

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.3413 of 2022**

---

Sarvashree Anuj Masala Industries, Industrial Area, Sitamarhi through its Proprietor, Jitendra Kumar (male), aged about 48 years, Son of Sri Ram Narayan Prasad Gupta, resident of mohalla - Mirchai Patti, Ward No. - 9, Sitamarhi- 843302, District - Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Old Secretariat, Bailey Road, Patna - 800015.
2. The Principal Secretary, Department of Industries, Government of Bihar, Old Secretariat, Bailey Road, Patna - 800015.
3. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna - 800001.
4. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna - 800001.
5. The Executive Director, BIADA, Regional Office, Muzaffarpur.
6. Area In-Charge, BIADA, Industrial Area, Sitamarhi.

... .. Respondent/s

---

**Appearance :**

|                      |   |                                                 |
|----------------------|---|-------------------------------------------------|
| For the Petitioner/s | : | Mr. Ajay Prasad, Adv.<br>Mr. Kaushal kr. Adv.   |
| For the BIADA        | : | Mr. Girijesh Kr., Adv.                          |
| For the Respondents  | : | Mr. Siya Ram Sahu, Adv.<br>Mr. Rajesh kr., Adv. |
| For the State        | : | Mr. Ranjay kr. Singh, AC to SC-6                |
| For the Respondent/s | : | Mr. Abbas Haider (Sc6)                          |

---

**CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY**  
**ORAL JUDGMENT**

**Date : 11-12-2023**

Heard the learned counsel for the parties.

**Re:- I.A. No. 02 of 2022**



1. For the reasons mentioned in the interlocutory application, it is allowed.

2. Registry is directed to make necessary changes.

3. This writ petition has been filed for the following relief(s);

*(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 party of the petitioner.*

*(ii) For immediately resume the work of completion of boundary wall of BIADA premises in the Industrial Area, Sitamarhi.*

*(iii) For issuance of a direction to the respondent state 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 law and other machinery.*

*(iv) For issuance of a direction to provide adequate security in the Industrial area, BIADA for safely of the life of the persons working in the*



*industrial units.*

4. Learned counsel for the petitioner has stated that the petitioner has been allotted 5445 sq. feet of land in the year 2012 for the purpose of manufacturing of *spices, masalas etc.* Learned counsel has stated that thereafter the possession was handed over to the petitioner in the year 2012 itself and the petitioner had started manufacturing of the *masalas*. That vide order dated 02.02.2015, the authorities have passed the order of cancellation of allotment and aggrieved thereby the petitioner has preferred an appeal before the Principal Secretary. That the Principal Secretary duly taking into account the facts and circumstances of the case has granted an opportunity to the petitioner to restart the Unit and allowed the appeal filed by the petitioner imposing certain conditions.

5. Learned counsel for the petitioner has stated that the petitioner was directed to furnish a bank guarantee of Rs. 1 lakh valid for a period of two years along with the affidavit of undertaking and the petitioner shall start business within three months from the date of an order and shall continue to run the unit. Learned counsel has stated that the petitioner has been given 15 days time to file the undertaking and also the bank



guarantee. Learned counsel for the petitioner has stated that due to some mistakes in the bank guarantee, the petitioner could not submit the same to the BIADA authorities within the time stipulated by the appellate authority. However, the petitioner has furnished the said bank guarantee with some delay.

6. Learned counsel has stated that without adverting to the above facts or issuing any show cause notice to the petitioner, the authorities have taken possession of the subject property on 24.12.2018 and allotted the subject property to third party on 25.03.2021. Learned counsel has stated that merely on the ground that the petitioner has submitted the bank guarantee with delay, the allotment made to the petitioner cannot be cancelled. Moreover, learned counsel for the petitioner has stated that the authorities concerned ought to have put the petitioner on prior notice before taking possession and should have followed the procedure i.e. by way of filing a Civil Suit before the competent Civil Court for resuming the possession. Learned counsel has relied on the Judgment of this Hon'ble Court passed in the case of **M/S DEEPAK PAINTS (P) LTD. VS. STATE OF BIHAR**, reported in **(2008) 2 PLJR 293**.

7. Per contra, the learned counsel appearing on



behalf of the BIADA has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner has never started commercial production at any point of time and duly taking into account that the land which was allotted to the petitioner was not utilized for the purpose of which it was granted has cancelled the allotment made in the year 2015. That, thereafter, the petitioner has preferred an appeal and the appellate authority taking sympathetic view has granted an opportunity to the petitioner by way of indulgence and directed him to file an undertaking as well as the bank guarantee for an amount of Rs. 1 lakh. That the petitioner was obligated to furnish the bank guarantee within 15 days from the date of passing of the order i.e. 09.11.2018, but the petitioner has submitted the bank guarantee after a lapse of more than three and a half years i.e. on 14.02.2018. As the petitioner has not furnished the bank guarantee and also the affidavit of undertaking, the authorities were constrained to take back the possession on 24.12.2018. That subsequently third party i.e. Respondent No. 7 has been allotted the land wayback in the year 2021 i.e. 25.03.2021. Learned counsel has stated that by the date, the petitioner has approached this Hon'ble Court, the third party allotment was already made and the Respondent No.



7 was put in possession in the subject property. Learned counsel has stated that there is no possible explanation given by the petitioner for the delay in complying with the conditions imposed by the appellate authority or for approaching this Hon'ble Court at this belated stage. Therefore, counsel has prayed for dismissal of the present writ petition.

8. Learned counsel appearing on behalf of the 7<sup>th</sup> Respondent has vehemently opposed the very maintainability of the writ petition and stated that the Respondent No. 7 has been allotted the land on 25.03.2021 and, thereafter, the Respondent No. 7 has invested huge amounts for setting up the industry of ceiling fans, table fans and wall fans. Learned counsel has stated that though the Respondent No. 7 has set up a unit, due to the *status quo* granted by this Hon'ble Court, the commercial production could not be started. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present writ petition with costs.

9. Admittedly, as seen from the record in this particular case, the order of cancellation was passed by the authority concerned on 02.02.2015, on the ground that the petitioner has not started the unit for which it was allotted the subject property. Thereafter, the petitioner has approached the



appellate authority and the appellate authority vide order dated 09.11.2018 in Appeal Case No. 14 of 2015 has passed the following orders:-

*“i. Firstly, the Appellant should clear the pending dues of BIADA with interest.*

*ii. thereafter, the Appellant should submit Band Guarantee of Rs. 1 lakh for a period of two years along with an Affidavit to BIADA that the Appellant will start the business within 3 months from the date of this order and shall remain in continuous operations; and should he stop his operations or violate any other condition of the allotment letter/BIAA Act/BIAA Rules, the above Bank Guarantee shall be encashed by BIAA.*

*iii. Once the above steps are completed and the Appellant submits the Bank Guarantee along with an Affidavit to BIAA, the MD shall restore the allotment to the Appellant.*

*iv. If the Appellant does*



*not approach BIADA and fulfils conditions No. i & ii above within 15 days from the date of this order, BIADA shall be free to take the possession of this land and re-allot it to any other entrepreneur as per its extant policies.”*

10. However, the petitioner for some reasons best known to him did not comply with the above said conditions and he has only filed the Bank Guarantee in February 2022 i.e. after a lapse of almost three and a half years. Even though the learned counsel for the petitioner relied on the judgment passed by this Hon’ble Court in **M/S DEEPAK PAINTS (P) LTD. VS. STATE OF BIHAR**, reported in **(2008) 2 PLJR 293** and other judgments and also contended that the authorities could not had taken the possession of the subject property on their own without putting the petitioner on notice or approaching the Civil Court. It is to be noted that once the petitioner has given an undertaking to the authority concerned and has not complied with the terms and conditions imposed by the appellate authority, the original order of cancellation will come into effect and no fault can be found for taking the possession by the respondent authorities. The subsequent order of cancellation made on 15.03.2022 (Annexure- 13) is passed



only for the reasons that the petitioner has submitted the bank guarantee after a lapse of more than 3 ½ years. By the said order, the bank guarantee furnished by the petitioner with the delay of almost three and a half years was rejected by the authority. Further as seen from the record, there is no *iota* of evidence to show that the petitioner has set up the unit or started any commercial production of the unit at any point of time. No scope of paper is filed by the petitioner to substantiate its claim that the unit was started by the petitioner after the date of allotment.

11. Having regard to the above said submissions, the writ petition is devoid of merits and the same is dismissed accordingly. The interim order granted on 27.04.2022 shall also stayed vacated.

12. In case the petitioner is so advised, he is free to approach the BIADA authority seeking allotment of another property for starting any other business.

13. In case such application is filed, the same shall be considered on its own merits without adverting to the order of cancellation or that of the appellate authority. If any such application is made, the authorities are directed to consider the application made by the petitioner as expeditiously as possible



preferably within a period of six weeks from the date of receipt  
of the said application.

**(A. Abhishek Reddy , J)**

Gauravkr/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | N/A        |
| Uploading Date    | 19.12.2023 |
| Transmission Date | N/A        |

