

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7058 of 2020

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Iris Electronics India Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, Plot No. CH-29, Srikrishna Nagar, Kidwaipuri, Patna, Bihar, through its Director Zakir Hussain, aged about 55 years (male), son of Late Wazir Hussain Khan, resident of 68, South Gandhi Nagar, Boring Canal Road, Police Station-Srikrishnapuri, Town and District-Patna-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industries, Government of Bihar, 2nd Floor, Vikas Bhawan, Bailey Road, Patna-800 015.
3. Bihar Industrial Area Development Authority, through its Managing Director, 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna-800 004, Bihar.
4. The Managing Director, Bihar Industrial Area Development Authority, 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna-800 004, Bihar.
5. The Executive Director, Bihar Industrial Area Development Authority, 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna-800 004, Bihar.
6. The Area In-charge, Patliputra Industrial Area, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Chittaranjan Sinha, Sr. Advocate Mr. Avinash Shekhar, Advocate
For the State	:	Mr. Vikash Kumar, S.C.-11
For Respondent-Authority:	:	Mr. Prashant Pratap, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

9 16-09-2020 After detailed arguments, over the last few days, issue narrows down to whether the petitioner was put on notice prior to cancellation of the allotment in his favour by the Bihar Industrial Area Development Authority (hereinafter referred to as “the Authority”).

2. Mr. Chittaranjan Sinha, learned Senior Counsel appearing on behalf of the petitioner seriously disputes the fact



of service of notice under Memo No.1013/D dated 09.03.2020. It is submitted that the Authority has developed a story in course of the instant proceedings regarding service being effected by hand and in support thereof brought on record Annexure 16, which is an afterthought. He submits that had the same been served on the petitioner by hand, it would have been mentioned in the impugned Office Order dated 02.06.2020 (Annexure 9), but has not been done. To emphasize, the learned Senior Counsel has submitted that the notice dated 09.03.2020 has been annexed by the respondent-Authority at Annexure 10 of the first counter affidavit and also as Annexure 16 to the last counter affidavit. He submits that the contents of both copies of the same notice dated 09.03.2020 are at variance with each other. He draws attention of the Court towards the contents at the bottom of the page in Annexure 10, which are missing in Annexure 16, i.e., another copy of the same document.

3. Mr. Prashant Pratap representing the Authority submits that the Authority has claimed service of notice dated 09.03.2020. The said fact finds mentioned in the order dated 02.06.2020. He further submits that Annexure 10 to the first counter affidavit is office copy of the notice dated 09.03.2020 containing the details of dispatch. Annexure 16 being another



copy of the same document, which was sent by hand delivery, does not contain the dispatch details, which are to be found in the office copy. Annexure 10 and Annexure 16 are different copies of the same notice dated 09.03.2020. The fact that the dispatch details are not mentioned in the copy served on the petitioner cannot lead to a conclusion that it has been created subsequently or is an afterthought. The representative of the petitioner has put his signature while receiving the notice dated 09.03.2020, which was delivered by hand (Annexure 16 to the last counter affidavit). It does not lie in the mouth of the petitioner to contend otherwise.

4. The submission therefore has given rise to a serious disputed issue regarding service of notice which can only be resolved by allowing the petitioner an opportunity to examine the dispatch registers and the receipt. The petitioner has remedy of appeal before the Principal Secretary, Department of Industries, Government of Bihar, Patna (respondent No.2) against the office order dated 02.06.2020.

5. In order to avail also an opportunity to properly assail the issue of service of notice with reference to the dispatch registers in support thereof and the receipts of the copy served manually, learned Senior Counsel submits that clear and



legible copy of the same may be made available to the petitioner so as to facilitate filing an application for stay on the ground of non-service of notice before the Principal Secretary, along with his appeal, which he intends to file. In the same breath, he submits that since the issue of service of notice is to be considered by the Appellate Authority, they may not proceed with the office order dated 02.06.2020, till such time the said issue is decided.

6. Learned counsel for the Authority submits that in the background of the prayer made for interim protection on behalf of the petitioner, obligation should be cast on the petitioner to show due diligence and approach the Authority immediately.

7. In view of such submissions, this Court would record that the petitioner should file an appeal along with an application for stay within two weeks.

8. The petitioner may approach the Authority within a week for obtaining clear and legible copy of the dispatch register, Annexure 10 and Annexure 16 to the last counter affidavit, i.e., the notice bearing receiving at the petitioner's Unit. The Authority should immediately make available the same so as to facilitate filing of the appeal with stay application



within two weeks.

9. Since the issue of service of notice is yet to be decided by the Principal Secretary, this Court would observe that the same should be decided by the Principal Secretary expeditiously and preferably within two weeks after submission of the appeal by the petitioner. Prior to such determination, this Court would hold that the Authority would have no right/basis to proceed in terms of the office order dated 02.06.2020. After such decision and determination of the issue of service of notice, the Authority may have an opportunity to proceed against the petitioner in terms of the office order dated 02.06.2020.

10. The writ application is disposed of.

(Madhuresh Prasad, J)

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