

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16480 of 2022

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M/s Durga Auto Industry through its Proprietor Chandan Kumar Mandal,
Gender- Male, aged about 47 years, S/o Nidhu Mandal R/o Near Mapha
Petrol Pump, P.O. and P.S.- Maranga, Purnea Bihar- 854301.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Industry, Govt. of Bihar.
2. The Principal Secretary, Bihar Industrial Area Development Authority (BIADA).
3. The Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna through its Managing Director.
4. The Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
5. The Joint Managing Director, Bihar Industrial Area Development Authority (BIADA).
6. The Executive Director, North, Bihar Industrial Area Development Authority (BIADA).
7. The Deputy General Manager, Purnea Cluster, Bihar Industrial Area Development Authority (BIADA).
8. The Area Incharge, Industrial Area- Maranga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajesh Ranjan, Advocate
For the Respondent/s	:	Mr.Abbas Haider (SC 6)
For the BIADA	:	Ms.Binita Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-12-2022

Petitioner has prayed for following relief (s) : -

“(i) For quashing and modifying the part of the order dated 10.12.2021 passed in Appeal Case No. 51/2019 by the Respondent No. 2, whereby and whereunder while allowing the appeal filed by the petitioner he has arbitrarily imposed such



conditions which are without the sanction of law and against the provisions of BIADA Amnesty Policy, 2021 and in teeth of various orders of this Hon'ble Court whereby upon submission of undertaking an extension of time is being granted for initiating the commercial production on the unit of the petitioner.

(ii) Further, for quashing the order dated 08.07.2022 passed in Appeal case no. 55/2022 whereby the Respondent No.3 has declined to interfere with the impugned order of cancellation and the order of the order dated 10.12.2021 passed in Appeal Case No. 51/2019

(iii) Further, for setting aside the order bearing Memo No. 757 dated 25.11.2019 passed by the Respondent No. 4 Managing Director, BIADA whereby and whereunder the land measuring an area of 6534 Sq. ft. which was allowed to the petitioner has been cancelled.

(iv) For declaration and to hold that the aforesaid impugned order dated 10.12.2021 passed in Appeal Case No. 51/2019 and order dated 8.07.2022 passed in Appeal case no. 55/2022 is illegal and in contravention to the settled principles of law i.e. Nemo Judex in Causa Sua (No one should be made a judge on his own cause) as the impugned order vide Memo No. 757 dated 25.11.2019 has been passed by respondent no. 4 Managing Director and the order dated 10.12.2021 passed in Appeal Case No. 51/2019 and order dated 08.07.2022 passed in Appeal case no. 55/2022 has been passed by respondent no. 2 Additional Chief Secretary, Department of Industries who is holding the same post at same time and as such liable to be quashed on this ground itself.

(v) For directing the forthwith not to take any coercive steps against the allotment of petitioner till disposal of this writ application.

(vi) For any other relief or reliefs for which the petitioner be found entitled in the eye of law.”



On 02.12.2022, we had passed the following order:-

“ Learned counsel for the petitioner states that as on date possession of the unit/plot has not been taken over, which fact is seriously disputed by the learned counsel for the respondent BIADA. However, it is not in dispute that, as on date, no third party right stands created.

Statement accepted and taken on record.

As agreed, petitioner will file an undertaking before this Court to the effect that (a) within sixty/ninety days, petitioner will start commercial production with BIADA handing over possession of the premises to the petitioner/recall of the order of cancellation. With the petitioner failing to do, BIADA shall take over vacant and peaceful possession of the premises from the petitioner; (b) within six/nine months, petitioner shall make the Unit fully operational and functional at least to the capacity of 80% for the product sanctioned and allowed to be manufactured as per the original terms of allotment; (c) petitioner shall clear all upto date dues payable to BIADA. This shall be done within four weeks from the date of handing over possession/recall of order of cancellation; (d) petitioner shall make itself compliant with all mandatory statutory requirements, including the ones protecting the interest of the employees; Petitioner shall clear all other statutory dues including G.S.T./electricity charges etc.; (e) in the event of failure on the part of the petitioner to comply with the undertaking, BIADA shall take over vacant and peaceful possession of the premises from the petitioner with liberty for further allotment to 3rd party, with the petitioner losing all rights therein and (f) petitioner shall be liable for initiation of proceedings for contempt for having violated the undertaking furnished to the Court.

Petitioner is ready and willing to furnish such an



undertaking within next seven working days, failing which the petition shall be deemed to have been dismissed for default.

Copy of the undertaking be supplied to learned counsel for the respondents.

However, BIADA has to recall the orders passed cancelling the allotment of the premises.

Let BIADA take a call on the offer made by the petitioner.

Learned counsel for the BIADA states that, should the petitioner make an application for change of user, it would be considered in accordance with the industrial policy, provided the petitioner does not take any benefit in terms thereof.

We are sure that the respondent BIADA would take a decision in the affirmative, which, in our considered view, would be in public interest as also in the interest of the State to generate economic growth as also provide employment to the people.

List on 19.12.2022 so as to enable learned counsel for the petitioner to file an undertaking on affidavit to the aforesaid effect, and till then no coercive steps be taken against the petitioner.”

Pursuant to our order dated 02.12.2022, petitioner has filed an undertaking on affidavit dated 12.12.2022 in the following terms:

“2. That in pursuance of the order dated 02.12.2022 passed by this Hon'ble High Court in C.W.J.C. No.16480 of 2022, I am filing this undertaking as follows:-

i. That, I hereby undertake that within sixty/ninety days, I will start commercial production with BIADA handing over possession of the premises to the me/recall of the order of



cancellation. Failing to do, BIADA shall take over vacant and peaceful possession of the premises from me.

ii. That I also undertakes that within six/nine months, I shall make the Unit fully operational and functional at least to the capacity of 80% for the product sanctioned and allowed to be manufactured as per the original terms of allotment.

iii. That also that I shall clear all up-to-date dues payable to BIADA and shall be done within four weeks from the date of handing over possession/recall of order of cancellation.

iv. That I also undertake to make itself compliant with all mandatory statutory requirements, including the ones protecting the interest of the employees, I shall clear all other statutory dues including G.S.T./electricity charges etc.

v. That I also undertake in the event of failure on the part of me to comply with the undertaking, BIADA shall take over vacant and peaceful possession of the premises from me with liberty for further allotment to 3rd party, with losing all rights therein.

vi. That I further undertake I shall be liable for initiation of proceedings for contempt for having violated the undertaking furnished to the Court.”

Learned counsel for the BIADA states that petition can be disposed of in terms of the undertaking so furnished.

The undertaking is accepted and taken on record.

Consequence of breach thereof, including initiation of proceedings for contempt having violated the undertaking furnished before this Court stands explained to the petitioner through the learned counsel.

As such, petition is disposed of in the following terms:-



(a). Undertaking of the petitioner dated 12.12.2022 (reproduced supra) is accepted and taken on record;

(b) Petitioner has been made aware of the consequences of breach thereof, including initiation of proceedings for contempt;

(c) In the event of failure on the part of the petitioner to comply with the undertaking, BIADA shall take over vacant and peaceful possession of the premises from the petitioner with liberty for further allotment to 3rd party, with the petitioner losing all rights therein and petitioner shall be liable for initiation of proceedings for contempt for having violated the undertaking furnished to the Court.

(d) Also, liberty reserved to BIADA, to approach this Court, should the petitioner fail to abide by the undertaking furnished before this Court.

(e) Order dated 10.12.2021 passed by the Respondent No. 2 namely The Principal Secretary, Bihar Industrial Area Development Authority in Appeal Case No. 51/2019; order dated 08.07.2022 passed by the respondent no. 3 namely The Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna through its Managing Director in Appeal Case No. 55/2022 and order dated 25.11.2019 passed



by the Respondent No. 4 namely The Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawn, Gandhi Maidan, Patna are quashed and set aside.

Petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Sujit/Ashwini/chn

AFR/NAFR	
CAV DATE	
Uploading Date	25.12.2022
Transmission Date	

