encroachment, etc. that are exercisable by any local authority or statutory body or State Agency under any law for the time in force in this regard.

(6) Where, in the opinion of the Authority, as a consequence of any development having been executed by the Authority in any development area, the value of any property in that area which has been benefited by the development has increased, the Authority may, with the prior approval of the State Government, levy upon the owners of the property or any person having interest therein a betterment charge in respect of the increase in value of the property resulting from the execution of the development.

Provided that no betterment charge shall be levied in respect of lands owned by the State or the Central Government.

(7) Such betterment charge shall be an amount, in respect of any property situated in a development area, equal to one-third of the amount by which the value of the property on the completion of the execution of the development scheme, estimated as if the property were clear of building exceeds the value of the property prior to such execution estimated in like manner.

(8) The Authority may in addition to the grants, loans advances or subsidies that may be received from the State Government also borrow from any source, with the prior approval of the State Government.

(9) The Authority may form an Industrial Area Management Committee for effectively managing the Industrial area.

(10) The Authority shall have powers:-

(a) to acquire and hold such property, both movable and immovable as the Authority may deem necessary for the performance of any of its activities;

(b) to purchase by agreement or take on lease or rent or under any form of tenancy any property as per prescribed rules, to erect such buildings and to execute such other works as may be necessary for the purpose of carrying out its duties and functions;"

8. A perusal of Sub-section (2) of Section 6 leaves no room for doubt that the authority has been made responsible for all that has been mentioned in the said Sub-section including allotment, modification or cancellation of allotment of land. We may also point out that by way of Bihar Act No. 27 of 1992, the provisions of the said Act were amended by the Bihar Industrial Area Authority Amendment Act, 1991. **The Bihar Industrial Area Authority Rules, 1981** were also in existence and under Rule 3 of the 1981 Rules, the entrustment of the duties of the Managing Directors of the authority has been defined which is extracted hereinunder:

"**3. Entrustment of duties of Managing Directors of** the Authority by the State Government/Authority **under Section 3(4) (d) of the Act**.

The following duties are being entrusted to the Managing Directors by the State Government Authority:-

(i) **Allotment and cancellation of Plots**.

(ii) Purchase of plant & Machinery not exceeding Rs. One Lakhs.

(iii) Sanction expenditure on fixed assets not exceeding Rs. Fifty Thousands.

(iv) Accord administrative approval of scheme not exceeding rupees one lakhs."

9. A perusal thereof would indicate that the Managing Director has been empowered by the State Government for allotment and cancellation of plots and it is, thus, in consonance with the Regulations that have been referred to hereinabove and were framed later on in the year 2007.

10. On a conspectus of all the aforesaid provisions, what appears for the purpose of allotment of land by the authority any proposal has to get a clearance from the Project Clearance Committee as per Regulation 1.4.2 of the 2007 Regulations extracted hereinabove. The said Regulations further provide for final approval of the said proposal to the concerned authority having delegated powers in respect thereof. The aforesaid provisions, therefore, indicate that the Managing Director can only sanction the project as the competent authority only if there is a clearance by the Project Clearance

Committee. However, the designated authority also has the power to disagree with the recommendations of the said Committee. It is in this context that a reference is necessary to Section 6(2) of the Act where the authority itself has been given the overall power relating to allotment of land. This power being conferred on the authority under the parent Act cannot be read as subservient to and shall be the original power of the authority to be exercised while discharging its responsibility of taking a decision with regard to allotment of land. In our considered opinion, therefore, it is the authority under the 1974 Act which has the final say in the matter of allotments even after the Managing Director may have given his sanction to any such project clearance by the Project Clearance Committee.

11. It is in this background that we now proceed to examine the facts of this case where we find that the Project Clearance Committee had cleared the project of the appellant, but the same could not be given effect to and as a consequence of this inaction on the part of the respondent authority the appellant moved an application on 27th March, 2012. The authority entered into a communication and the State Government that was also responded to with the issuance of letters by the Principal Secretary of the Industries Department as

well as also of the Department of the Public Health Engineering. The reason for this communication was that the land which was subject-matter of allotment had been in the possession of the Public Health Engineering Department (hereinafter referred to as the 'PHED') and the possession thereof could not be taken, as a result whereof the Project Clearance Committee had to take a decision for withdrawing and canceling the proposal of the appellant. This is clearly evident from the proceedings of the meeting dated 30th April, 2012 of the Project Clearance Committee where it has been clearly recited that since the possession could not be taken from the PHED even after a very long lapse of time and since the authority also requires the land for the construction of its own building, therefore, it was resolved to cancel the allotment made to the appellant on account of such contingency.

12. We may, at this stage, also mention another fact as pointed out by the learned counsel for BIADA that this had also become necessary according to them on account of the orders passed by the Apex Court in Civil Appeal No.8913 of 2013 where the State Government of Bihar had been given the liberty to inform this Court about a decision being taken in respect of such allotments. The order dated 30th October, 2013

has been filed as Annexure-9 in the writ proceedings and the order passed on 10th of December, 2013, which is Annexure-10 thereto, is extracted hereinunder:

> "Mr. Gaurav Agrawal, learned counsel appearing for Bihar Industrial Development Authority (respondent No. 7) submits that he has got particulars of various allotments made, details of which are mentioned in IA No. 3, and prays for some time for production of those materials. He also submitted that since May 2013, allotment of all commercial plots has been withheld by the Authority. We are also informed that at the moment there is no scheme for allotment of commercial plots.
>
> We have perused the notification issued with regard to the allotment of industrial plots.
>
> Mr. P.S. Patwalia, learned senior counsel appearing for the appellant, pointed out that the notification is not at all satisfactory and contains many loopholes. He submitted that, in any way, the notification only deals with industrial plots and not commercial plots.
>
> As prayed, put up on January 15, 2014.
>
> Needless to mention here that if respondent No. 7- Authority proposes to allot commercial plots, they should first frame a proper scheme so that arbitrary allotments could be avoided.

13. Learned counsel for the respondent authority has urged that this was also one of the additional reasons for not proceeding with the allotments any further.

14. It is in this background that the appellant filed C.W.J.C. No.3356 of 2014 and during the pendency of the said writ petition the aforesaid decision of withdrawing and canceling the proposal of allotment in favour of the appellant was brought to the notice of the Court through an interlocutory application. This decision of the authority dated 24th May, 2014 and its consequential communication dated 6th June, 2014 were also, therefore, brought on record in the said writ petition whereafter the State Government through the Principal Secretary of the concerned department communicated the decision dated 12.11.2015 in favour of the appellant. On 15th December, 2015 the said writ petition was disposed of by the following order:

> "Learned Senior counsel Mr. Tej Bahadur Singh fairly submits that the grievance of the petitioner now stands redressed in terms of the order dated 12.11.2015 passed by the Principal Secretary, Industries Department, Bihar, Patna in Appeal No. 27/2015 setting aside the cancellation order in question.
>
> 2. In the above view of the mater, the **writ petition stands disposed with the observation that concerned authorities shall give due affect to the aforesaid order dated 12.11.2015 expeditiously**."

15. The writ petition giving rise to the present appeal, namely, C.W.J.C. No.1038 of 2016 came to be filed

thereafter by the respondent BIADA challenging the very same order dated 12th November, 2015 that had been passed by the Principal Secretary, Industries Department on the basis whereof the writ petition filed by the appellant had been disposed of vide order dated 15.12.2015 quoted above. The order of the Principal Secretary had set aside the decision of the Project Clearance Committee with a clear observation that the appellant was entitled to the said allotment. The challenge raised to the order dated 12.11.2015 in the writ petition filed subsequently by BIADA was made without there being any pleading in the writ petition about the judgement dated 15th December, 2015 and it's impact even though a reference to the said order does find place in the communications of the respondents. No reason has been given as to why the aforesaid fact of the passing of the judgement dated 15th December, 2015, which is inter parties, was not stated in the writ petition giving rise to the present appeal.

16. However, a counter affidavit was filed and the aforesaid fact was brought to the notice of the learned Single Judge as well as the entire background of the case in which the proposal for allotment had proceeded and had ended up in the order passed by the Principal Secretary on 12th of November,

2015.

17. It appears that in order to get away with the observations in the order dated 15.12.2015 of the High Court for giving effect to the order dated 12.11.2015, the respondents filed a Civil Review No.38 of 2016 (in C.W.J.C. No.3356 of 2014), but the same was rejected by the order dated 6.5.2016 which is extracted hereinunder:

> "The review application has been filed for review of a part of the order dated 15.12.2015 passed in C.W.J.C. No. 3356 of 2014 (Jai Matadi Incorporation Private Limited vs. The State of Bihar & Ors.).
>
> 2. Learned counsel for the petitioner submits that the observation contained in the later part of the order dated 15.12.2015 to the effect that the concerned authorities shall give due affect to the order dated 12.11.2015, is contrary to the policy of the respondent no. 7-review petitioner. <u>However, this fact was not brought to the notice of the writ Court at the time of disposal of C.W.J.C. No. 3356 of 2014.</u>
>
> 3. In the above view of the matter, this Court is not satisfied that the order under review dated 15.12.2015 suffers from any error apparent on the face of the record. No sufficient reason has been shown even otherwise to justify review of said order. On the contrary, it is stated that for similar grievance, <u>a separate writ petition in C.W.J.C. no. 1038 of 2016 has been filed challenging</u>

> the order dated 12.11.2015 which is pending before this Court.
>
> 4. The review petition accordingly stands dismissed."

18. No further challenge was raised by BIADA either by way of filing an appeal or otherwise to the judgement dated 15.12.2015 or the order rejecting the review application dated 06.05.2016.

19. The learned Single Judge, under the impugned judgement, proceeded to examine the claims and counter claims of the parties, but without recording any finding with regard to the impact of the judgement dated 15.12.2015, proceeded to hold that the Principal Secretary had no power or jurisdiction to pass any order in terms of Section 6(2)(a) of the 1974 Act and, accordingly, allowed the writ petition and quashed the order dated 12.11.2015.

20. Assailing the aforesaid judgement, the appellant is before us contending that it was not open to the learned Single Judge to have overlooked the judgement of a co-ordinate Bench inter parties that was binding and which issued a writ for compliance of the aforesaid directions.

21. In this regard learned counsel for the respondent BIADA has vehemently urged that complaining of non-compliance of the judgement dated 15.12.2015, the appellant himself had preferred M.J.C. No.2769 of 2016 whereafter a

show cause was issued. The learned Single Judge on 5th July, 2017 passed the following order:

> "Learned counsel for the opposite party no. 8 submits with reference to the show cause that CWJC No. 1038 of 2016 has been preferred before this Court against the appellate order dated 12.11.2015 passed by the Principal Secretary, Industry Department, Government of Bihar in Appeal Case No. 27 of 2015 which is pending consideration.
>
> 2. In the above view of the matter, let this case be listed after disposal of aforesaid CWJC No. 1038 of 2016.
>
> I.A. No. 4482 of 2017
>
> 3. This interlocutory application has been filed on behalf of the opposite party no. 8 for modification of the order dated 03.05.2017 requiring the show cause to be filed showing compliance of the order dated 15.12.2015 passed in the connected writ petition.
>
> 4. Considering the pendency of CWJC No. 1038 of 2016 preferred against the appellate order as stated above, the direction to the opposite parties to show compliance of the order of this Court within three weeks as contained in the order dated 03.05.2017 is dispensed with for the time being. The interlocutory application stands disposed of. "

22. Relying on the same, learned counsel submits that the judgement dated 15.12.2015, therefore, was not found capable of compliance at that stage and, consequently, the

impact thereof cannot be of any avail to the appellant and the learned Single Judge while proceeding to quash the order dated 12th of November, 2015 has not committed any error or impropriety in proceeding to deal with the matter.

23. We have considered the submissions raised and in order to clear the cob-web of the status of the authorities as to who would be competent enough to decide a dispute with regard to such allotment, we may point out that, as observed above, the authority vests in BIADA as per Section 6(2) of the Act. The 1981 Rules as well as the 2007 Regulations are subordinate legislations under which the Managing Director has been made the sanctioning authority after the clearance of the project by the Project Clearance Committee, but the same is subject to the ultimate order which can be passed by the authority in terms of Section 6(2) of the 1974 Act. If the Regulations have been framed, they do not take away the power of the authority itself nor is the authority denuded of its own powers in proceeding to deal with the matters of allotment. In the given circumstances, therefore, the authority having been conferred with the power to take a decision in the matter, it would have been more appropriate that the decision should have been taken by the authority itself. We, therefore, find that the approach for getting

a decision from the authorities one way or the other appears to have been misdirected and, as a matter of fact, the matter ought to have been placed before the authority itself for a final decision to be taken as to whether the impact of the judgement dated 15th of December, 2015 had vanished or was diluted by any other factor so as to assess the decision of the Project Clearance Committee to withdraw or cancel its earlier decision. In our opinion, the Project Clearance Committee, instead of having proceeded to take a decision, ought to have placed the matter before the authority itself for a decision for any plausible or cogent reason for not proceeding with the allotment.

24. Apart from this, we find that such reasons, namely, the requirement of BIADA for its own purposes or any other reason had not been the original cause, but it was on account of the delay in the possession not being handed over by the PHED that such a situation arose resulting in the taking of a decision and till today remains the same without there being any further indication of any project coming forth on the said land.

25. The learned Single Judge while proceeding to decide the matter on 19th April, 2018 has completely overlooked the aforesaid provisions and, in our opinion, while proceeding to interpret Section 6(2)(a) has misconstrued the provision which

was not the provision that was applicable in the controversy inasmuch as there was no order of cancellation or allotment by the Managing Director against which any appeal or otherwise could be filed before the State Government. The Principal Secretary had been approached against the inaction of the respondent authorities and not against any order of cancellation or allotment. This aspect having been overlooked, we do not find the judgement to be sustainable and, even otherwise, it would have been appropriate for a direction to the BIADA to take a decision itself in accordance with law after going through the claim of the appellant as well as the impact of the judgement of this Court. What we find surprising is that the respondent authority did not choose to challenge the order dated 15.12.2015 even after the review application had been rejected. In the given circumstances, only because the Contempt Court had not proceeded in the matter and kept the proceedings in abeyance would not take away the impact of a final judgement inter parties.

26. We may further point out that the learned Single Judge was not sitting in appeal over the order of a co-ordinate bench dated 15.12.2015 and, in fact, the learned Single Judge while delivering the impugned judgement could not have

created an impact which would result in the cancellation of a writ by another Court in the same jurisdiction as that would be contrary to the principles of law as held by the apex court in a 9 Judges decision in the case of Naresh Shridhar Mirajkar & Ors. Vs. State of Maharashtra and another, reported in A.I.R. 1967 SC 1. We may extract paragraph 3 of the judgment in the case of Vikramjit Singh v. State of Madhya Pradesh, reported in 1992 Supp (3) SCC 62, where this principle has been enunciated in the matter of a bail application as follows:-

> "**3.** The application was listed before Mr Justice Gupta who by the impugned judgment cancelled the earlier order of Mr Justice B.C. Varma and while so doing made strong remarks against grant of bail in cases like the present one. The appellant has now challenged the judgment before this court. It appears that the learned Judge while passing the impugned order, failed to appreciate that no bench can comment on the functioning of a co-ordinate bench of the same court, much less sit in judgment as an appellate court over its decision. If the State was aggrieved by the order of bail by Mr Justice B.C. Varma it could have approached this Court but, that was not done. The judgment of Mr Justice B.C. Varma, therefore, became final so far the High Court was concerned. If the appellant had misused the bail or new materials came to light, it would have been open to the prosecution to move for cancellation, but that is not the position in the present case. On the basis of the same materials and in the same circumstances in which the order was earlier

> passed in favour of the appellant by the High Court, the application for cancellation was made entirely as a sequel of the observations made by Mr Justice Gupta while dealing with the application of another accused. It must be, therefore, held that Mr Justice Gupta had no authority to upset the earlier order of the High Court. That which could not be done directly could also not be done indirectly. Otherwise a party aggrieved by an order passed by one bench of the High Court would be tempted to attempt to get the matter reopened before another bench, and there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary. The impugned order dated July 16, 1991 is, therefore, set aside and the order dated July 6, 1990 granting bail to the appellant is restored."

27. We also find that the judgement cited by the learned counsel for the appellant, reported in (1998) 9 SCC 138, Authorized Officer (Land..)Vs. M.M. Krishnamurthy somewhat comes to the aid of the aforesaid proposition.

28. We, therefore, accordingly, allow the appeal and set aside the impugned judgement dated 19th April, 2018 with a direction to the Authority (BIADA) to re-consider the entire matter afresh independently without being influenced by any intervening orders having been passed by the State or any of the authorities and communicate the same to the appellant within a

period of two months from today.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Saif/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	10.05.2019
Transmission Date	N/A