

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24752 of 2019

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M/s Jai Ganesh, through Mr. Ashok Kumar Tulasiyan, aged about 63 years, male, son of Sita Ram Tulsiyan, resident of Mohalla Jagir, P.O. and P.S. Begusarai, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Department of Industries, Bihar, Patna.
2. The Secretary, Department of Industries, Bihar, Patna.
3. The Section Officer, Section -05, Department of Industries, Bihar, Patna.
4. The Bihar Industrial Development Authority, through its Managing Director, Bihar, patna.
5. The Managing Director, Bihar Industrial Development Authority, Bihar, Patna.
6. The Development Officer, Bihar Industrial Development Authority, Bihar, patna.
7. The Area Incharge, Industrial Area, Barauni.
8. The Incharge Director, Bihar Industrial Area Development Authority, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjeev Ranjan, aDV
For the State	:	Mr.Rajiv Kumar Sinha AC to AAG7
For BIADA	:	Mrs. Binita Singh, Adv

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

(Per: HONOURABLE THE CHIEF JUSTICE)

19-09-2022 Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

- a. For quashing of the order dated 05.08.19 passed in Appeal Case No. 10/2019 Industrial Area, Barauni by the Office of the Secretary, Department of Industries whereby the appeal filed by

the petitioner against the order of Managing Director, Bihar Industrial Development Authority, Bihar, Patna contained in Memo No. 1538/D dated 01.03.2019 has been dismissed.

- b. For quashing the Memo No. 1538/D dated 01.03.2019 issued by the Managing Director, Bihar Industrial Development Authority, Bihar, Patna whereby the allotment of the petitioner of plot measuring 0.10 Acres located in Industrial Area, Barauni was cancelled and his deposit was forfeited.
- c. The petitioner in the facts and circumstances of the case prays for grant of any other relief (s) which he is entitled to in the facts and circumstances of the case.

Petitioner through counsel undertakes to pay entire amount of transfer fee which would be 15 per cent (approximately).

Additionally, petitioner undertakes to pay the balance outstanding amount of Rs. 10, 000 (approximately).

Petitioner undertakes to do so, within one week from today, upon receipt thereof the BIADA shall take all steps for executing the document.

For compliance of formalities, the petitioner shall make himself available before the authority concerned on **22.09.2022.**

On 18.08.2022, we had passed the following order:-

Learned counsel for BIADA states that as on date no 3rd party right stands created.

Statement accepted and taken on record.

Petitioner will file an undertaking to this Court to the effect that (a) within 60 days, petitioner will start commercial production in the Unit, should the respondents hand over possession of the premises to the petitioner, failing which petitioner shall give vacant and peaceful possession of the premises to BIADA; (b) within six months, petitioner shall make the Unit fully operational and functional in terms of the product sanctioned and allowed to be manufactured as per the original terms of allotment; (c) petitioner shall clear all the dues payable to BIADA as on date; (d) petitioner shall make itself compliant with all the statutory requirements, including the ones protecting interest of the employees; (e) in the event of failure on the part of the petitioner to comply with the undertaking, petitioner shall hand over the vacant and peaceful possession of the premises to BIADA with liberty for further allotment to 3rd party, when petitioner shall lose 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 two working days, failing which the petition shall stand 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.

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 24th of August, 2022 so as to enable learned counsel for the petitioner to file an undertaking on affidavit to the aforesaid effect.”

Petitioner has filed an undertaking being part of supplementary affidavit dated in the following terms:-

SUPPLEMENTARY AFFIDAVIT ON BEHALF OF THE
PETITIONER

I, Ashok Kumar Tulsyan, Male, aged about 66 years, Son of Sita Ram Tulsyan, Resident of Mohalla – Jagir, Post Office – Begusarai, Police Station – Begusarai, District – Begusarai, do hereby affirm and state as follows :-

1. That I am petitioner in this case and as such am well acquainted with the facts and circumstances of the case.
2. That this supplementary affidavit is being filed to bring on record the application dated 20.12.2018 filed by Jai Ganesh along with supporting document for transfer of the leasehold interest in favour of Verma Industries by submitted all the documents as sought in the checklist.

A Photocopy of application dated 20.12.2018 is being annexed herewith and marked as Annexure – 17 to this Supplementary Affidavit in continuation of the main writ application.

3. That BIADA instead of passing any order on the said application has arbitrarily cancelled the allotment of land.

4. That it is further relevant to state that the petitioner is bringing on record the order of the Hon'ble Supreme Court stating therein that in similar circumstances the BIADA has earlier refused to permit transfer of the leasehold interest in favour of the proposed purchaser for failure to pay 15% of the Circle Rate, which resulted in the proposed transferee approaching this Hon'ble Court in assailing the action of BIADA in charging 15% market rate for such transfer. The matter travelled up to the Hon'ble Supreme Court in Civil Appeal No. 8219 of 2019 and the Hon'ble Supreme Court vide order dated 22.10.2019 after noticing that there is a provision for such transfer by virtue of Policy Decision and BIADA is entitled for unearned increment in terms of the Lease Deed has accorded permission to such transfer on payment of 15% of market rate and not BIADA rate. Thus, the application filed at the instance of

proposed transferee assailing the action of BIADA has not been questioned on the ground of locus.

A Photocopy of order dated 22.10.2019, passed in Civil Appeal No. 8219 of 2019 by Hon'ble Supreme Court is being annexed herewith and marked as Annexure - 18 to this Supplementary Affidavit in continuation of the main writ application.

5. That it is further relevant to state that the Appellate Authority of BIADA in Appeal No. 52 of 2022 in similar circumstances vide order dated 02.08.2022 has allowed transfer of leasehold interest of land in favour of Verma Industries, the proposed transferee in an appeal against cancellation filed at the instance of transferor the Ashok Kumar Tulsyan, the present petitioner.

A Photocopy of order dated 02.08.2022, passed in Appeal No. 52 of 2022 is being annexed herewith and marked as Annexure - 19 to this Supplementary Affidavit in continuation of the main writ application.

6. That it would be high inequitable and unfair that a running industry should be directed to be dismantled, which would not be conducive for industrial growth. The abode objection for which BIADA has been set up and would run counter to the scheme of Rapid Industrial Growth.
7. That the Appellate Authority has erred in holding that appeal at the instance of the proposed transferee is not maintainable as once the original allottee has relinquished his interest in the leasehold property by assigning his leasehold interest in favour of the proposed transferee, the

right to sue would vest to such proposed transferee whose interest are vitally affected in terms of the Policy Decision, which permits such sale / transfer.

8. That the contents of this supplementary affidavit have been read and understood by me, which are true to my knowledge and belief.
9. That the Annexures are true / photocopies of their respective originals.

In view of the aforesaid, petitioner's undertaking is accepted and taken on record.

BIADA has no objection to the order being passed, as is so being passed in similarly situated cases to augment the industrial growth within the State of Bihar.

Petitioner's undertaking that he would revive the unit within six months and make it fully operational and functional, is accepted and taken on record.

Consequence of breach thereof stands explained through the learned counsel.

This Court would not hesitate to not only initiate proceedings of contempt for violating such an undertaking, but also direct the BIADA to take over the possession of the

property for allotment to a third party in accordance with law.

Present petition stands disposed of in the aforesaid terms.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

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