

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12695 of 2021

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M/s Kanti Industries Factory No. D-7 Industries Area, Fatuha- 803201, Patna,
Bihar, through one of its partners Shri Deepak Kumar, S/o Late Tarni Prasad
Mandal, Resident of New Kadamkuan, P.S.- Kadamkuan, P.S.- Kadamkuan,
District- Patna.

... .. Petitioner

Versus

1. The Bihar Industrial Area Development Authority Constituted under Bihar Industrial Area Development Authority Act, having its office at Indira Bhawan, Ram Charitra Path, Patna, through its Chairman- Cum- Managing Director.
2. The Principal Secretary-cum- The Additional Chief Secretary-cum- The Appellate Authority Department of Industries, Government of Bihar, Patna.
3. The Managing Director Bihar Industrial Area Development Authority, Indira Bhawan, Ram Charitra Path, Patna.
4. The Executive Director Bihar Industrial Area Development Authority, Indira Bhawan, Ram Charitra Path, Patna.
5. Bihar State Financial Corporation a State Financial Corporation incorporated under the State Financial Corporation act, having its Office at Frazer Road, Patna, through its Managing Director.
6. The Manager, Bihar State Financial Corporation, having its officer at Frazer Road, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Sanjiv Mishra, Adv. Mr. Sanjiv Sharan, Adv.
For the BIADA	:	Mr. Yashraj Bardhan, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 28-06-2022

Heard Mr. Sanjiv Mishra, learned counsel for the petitioner and Mr. Yashraj Bardhan, learned counsel for the respondent-Bihar Industrial Area Development Authority (for short 'BIADA').

2. In the instant application, the petitioner a partnership firm, through one of its partner, namely, Deepak Kumar has prayed for quashing the order dated 31.03.2021 passed by the respondent no. 2, the Additional Chief Secretary, Department of Industries, Bihar, Patna in Appeal No. 40 of 2019 by which he has dismissed the appeal preferred on behalf of the petitioner with an observation that he had no power to revise his earlier order as per the Bihar Industrial Area Development Authority, Act 1974 (for short 'the Act of 1974'). The petitioner has further prayed for quashing the order dated 23.06.2007 passed by the respondent no. 4 by which he has cancelled the allotment of the plot made in the year 1977. Another prayer of the petitioner to quash the order dated 30.05.2011 passed by the respondent no. 3 by which the appeal against the order dated 23.06.2007 passed by the respondent no. 4 had been rejected.

3. It is the case of the petitioner that BIADA had allotted a plot admeasuring 10,080 square feet to the petitioner



for a period of ninety years to carry on the manufacturing activities vide allotment letter dated 14.07.1977. In this regard, a registered lease deed was executed between the parties on 16.08.1978 laying down the terms and conditions of the lease. After establishing the manufacturing plant on the above said plot, the petitioner availed of a loan facility of Rs. 6,24,000/- from the Bihar State Financial Corporation. After establishing the plant on the said land, the petitioner firm got engaged in the manufacturing business, as it was granted registration number as a Small Scale Industrial Unit by the Assistant Development Officer, Patna, Industrial Area Development Authority. The further case of the petitioner is that due to paucity in the form of working capital for carrying out the manufacturing activities, the firm had to stop further production in the year 1990. Despite several efforts of the partners of the firm to arrange for funds from the Banks, they could not manage to get adequate co-operation from the Banks. Therefore, the petitioner was left with no option, but to stop the production activities. Thus, the factory had to be closed down. Under such circumstance, the respondent no. 4 vide impugned order dated 23.06.2007 cancelled the allotment of the plot. However, the petitioner had no knowledge of cancellation of allotment of plot made vide



impugned order dated 23.06.2007 passed by the respondent no.

4. After the petitioner came to know about the cancellation order, an appeal under Section 6(2)(a) of the Act of 1974 vide Appeal No. 1 of 2011 was filed. The said appeal filed by the petitioner was rejected vide impugned order dated 30.05.2011 passed by the respondent no. 3. Being aggrieved by the aforesaid order dated 30.05.2011, the petitioner preferred a writ petition before this Court vide C.W.J.C. No. 12550 of 2011 which was permitted to be withdrawn with liberty to the petitioner to ventilate his grievance before the concerned respondent. Thereafter, the petitioner represented before various authorities and, ultimately, filed another writ petition before this Court vide C.W.J.C. No. 4117 of 2019 wherein also a prayer was made for quashing the impugned order dated 23.06.2007 passed by the respondent no. 4 and the appellate order dated 30.05.2011 passed by the respondent no. 3.

4. It would be evident from the order dated 16.07.2019 passed in C.W.J.C. No. 4117 of 2019 that having realised the difficulties in challenging the order of cancellation of allotment of plot dated 23.06.2007 and the appellate order dated 30.05.2011 because earlier challenge to those orders in C.W.J.C. No. 12550 of 2011 had been withdrawn, the learned



counsel for the petitioner sought leave to withdraw the writ petition with liberty to avail his remedy before the appropriate authority in terms of the BIADA Regulation, 2007.

5. After withdrawing the writ petition, in the second round of litigation, the petitioner once again filed an appeal under Section 6(2)(a) of the Act, 1974 before the Additional Chief Secretary, Department of Industries, Bihar, Patna, which was dismissed vide order dated 31.03.2021 observing that he had no jurisdiction to review or revise the order as per the Act, of 1974.

6. In the background of the aforestated facts, the petitioner has filed the present writ petition challenging the orders dated 31.03.2021 passed by the respondent no. 2, dated 23.06.2007 passed by the respondent no. 4 and dated 30.05.2011 passed by the respondent no. 3.

7. Mr. Mishra, learned counsel for the petitioner contended that unfortunately in earlier two rounds of litigation before this Court, the counsel for the petitioner withdrew the application little realising the fact that the withdrawal of the application would not solve the problem of the petitioner. He submitted that the writ petition of the petitioner is required to be adjudicated on merit. He fairly conceded that there is no



statutory provision under which a second appeal under Section 6(2)(a) of the Act, 1974 could have been filed before the appellate authority. However, he contended that since it is a very hard case in which the petitioner has been put in great difficulty because of the withdrawal of the writ petitions in earlier rounds of litigation, he has approached this Court once again under extraordinary writ jurisdiction.

8. On the other hand, Mr. Yashraj Bardhan, learned counsel for the BIADA submitted that the instant writ petition is nothing but an abuse of the process of the Court. He contended that the petitioner took a conscious decision on 15.09.2015 in C.W.J.C. No. 12550 of 2011 wherein challenge was made to the aforesaid order dated 23.06.2007 passed by the respondent no. 4 and the appellate order dated 30.05.2011 passed by the respondent no. 3 in the appeal to withdraw the writ petition in order to ventilate the grievance before the respondent-authorities. He further contended that the second round of litigation was equally frivolous as the same orders passed by the respondent authorities were challenged once again before this Court. After realising the difficulties, the petitioner once again withdrew the application seeking liberty to avail his remedy before the appropriate authority in terms of the BIADA



Regulations, 2007. He further contended that knowing fully well that an appeal is not maintainable against an appellate order, the petitioner preferred an appeal which was rightly dismissed by the respondent no. 2 observing that he had no power to revise his earlier order as per the Act of 1974.

9. We have heard learned counsel for the parties and carefully perused the records.

10. We find force in the submission made on behalf of the respondent-BIADA.

11. It is not in dispute that after the cancellation of allotment of plot vide aforesaid order dated 23.06.2007 and the appellate order dated 30.05.2011, the petitioner challenged them in C.W.J.C. No. 12550 of 2011. The said writ petition was withdrawn on 15.09.2015 by the petitioner with liberty to ventilate his grievance before the concerned respondents. The writ petition was withdrawn without the permission to institute a fresh writ petition.

12. Almost four years after the withdrawal of the writ petition, the petitioner again filed a writ petition vide C.W.J.C. No. 4117 of 2019 before this Court challenging the same order of cancellation of plot dated 23.06.2007 and the appellate order dated 30.05.2011. The said writ petition was also withdrawn on



16.07.2019 by the petitioner with liberty to avail remedy before the appropriate authority in terms of BIADA Regulation, 2007. The second writ petition was also withdrawn without the permission to institute a fresh case before this Court.

13. After withdrawing the second writ petition, the petitioner filed an appeal under Section 6(2)(a) of the Act of 1974, vide Appeal No. 40 of 2019, which was dismissed by the respondent no. 2 with an observation that he has no power to revise earlier order.

14. An appeal is a statutory remedy available to an aggrieved person as a matter of right. The petitioner had already availed of the statutory remedy of appeal, which was dismissed by the appellate authority vide order dated 30.05.2011. Mr. Sanjiv Mishra, learned counsel for the petitioner has conceded that there is no statutory provision under the Act of 1974 providing remedy of second appeal, review or revision. The petitioner being aware of the legal position that no second appeal could have been maintained against the appellate order, preferred the appeal challenging the order dated 23.06.2007 whereby the allotment of plot to the petitioner was cancelled and the appellate order dated 30.05.2011. In the absence of any statutory remedy of second appeal or review or revision under



the Act of 1974, the respondent no. 2 has rightly dismissed the appeal vide impugned order dated 31.03.2021.

15. After the aforesaid order dated 31.03.2021 was passed by the respondent no. 2, the petitioner has filed the present writ petition in which once again a prayer has been made to quash the order of cancellation of plot dated 23.06.2007 and the appellate order dated 30.05.2011 apart from seeking quashing of the order dated 31.03.2021 passed by the respondent no. 2.

16. When the petitioner had withdrew C.W.J.C. No. 12550 of 2011 without permission to file a fresh writ petition, he had abandoned his claim in respect of the cause of action relied on in the writ petition. He had sought liberty to ventilate his grievance as against the respondents in accordance with law. As a matter of fact, with the dismissal of the appeal preferred by the petitioner before the appellate authority under the Act of 1974 vide order dated 30.05.2011, the lis between the parties had attained finality. The second writ petition filed on behalf of the petitioner after four years of withdrawal of the first writ petition without permission to file fresh writ petition was nothing but an abuse of the process of the Court. Again, the second writ petition vide C.W.J.C. No. 4117 of 2019 was withdrawn by the



petitioner without seeking any permission to file a fresh petition. The filing of the appeal against the order of cancellation of allotment of plot and the appellate order after withdrawal of the writ petition under Section 6(2)(a) of the Act of 1974 by the petitioner before the appellate authority was also a gross abuse of the process of the law. Under such circumstance, there was no question of entertaining a second appeal or revision or review against the appellate order in absence of any statutory provision in this regard under the Act of 1974. After dismissal of the thoroughly misconceived appeal of the petitioner vide order dated 31.03.2021 passed by the respondent no. 2, the filing of the instant application before this Court for the reliefs prayed for as enumerated above, is again a gross abuse of the process of the Court.

17. In **Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior, and Others** since reported in **(1987) 1 SCC 5**, the Hon'ble Supreme Court after consideration of relevant provisions of law held that fresh writ petition is not maintainable in respect of the same subject matter if the earlier writ petition had been withdrawn without permission to file a fresh writ petition.

18. The relevant paragraphs no. 5 to 9 of **Sarguja**



Transport Service (supra) are quoted hereinbelow:

“5. In this case we are called upon to consider the effect of the withdrawal of the writ petition filed under Articles 226/227 of the Constitution of India without the permission of the High Court to file a fresh petition. The provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) are not in terms applicable to the writ proceedings although the procedure prescribed therein as far as it can be made applicable is followed by the High Court in disposing of the writ petitions. Rule 1 of Order XXIII of the Code provides for the withdrawal of a suit and the consequences of such withdrawal. Prior to its amendment by Act 104 of 1976, Rule 1 of Order XXIII of the Code provided for two kinds of withdrawal of a suit, namely, (i) absolute withdrawal, and (ii) withdrawal with the permission of the court to institute a fresh suit on the same cause of action. The first category of withdrawal was governed by sub-rule (1) thereof, as it stood then, which provided that at any time after the institution of a suit the plaintiff might, as against all or any of the defendants “withdraw” his suit or abandon a part of his claim. The second category was governed by sub-rule (2) thereof which provided that where the court was satisfied (a) that a suit must fail by reason of some formal



defect, or (b) that there were sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it might, on such terms as it thought fit, grant the plaintiff permission to withdraw from such suit or abandon a part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. Sub-rule (3) of the former Rule 1 of Order XXIII of the Code provided that where the plaintiff withdrew from a suit or abandoned a part of a claim without the permission referred to in sub-rule (2) he would be liable to such costs as the court might award and would be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. Since it was considered that the use of the word “withdrawal” in relation to both the categories of withdrawals led to confusion, the rule was amended to avoid such confusion. The relevant part of Rule 1 of Order XXIII of the Code now reads thus:

“Rule 1. *Withdrawal of suit or abandonment of part of claim.*—(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

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(3) Where the court is satisfied,—



(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be, liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

6. It may be noted that while in sub-rule (1) of the former Rule 1 of Order XXIII of the Code the words “withdraw his suit” had been used in sub-rule (1) of the new Rule 1 of Order XXIII of the Code, the words “abandon his suit” are used. The new sub-rule (1) is applicable to a case where the court does not accord permission to withdraw from a suit or such part of the claim with liberty to institute a fresh suit in respect of



the subject-matter of such suit or such part of the claim. In the new sub-rule (3) which corresponds to the former sub-rule (2) practically no change is made and under that sub-rule the court is empowered to grant subject to the conditions mentioned therein permission to withdraw from a suit with liberty to institute a fresh suit in respect of the subject-matter of such suit. Sub-rule (4) of the new Rule 1 of Order XXIII of the Code provides that where the plaintiff abandons any suit or part of claim under sub-rule (1) or withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he would be liable for such costs as the court might award and would also be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

7. The Code as it now stands thus makes a distinction between “abandonment” of a suit and “withdrawal” from a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws from a suit without the permission, referred to in sub-rule (3) of Rule 1 of Order XXIII of the Code, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. The principle underlying Rule 1 of Order XXIII of the Code is that when a plaintiff once institutes a suit in a court and



thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the court to file fresh suit. *Invito beneficium non datur* — the law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will lose it. In order to prevent a litigant from abusing the process of the court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of Rule 1 of Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in Section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. The rule of res judicata applies to



a case where the suit or an issue has already been heard and finally decided by a court. In the case of abandonment or withdrawal of a suit without the permission of the court to file a fresh suit, there is no prior adjudication of a suit or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of Rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the court.

8. The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying Rule 1 of Order XXIII of the Code is adopted in respect of writ petitions filed under Articles 226/227 of the Constitution of India also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a



High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in *Daryao v. State of U.P.* [AIR 1961 SC 1457 : (1962) 1 SCR 574] in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Article 32 of the Constitution of India because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in *Daryao case* [AIR 1961 SC 1457: (1962) 1 SCR 574] is to be found at p. 593 and it is as follows:

“If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other.”

9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the



permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in *Daryao case* [AIR 1961 SC 1457 : (1962) 1 SCR 574] is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in



holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open.” (emphasis supplied)

19. The repeated filing of writ petitions by the petitioner which are not maintainable agitating the same cause of action is nothing but a blatant abuse of the process of law and deserves to be dealt with sternly.

20. Accordingly, the writ petition is dismissed with cost of Rs. 1,00,000/- (One lakh) to be deposited by the petitioner before the Patna High Court Legal Services Committee within three months from today, failing which the District Magistrate, Patna shall be at liberty to realize the cost as arrears of land revenue from the petitioner.



21. Registry is directed to send a copy of the judgment to the District Magistrate, Patna.

(Ashwani Kumar Singh, J)

(Dr. Anshuman, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01-07-2022
Transmission Date	NA

