

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9647 of 2020

Prabha Electro Castings Private Limited a Company incorporated under the provisions of the Companies Act 1965, having its factory at Industrial Area, Raxaul, East Champaran, through its Director Sri Binod Kumar Sarraf, aged about 60 years (male), Son of Late Mohan Lal Sarraf Resident of Shiv Mandir, Nepali Tola, P.O. and P.S. Ramnagar, District - West Champaran.

... .. 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 - 800015.
3. Bihar Industrial Area Development Authority, through its Managing Director, 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna - 800004, Bihar.
4. The Managing Director, Bihar Industrial Area Development Authority, 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna 800004, Bihar.
5. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Muzaffarpur.
6. The Area In-Charge, Raxaul Industrial Area, West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi
For the Respondent/s : Mr. Prashant Pratap

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 23-03-2022

The allotment of plot having an area of 2.27 acres in Raxaul Industrial Area, made in favour of the petitioner has been cancelled by the Executive Director purportedly under the order of the Managing Director of the Bihar Industrial Area Development Authority ('BIADA' for short) by communication



dated 20.06.2020 bearing memo no. 556. The petitioner seeks quashing of the same and also a direction upon the respondents restraining them from resuming possession of the plot.

Earlier the petitioner had filed CWJC No. 8906/2013 for quashing letter dated 28.04.2012 of the BIADA, calling upon the petitioner to commence production on his plot allotted in the industrial area, failing which the land allotted to the petitioner would be cancelled.

At that time Certificate Case No. 04/Electricity/2002-03 was pending against the petitioner for recovery of electrical dues and the writ petition was disposed of by order dated 17.07.2018 in the following terms:

“4. Having regard to the submission of the petitioner, the writ petition is disposed of, granting liberty to the petitioner to clear its electricity dues by making payment of the outstanding Rs. 10,96,536/- within a period of two weeks from the date of receipt/production of a copy of this judgment. If the said payment is made within the stipulated time, the petitioner may file a representation before the Executive Director, Regional Office, Bihar Industrial Area Development Authority, Bela, Muzaffarpur (respondent no. 4) within a further period of two weeks from the date of such payment. In such event, the petitioner's representation for grant of permission to start



the unit, if allotment of land has not already been cancelled, shall be disposed of on its own merits after grant of opportunity of hearing to the petitioner in accordance with law.”

It is the petitioner's case that cancellation of petitioner's allotted plot is again in violation of Rule 3(1) of Bihar Industrial Area Development Authority Rules, 1981 ('Rules' for short) read with Section 6(2)(a) of the Bihar Industrial Area Development Authority Act, 1974 ('Act' for short). The petitioner's unit ran into heavy loss within few years after its commencement due to insufficient and intermittent electricity supply by the Bihar State Electricity Board. This led to dispute between the Bihar State Electricity Board and the petitioner arising out of Certificate Case No. 04/Electricity/2002-2003. The BIADA was knowing about the dispute and was thus aware that closure of petitioner's unit was bonafide and for reasons beyond its control. However, without complying with principles of natural justice, allotment of petitioner's plot is sought to be cancelled by the impugned communication which is thus legally unsustainable.

The petitioner's counsel has also submitted that the petitioner may be allowed at least six-month time as per decision of the Division Bench in the case of ***Bihar Industrial***



Area Development Authority & Ors. vs. Deepak Paints Pvt Ltd. & Ors. in LPA 353/2008 passed in CWJC No. 7352 of 2007 (Annexure-11), since intervening factors such as illegal demand for electrical dues etc. have delayed commencement of production.

BIADA has filed a counter-affidavit, to which petitioner has also filed a rejoinder.

At the outset, learned counsel for the BIADA has taken an objection regarding maintainability of the writ petition. He has submitted that the petitioner has repeatedly committed breach/violation of the terms of allotment and having done so he cannot be permitted to invoke the equitable, discretionary writ jurisdiction.

Another ground of objection is that the cancellation of petitioner's plot can be challenged before the learned Appellate Authority, i.e., Principal Secretary, Department of Industry, as per Section 6(2)(a) of the Act. Since the petitioner has adequate alternative remedy, this Court may not exercise discretion in favour of the petitioner.

Learned counsel for the BIADA has further submitted that the area In-charge of the industrial area, where the petitioner's plot is situated had reported that the plot allotted to the



petitioner is deserted and the unit is in dilapidated state. Show-cause dated 20.03.2020 (Annexure-G to the counter-affidavit) was issued to the petitioner giving him final opportunity to start his unit and commence production within 15 days, failing which BIADA would cancel the allotment of petitioner's plot in the industrial area and forfeit the amount deposited towards land, and resume possession of the lands. For breach of the terms of allotment, in favour of the petitioner, the same was cancelled and the amount deposited by the petitioner forfeited vide office order dated 20.06.2020 (Annexure-H to the counter-affidavit). It is submitted that the petitioner has been delaying the issue of establishing an industrial unit since a long time.

Referring to the scope and activity of BIADA as an Authority created by statute, it is submitted that the industrial areas are developed by BIADA by carving out plots, providing infrastructure and making the same available on nominal rent only for the purposes of promoting industrial activity so as to boost the State economy in larger public interest. If the allottees, like petitioner, after obtaining the allotment do not start any industrial activity by setting up a unit on the plot, the infrastructure and concessions which the Authority provides are wasted. Other genuine entrepreneurs are also deprived of their



chance for allotment of such plot, because the same is not available for allotment.

In the instant case, allotment of the plot in question was made to the petitioner way back in the year 1992. It was operational for some time whereafter it has stopped working. The unit has been lying idle since long, as would be evident from the notice dated 30.07.2007 issued to the petitioner (Annexure-B to the counter-affidavit). It is apparent that the same has been issued after industrial activity was found closed on the plot in question for years together and dues of the Authority were outstanding against the petitioner. The petitioner, thus, is nothing more than a squatter on land in question.

The learned counsel for the petitioner, on the other hand, has submitted that the petitioner has never been served with said notice dated 20.03.2020 bearing Memo. No. 355. In respect of the inspection dated 27.05.2020, it is stated that the same was during lockdown period without giving statutory notice of one month period. The impugned communication dated 20.06.2020 purporting to cancel of the petitioner's allotment is thus violative of the principles of natural justice and contrary to Section 6(2)(a) of the Act, read with Rule 3(1) of the Rules.



This Court finds that the records reveal repeated notices from BIADA to the petitioner during at least the last 15 years. All are based on the same reason that the petitioner has not commenced industrial activity on the plot allotted to him in the industrial area. The earliest notice in this regard is of 2007, which also states that for years together, prior thereto there has been no industrial activity on the petitioner's plot. Earlier, also when the petitioner was put to notice asking it to commence production failing which land allotted would be cancelled, the petitioner had invoked writ jurisdiction of this Court. Vide order dated 17.07.2018 passed in CWJC No. 8906/2013, this court refused to interfere with the decision of BIADA and disposed of the writ petition granting liberty to the petitioner to make a representation for granting permission to start the unit, that also if allotment of the land had not already been cancelled, as quoted hereinabove.

The representation, pursuant to the order of this Court dated 17.07.2018, was considered by BIADA, favourable to the petitioner. An order dated 18.07.2019 (Annexure-7 to the writ petition) was thus communicated to the petitioner allowing him three months' time for initiating industrial activity failing which there were to be coercive consequences in terms of cancellation



of allotment, resumption of possession and forfeiture of deposit. The order dated 18.07.2019 granting three months' opportunity with aforementioned conditions was never assailed by the petitioner. In-fact the petitioner has taken benefit of this opportunity granted under communication dated 18.07.2019. He was well aware of the consequences of the communication, which apparently has been precipitated by issuance of the communication dated 20.06.2020, which is sought to be assailed in the instant proceedings.

Surprisingly, in the instant case the precipitatory action taken under order dated 20.06.2020 in terms of the communication dated 18.07.2019 (Annexure-7) is assailed by raising a plea that the Electricity Board had not granted a fresh connection to the petitioner at its industrial unit. Another ground that has been urged for assailing the impugned decision is that since for 19 years the unit had remained closed, the machineries got destroyed. It would be relevant to note here that such plea has been taken by the petitioner for the first time in its representation dated 18.09.2019 (Annexure-8), just within two months from the communication dated 18.07.2019, whereby the unit was granted three months time for commencing its operation. Both the grounds urged in the representation dated



18.09.2019 are grounds which were available to petitioner when he had made his representation dated 05.09.2018 (Annexure-5), pursuant to the order dated 17.07.2018 passed on the petitioner's earlier writ petition bearing CWJC No. 8906/2013 but were not taken by the petitioner. Further, this Court would take notice of the fact that having availed two months out of three months time granted to the petitioner under order dated 18.07.2019, for initiating industrial activity, the petitioner's plea that fresh electricity connection has not been granted, or that the machinery got destroyed clearly lacks bonafide and appears to be a desperate attempt, to somehow prolong the consequences of the order dated 18.07.2019. The basis for this Court to arrive at such a conclusion today, is the fact that based on the plea of non-supply of fresh electrical connection and machinery being destroyed, petitioner in representation dated 18.09.2019 (Annexure-8), had sought time till the end of financial year 2019/20, i.e. upto 31st March, 2020, but today when the matter is taken up two years thereafter, the position remains the same. Neither fresh electrical connection has been obtained/granted to the petitioner nor is there any averment to the extent that machinery has been made operational.

In the circumstances, this Court is of the opinion that



having availed two months' time out of three months period granted under communication dated 18.07.2019 for initiating industrial activity, the petitioner is estopped from raising a new and inconsistent plea in its representation dated 18.09.2019, which is clearly an effort towards procrastination. The law also in this regard is well settled. In respect of the same issue, the law frowns upon a party who takes inconsistent plea with a view to prolong the issue or its consequences. In this connection, this Court would consider it useful to refer to the decision of Hon'ble Supreme Court in case of ***The Joint Action Committee of Airlines Pilots Associations of India & Ors. vs. The Director General of Civil Aviation & Ors.*** reported in 2011 (5) SCC 435. This Court would consider it useful to refer to paragraph 12 of the said judgment which reads as follows:

12. The doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right



which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily. [Vide Babu Ram v. Indra Pal Singh, P.R. Deshpande v. Maruti Balaram Huibatti and Mumbai International Airport (P) Ltd. v. Golden Churiot Airport.]

With regard to submission of petitioner's counsel based on judgment in the case of Deepak Paints (supra), this Court would observe that the same is of no avail to the petitioner. The judgment in the case of Deepak Paints (supra) is dated 18.03.2015. The Division Bench in the case of Deepak Paints (supra) was considering the same submissions based on the Act alleging incompetence of the Managing Director to cancel the allotment and that the possession could only be resumed after following the procedure prescribed by law. Having considered these submissions the Division Bench modified the order passed by the learned Single Judge allowing the writ petition; and vide order dated 18.03.2015, passed in Deepak Paints (supra) granted only six months' time to establish or revive the industries, if for



some reason they had become sick. In case the same was not done, it was left open to the BIADA to resume the land for further allotment by inviting application from the intending entrepreneurs.

On petitioner's representation dated 05.09.2018, as per order passed in his own writ petition (CWJC No. 8906/2013), three months' time was granted by BIADA under order dated 18.07.2019, that also more than four years after judgment in the case of Deepak Paints (supra). Thus the petitioner effectively got much more than four years time.

The order dated 18.07.2019 was never assailed or questioned by the petitioner and therefore is now a *fait-accompli* insofar as the ultimatum contained therein regarding cancellation of allotment, resumption of possession and forfeiture of deposit. The issue regarding cancellation of petitioner's allotment therefore has attained finality *inter-partes*.

Even otherwise the conduct of the petitioner does not inspire confidence. Whether bonafide, or otherwise, the fact remains that for at least 19 long years, admittedly there has been no industrial activity on the petitioner's land, for one reason or the other.

The petitioner, at best, had the opportunity of filing an



appeal before the Appellate Authority in terms of the Act, which opportunity also has not been availed.

No case is made out for invoking the extra ordinary and discretionary writ jurisdiction for interfering with cancellation of the petitioner's allotment by the impugned order of BIADA dated 20.06.2020.

The writ petition is devoid of merit and is dismissed.

(Madhuresh Prasad, J)

I agree
Chakradhari Sharan Singh, J:

(Chakradhari Sharan Singh, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	22.12.2021
Uploading Date	24.03.2022
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