

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2198 of 2019

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Sarva Sri Maa Tara Jaivik Udyog Purnea, through its Proprietor Arjun Kumar Sah Resident of Village-Sanauli Chowk, Gulab Bagh, Purnea, District-Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Industry, Govt. of Bihar.
2. The Chief Secretary, Industry Department, Govt. of Bihar, Bihar
3. The Bihar Industrial Area Development Authority (BIADA), Regional Office, Branch Bhagalpur, through its M.D. Head Office Udyog Bhawan, East Gandhi Maidan, Patna
4. The Executive Director, Bihar Industrial Area Development Authority(BIADA), Regional office, Bhagalpur
5. The Development Officer, Bihar Industrial Area Development Authority (BIADA), Bhagalpur.
6. The District Magistrate, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kameshwar Prasad Singh
For the Respondent/s : Mr.Rajiv Roy (Gp1)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 20-02-2020

1. The present writ petition has been filed for quashing the order dated 25.09.2018, passed by the Executive Director, Bihar Industrial Area Development Authority (hereinafter referred to as the “BIADA”) Bhagalpur, whereby and whereunder allotment of the plot made to the petitioner, bearing plot no. 11 (P), admeasuring an area of 10,000 Sq.ft., situated at BIADA Regional Area, Bhagalpur has been cancelled.



2. The brief facts of the case, according to the petitioner, are that it was invited by the Industries Department, Government of Bihar for opening an industry at Purnea stating that BIADA was working for the development of the said area and for that purpose it was allotting plots of land for establishing industry in the Purnea town. The petitioner is stated to have applied for allotment of a plot whereafter, BIADA had allotted a piece of land on 28.09.2008 which had a boundary wall and two asbestos rooms and a big asbestos shed. The said big asbestos shed is stated to have been wrecked on account of storm whereupon the petitioner is stated to have written a letter dated 17.03.2008 to the respondent-authorities to repair the same so that he could start his industry. It is the further case of the petitioner that since the plot allotted to the petitioner was not proper for a Jaivik Udyog, the petitioner decided to change his business. The petitioner had then given an application dated 19.09.2013 for change of his business/ project, however, in the meantime, the respondent no. 5 i.e. the Development Officer, BIADA, Bhagalpur had given a notice dated 16.05.2013 to the petitioner informing that the outstanding dues as against him stood at a sum of Rs. 41,497/-. Since the respondent authorities did not respond in the matter of granting permission to the



petitioner regarding change of the project/ industry, the petitioner had again written to the respondent authorities on 01.09.2014 for change of the project, however instead the allotment of the plot of the petitioner was cancelled by an order dated 05.08.2015, passed by the Managing Director, BIADA, Patna and the amount deposited by the petitioner was directed to be forfeited. The petitioner had filed an appeal against the aforesaid order dated 05.08.2015 before the Principal Secretary, Department of Industry, Government of Bihar, Patna on 25.11.2015, however the said appeal has been rejected and communication to the said effect has been sent to the petitioner herein by the Executive Director, BIADA, Bhagalpur. The petitioner had also challenged the orders dated 09.05.2018/ 22.05.2018, passed by the Principal Secretary, Industries Department, Government of Bihar, Patna in Appeal no. 36 of 2015, however, the appeal has been rejected.

3. The learned counsel for the petitioner has submitted that since the petitioner was seriously ill, he could not establish any industry in the land/ plot in question, allotted by the respondent-BIADA, hence a humanitarian view is required to be taken. It is further submitted that the respondent-authorities are also at fault inasmuch as the plot in question,



allotted to the petitioner, was not suitable for his initial project pertaining to Jaivik Udyog, as such the petitioner had applied for change of his business/ project, nonetheless the respondent-authorities had not taken any decision one way or the other resulting in gross prejudice to the petitioner as also resulting in the petitioner being not able to establish any industry. It is further submitted that the impugned orders dated 09.05.2018/ 22.05.2018 are also bad, inasmuch as the petitioner has not been granted proper opportunity of hearing.

4. *Per contra*, the learned counsel appearing for the respondent-BIADA has submitted at the outset, that the writ petition is fit to be dismissed out-rightly on account of suppression of actual facts and for misleading this Court. It is submitted that the actual facts are that on an application submitted by the petitioner, the respondents had allotted plot No. 11(P) admeasuring an area of 10,000/- sq.ft., situated at the Industrial Area, Purnea city, in favour of M/s Maa Tara Jaivik Udyog for the establishment of compost industry, vide allotment letter no. 322/D dated 12.02.2008, subject to the terms and conditions mentioned in the said letter. As per the allotment letter, the petitioner was obligated to start the full commercial production of his industry within 180 days of the allotment. The



petitioner had taken over the physical possession of the demised premises within the stipulated time frame vide memo dated 27.09.2008.

5. It is a matter of record that the petitioner did not start any industrial activity even after lapse of several months, hence a show cause notice dated 29.01.2010 was issued to the petitioner herein calling upon him to initiate industrial activity within a period of 15 days, failing which coercive statutory action may be taken against him, however the petitioner failed to make any effort in this regard. In reply to the said show cause notice dated 29.01.2010, the petitioner had replied by stating that two trees were existing on the demised premises, hence he was finding it difficult to initiate industrial activity, whereafter the respondent-authorities had auctioned the trees vide letter dated 28.09.2010 and then the said trees were removed. Nonetheless, the petitioner failed to initiate any industrial activity on the plot in question, hence yet another show cause notice dated 16.05.2013 was served upon the petitioner and he was called upon to show cause as to why the allotment in question may not be cancelled, his deposits be not forfeited and the possession of the land in question be not resumed. However, to the shock and surprise of the respondent-authorities, the



petitioner came up with a new ploy and after lapse of five long years, he intimated the respondent-authorities that for the initial product for which the land has been allotted, i.e. for production of organic compost, the area of the land in question was insufficient, hence the product may be changed but neither any document nor any request was made by the petitioner resulting in issuance of another show cause notice dated 19.09.2013. It is the further case of the respondent-authorities that despite numerous request/ directions, the allotted premises continued to remain deserted and no industrial activity was initiated by the petitioner herein. In the meantime, a report was submitted by the Area In-charge, Fatua by a letter dated 22.10.2013 regarding the plot in question being still deserted, no industrial activity having been initiated and outstanding dues pertaining to the said plot in question having not been paid. In the meantime, the petitioner had sent a letter dated 04.11.2013 intimating about his ill health and the petitioner had requested for extension of six months for initiating industrial activity. However, even after a lapse of considerable time, neither industrial activity was initiated by the petitioner nor the outstanding dues were paid, hence a show cause notice dated 22.11.2013, 19.09.2014 and 03.03.2015 were issued to the petitioner herein stating therein that despite several



opportunities having been granted, the matter was being lingered by the petitioner on one pretext or the other, hence the intention of the petitioner was to retain the industrial land without initiating any work upon it, which is a clear violation of the terms and conditions of allotment, resulting in direct loss in the industrialization process of the State as also loss to the State ex-chequer. Finally, on account of violation/breach of the terms and conditions of the allotment and on account of the petitioner not initiating industrial activity upon the land in question, the allotment of the land of the petitioner was cancelled and the amount deposited by him was forfeited vide office order dated 20.08.2015.

6. The learned counsel for the respondent BIADA has further stated that the petitioner was never keen in setting up the industry and commence the production despite repeated request having been made by the respondents and taking note of the attitude of the petitioner and considering the inordinate delay of more than seven long years on the part of the petitioner, the respondents were constrained to cancel the allotment of the land in question and take measures for the possession of the allotted land besides forfeiting the money deposited by the appellant, in terms of the statutory powers vested in the respondents by virtue



of Section 62(a) and 62(b) of the BIADA Amendment Act, 1991 and the allied provisions mentioned therein. It is thus submitted that on account of the lackadaisical and negligent approach of the petitioner, the State as also the State exchequer have been put to loss. In fact, the petitioner has resorted to only talks and has failed to honour its obligation and commitment as stipulated in the allotment letter as also in the subsequent letters written by it to the respondent-authorities.

7. I have heard the learned counsel for the parties and perused the materials on record and I find that the land in question was allotted to the petitioner vide allotment letter dated 12.02.2008 for establishment an Organic Compost Industry and it was stipulated clearly in the said letter dated 12.02.2008 that in case of non-fulfilment of any of the conditions, the allotment of land will be cancelled. At this juncture, it may be relevant to quote the relevant Clauses of the said allotment letter dated 12.02.2018 herein below :-

"(9) Unit will have to get the maps of Factory approved by BIADA and Factory Inspector within one month after taking possession of the land. Any construction on the land without prior approval will be unlawful.

(13) Construction work should start within 6 months from the date of allotment order and



the production should start within 2 years from date of land allotment order. If this is not complied with then land allotment will automatically be cancelled. Unit has the option to appeal against this to Industrial Development Commissioner.

(15) Land will be allotted on as and whereas conditions and no appeal will be entertained against it.

(17) In case of non payment of land cost, land rent or maintenance charge, the Allotment will automatically be deemed cancelled.

(20) Lease deed will be executed by BIADA only after the allottee makes an investment of 50% of the promoters contribution, excluding the cost of the land.

(23) Conditions which may invite cancellation of the land allotment:-

A. Non adherence of the schedule of activity and the time frame given below -

	Activity		Time frame
a.	Allotment of land	:-	0
b.	Payment of 30% of land cost as 1 st installment & submission of Bond.	:-	Within 15 days of allotment
c.	Physical possession &	:-	Within 30 days of allotment



	provisional memorandum no.		
d.	Lease Deed after 50% investment of promotor's contributions.	:-	Within 60 days of allotment
e.	Start of Trial Production	:-	Within 180 days of allotment
f.	Full Commercial Production	:-	Within 360 days of allotment
g.	Permanent Memorandum No.	:-	Within 370 days of allotment

If the unit fails to complete any of the above activities within the above time frame, the allotment shall be cancelled.

B. Going into Non Production- If the Unit goes into non production and does not start reproduction within 6 months from the due date of closure of the unit.

C. Using the Plot for purpose other than what has actually been approved by BIADA

D. Changing the shareholding of the entity without approval of BIADA.

E. Subletting of the plot.

F. Violating any of the facts mentioned in this allotment letter.

The decision of Managing Director (BIADA) on the issues of cancellation will be final.

(24) Consequences of cancellation:-

After the cancellation, the BIADA may



initiate following actions against the unit-

- a. BIADA may file criminal proceedings against the unit; and/or*
- b. BIADA may retake the possession and confiscate the plot along with structures and machineries standing thereon; and/or*
- c. Forfeit any money that may have been deposited with BIADA; and/or*
- d. Initiate such other action as permitted in the law.*

It is thus clear from the aforesaid terms and conditions mentioned in the allotment letter dated 12.02.2008 that the petitioner was obliged to start the trial production within 180 days and full commercial production within 360 days of the allotment of land, failing which the allotment of land would invite cancellation and BIADA shall re-take the possession and confiscate the plot along with structures and machineries standing thereon apart from forfeiting the money deposited with BIADA and initiating such other action as is permitted in law, including filing criminal proceedings against the Unit. In the present case, despite lapse of more than 2500 days approximately, i.e. starting from the date of handing over the possession of the land in question to the petitioner on



27.09.2008 upto the date of cancellation of the allotment of the land in question on 20.08.2015, the petitioner failed to start even the trial production, much less the commercial production, hence entailing the cancellation of the allotment of land made in favour of the petitioner and the resultant consequences thereof. It appears that the appeal filed by the petitioner against the order of cancellation dated 05.08.2015/ 20.08.2015 has also been dismissed by the Principal Secretary by an order dated 09.05.2018/ 22.05.2018 which is a well reasoned just and legal order. This Court further finds that the petitioner has miserably failed to initiate any industrial activity much less start commercial production of the Organic Compost Industry within the stipulated time frame of 180/360 days and has defaulted perpetually over a period of about 10 years resulting in not only loss to the State Exchequer but also loss to the industrialization process of the State of Bihar, which has further resulted in infringement of the rights of other affected / deserving persons. If the petitioner would have established an industry, it would have definitely promoted industrial/economic development in the State of Bihar as also would have generated employment and benefited the State Ex-chequer, which ultimately is the basic aim and object of allotting industrial plots by the BIADA. Thus



this Court finds that the petitioner has blatantly violated the terms and conditions of the allotment letter dated 12.02.2008, as is apparent from what has been stated, herein above, in the preceding paragraphs, hence he deserves no sympathy or relief from this Court.

8. Having regard to the facts and circumstances of the case, for the reasons stated hereinabove and considering the fact that the petitioner has not been able to show any lacuna in the decision making process much less in the decision taken by the respondent-authorities, I do not find any infirmity either in the order cancelling the plot in question dated 05.08.2015/ 20.08.2015 or in the appellate order dated 09.05.2018/ 22.05.2018, hence the present petition stands dismissed, being devoid of any merit.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.08.2020
Transmission Date	NA

