

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16978 of 2022

Sarvashree Suman Engineering Works, Large Industrial Area, Barari, Bhagalpur through its proprietor Sanjay Kumar, aged about 51 years, Gender-Male, Son of Late Kalanand Prasad @ Kalanand Prasad Yadav, Resident of Village- Madhura, Post Office and Police Station- Tarapur, District- Munger.

... .. Petitioner/s

Versus

1. The Principal Secretary-cum-Chairman of Bihar Industrial Area Development Authority Department of Industries, Govt. of Bihar, Patna.
2. The Bihar Industrial Area Development Authority through its Managing Director, Udhyog Bhawan, East Gandhi Maidan, Patna.
3. The Managing Director, Bihar Industrial Area Development Authority Director, Udhyog Bhawan, East Gandhi Maidan, Patna-4.
4. The Executive Director (Headquarter), Bihar Industrial Area Development Authority Director, Udhyog Bhawan, East Gandhi Maidan, Patna-4.
5. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Barari, Bhagalpur.
6. The Deputy General Manager, Bihar Industrial Area Development Authority Bhagalpur Cluster.
7. The Area Incharge, Bihar Industrial Area Development Authority Barari, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ranjan Kumar Singh, Advocate
For the Respondent/s	:	Mr.Lalit Kishore, Advocate General
For the BIADA	:	Mr.Devesh Shankaran, Advocate

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) : 0

“i. For issuance of a direction to the respondent authority to allow the petitioner to start his business under trade and commerce which has been prevented by the respondent in most arbitrary and



callouses manner for no fault on the part of the petitioner.

(ii) For issuance of a direction to the respondent authority for taking all necessary step with knowledge and consent of the petitioner for bringing conducive atmosphere in which the petitioner can start its industrial activity by providing necessary help and support of the law and other machinery.

(iii) For issuance of a direction to provide adequate security in the industrial area, BIADA for safety of the life of the persons working in the industrial units.

(iv) For issuance of an appropriate writ in the nature of certiorari for quashing the appellate order dated 25.10.2022 passed in Appeal Case No. 162 of 2022 by Respondent No. 2 namely, The Principal Secretary, Department of Industry, Govt. of Bihar which was communicated by the Deputy Secretary, Department of Industry, Govt. of Bihar, Patna under Memo No. 4817 dated 28.10.2022 quashing the original cancellation order dated 13.08.2022 under Memo No. 637, issued under the signature of Respondent No. 2 namely, The Deputy General Manager, Bihar Industrial Area Development Authority (hereafter referred to as 'BIADA'), Bhagalpur Cluster by which allotted land measuring area 5000 sq. feet bearing Plot No. D-55 (2) has been cancelled.

(v) For issuance of an appropriate writ in the nature of mandamus commanding the respondent authorities to restore the status of the unit in question, inter alia, on the sole reason that the unit is in fully commercial production.

(vi) For any other relief/reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.”

On 09.12.2022, 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 20.12.2022 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 09.12.2022, petitioner has filed an undertaking on affidavit in the following terms: -

“(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 petitioner/recall of the order of cancellation, failing which petitioner shall give vacant and peaceful possession of the premises to BIADA.

(ii) That, I also undertakes that within Sixty/ninety 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.



(iii) That, I also undertakes that I shall clear all update dues payable to BIADA, if any, within four weeks from the date of handing over possession/ recall of order of cancellation.

(iv) That, I also undertake, petitioner shall make itself complaint with all mandatory statutory requirements, including the ones protecting the interest of the employees and 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 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 third party.

(vi) That I further undertake that in the event of default/violated the undertakings, I shall be liable for initiation of proceedings for contempt of this Hon'ble 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 15.12.2022 (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 25.10.2022 passed by respondent no.1 namely the Principal Secretary, Department of Industry, Government of Bihar, Patna in Appeal Case No.162 of 2022 (Annexure 'P/5' series) and the order dated 13.08.2022 passed by respondent no.6 namely the Deputy General Manager, Bihar Industrial Area Development Authority, Bhagalpur Cluster and communicated by the Deputy Secretary, Department of Industry, Government of Bihar 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/-

AFR/NAFR	
CAV DATE	
Uploading Date	25.12.2022
Transmission Date	

