IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.367 of 2019
In
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, aged about 62 years, Gender- Male Son of Late Baleshwar Sah, Resident of Mathurapur, Samastipur, Police Station- Warisnagar, District- Samastipur

... ... Appellant/s

Versus

1. The State of Bihar Through Principal Secretary, Department of Industry, Govt. of Bihar, Patna.
2. The Managing Director Bihar Industrial Area Development Authority, Udhyog Bhawan, East Gandhi Maidan, Patna-4.
3. The Secretary Bihar Industrial Area Development Authority, Udhyog 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.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ranjan Kumar Singh, Advocate
For the Respondent/s	:	Mr.Yogendra Prasad Sinha (AAG 7)
		Mr. Rakesh Ambastha, AC to AAG 7
For BIADA		Mr. Pankaj Kumar Sinha, Advocate
		Mr. Devesh Shankaran, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-03-2021

This Letters Patent Appeal is directed against the order dated 25.02.2019, passed in C.W.J.C. No. 24441 of 2018, titled as Sarvashree Unique Wheat and Allied Agro Product Private Limited Vs. The State of Bihar & Ors., by a learned

Single Judge of this Court.

Vide impugned order 25.02.2019, the learned Single Judge dismissed the writ petition, inter alia, on the ground that the "petitioner cannot be permitted to raise the issue of valuation on not handing over possession of the corrected plot", for the reason that the same was never ever raised with the respondent Bihar Industrial Area Development Authority (BIADA for short).

We are in agreement with such finding returned by the learned Single Judge, more so, considering the appellant's acts and conduct.

BIADA was established with the avowed object and purpose of developing industrial estates and allotting plots for industrial growth within the State of Bihar. Plots were allotted to the entrepreneurs for setting up of industry on expeditious basis. This was to give impetus to industrial growth.

We notice that the appellant was allotted plots vide separate letters of allotment dated 16th of October, 2007 and 20th of November, 2007, dealing with four plots. The allotment was for setting up of separate industrial units.

In terms of the second allotment dated 20th of November, 2007, with which we are concerned, 10,890 sq.ft. of land was allotted. Even though there is discrepancy with regard to the number of the plot, but nonetheless it is a matter of record that in relation to this second letter of allotment, despite handing over of possession, appellant did not pay any dues, save and except the one which was paid initially and that too amounting to Rs.55,000/- (approximately). Also, he did not develop the plot for establishing any industry. The second letter of allotment dated 20th of November, 2007 (Annexure-3) itself contained clauses stipulating conditions of allotment and that being (i) The estimated cost of civil construction and machinery of the allotted land would have to be deposited (Clause-9); (ii) consequences of non-compliance of conditions of allotment (Clause-21); (iii) the scheduled activity was to commence within the stipulated period. Undisputedly, all this was not done in the instant case.

Noticeably, the appellant's allotment stood cancelled, but then, as a result of an omnibus direction issued by this Court in an unrelated matter being C.W.J.C. No. 11684 of 2013, titled as Sarvashree Aditya Enterprises Vs. The State of Bihar & Ors., BIADA was directed to initiate appropriate action only after affording opportunity to the allottees for reviving their unit/commencing commercial production. Despite the same, appellant failed to take any action in the affirmative.

Be that as it may, taking benefit and advantage of the said directions, to overcome the issue of limitation, appellant preferred an appeal before the appropriate authority which stood decided in terms of order dated 19.11.2018 in Appeal Case No. 21/2014, titled as M/s. Unique Wheat, Samastipur Vs. MD, BIADA. The operative portion of the findings returned by the authority reads as under:-

"The above therefore, requires that the Appellant must be bound by a financial bond so that he should seriously work to restart and continue his business. Having said that, I hereby order that the allotment of plot be restored to the Appellant with following conditions:-

i. Firstly, the Appellant should clear the pending dues of BIADA with interest.
ii. He shall also pay the valuation cost as demanded by BIADA of the previous structure.
iii. Thereafter, the Appellant should submit Bank Guarantee of Rs. 3 lakhs for a period of two years along with an Affidavit to BIADA that the Appellant will start the business within 4 months from the date of this order and shall remain in continuous operations; and should he stop his operations or violate any other condition of

the allotment letter/BIADA Act/BIADA Rules, the above Bank Guarantee shall be encashed by BIADA.

iv. Once the above steps are completed and the Appellant submits the Bank Guarantee along with an Affidavit to BIADA, the MD shall restore the allotment to the Appellant.

v. Thereafter, the BIADA shall hand over the physical possession of the plot to the Appellant.

vi. If the Appellant does not approach BIADA and fulfils condition No. i & ii above within 15 days from the date of this order, BIADA shall be free to take the possession of this land and re-allot it to any other entrepreneur as per its extant policies."

Even the aforesaid direction issued in the year 2018 were not complied with.

We are of the considered view that the appellant has been dilly-dallying the issue of establishing an industrial unit. It is only on account of incremental escalation of prices of the land in the industrial area, that now the appellant wants to take benefit and advantage by laying challenge to such orders passed by the authority.

We may observe that the appellant's allotment stood cancelled vide communication dated 25th January, 2008, on the ground that he had failed to deposit the amount in terms of allotment letter. Appellant did not immediately lay any challenge to the said order and it is only by taking advantage of a subsequent order passed by this Court in Sarvashree Aditya Enterprises (supra), did he prefer an appeal challenging the order of cancellation and, that too, in the year 2014. His case is even otherwise hopelessly barred by delay and laches.

Appellant contends that it had preferred an appeal in the year 2008, 2010 and 2014, but we do not find favour with such submission for it not to be supported by any contemporaneous document on record.

As such, we dismiss the present appeal with cost quantified at Rs.10,000/-.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.03.2021
Transmission Date	