

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5269 of 2023

M/S Perna Agro Food Products through its Proprietor Shri. Ashutosh Kumar Sinha, Gender-male, aged about 55 years, son of Sri Mahendra Pratap Singh, Resident of B-84, Biscoman Colony Near Kumharar, P.S. Agamkuan, District- Patna, Patna-7, Bihar. At present residing at A/2, 1st Floor, Anandpuri, Boring Canal Road, P.S. Sri Krishnapuri, District- Patna, Patna-1, Bihar.

... .. Petitioner/s

Versus

1. The Bihar Industrial Area Development Authority (BIADA) Udyog Bhawan, Gandhi Maidan, Patna through its Managing Director.
2. The Principal Secretary, Department of Industries, Government of Bihar, Patna.
3. The Managing Director, Bihar Industrial Area Development Authority (BIADA) Udyog Bhawan, Gandhi Maidan, Patna.
4. The Joint Managing Director, Bihar Industrial Area Development Authority (BIADA) Udyog Bhawan, Gandhi Maidan, Patna.
5. The Executive Director, Bihar Industrial Area Development Authority (BIADA) Udyog Bhawan, Gandhi Maidan, Patna.
6. The DGM, Industrial Area, Patna Cluster, Bihar Industrial Area Development Authority (BIADA) Udyog Bhawan, Gandhi Maidan, Patna.
7. Assistant Area Manager, Industrial Unit, Fatua, Patna, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar, Adv.
For BIADA	:	Mr. Girijish Kumar, Adv.
For the Respondent/s	:	Mr. P.K. Shahi, AG
	:	Mr. Manish Dhari Singh, AC to AG

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

Date : 06-11-2023

Heard the learned counsel for the parties.

2. This writ petition has been filed for the following
reliefs;

“(i) To quash the Office Order bearing Memo No. 801, dated 29.12.2022, passed by the Deputy General Manager, Industrial Area, Patna Cluster, BIADA, Patna, Bihar (respondent no. 6) in the light of the



order of Joint Managing Director, BIADAM (Respondent No. 4). whereby and whereunder, the Plot No. O-7(P), admeasuring a total area of 5000 Sq Ft allotted to the petitioner under Lease Deed dated 07.06.2018 has been cancelled.

(ii) To quash the order dated 07.03.2023 passed by the Principal Secretary, Department of Industries, Government of Bihar (Respondent No.2), in Appeal No. 102 of 2023, by which the order dated 29.12 2022. passed by the Deputy General Manager, Industrial Area, Patna Cluster BIADA, Bihar Patna (respondent no. 6) has been duly affirmed and the Appeal was rejected.

(iii) For a direction upon the Respondent Authorities not to allot petitioner's Plot No. O- 7(P) to any other person, till the disposal of the writ application.

(iv) For directing the respondents not to take any coercive steps against the allotment of the petitioner till the disposal of the writ petition.

(v) For any other relief or rleiefs for which the petitioner is found entitled in the eye of law.”

3. Learned counsel for the petitioner has stated that due to unavoidable circumstances like Covid-19 etc., the petitioner could not start the commercial production and the same is not deliberate but for the reasons beyond the control of the petitioner and therefore, an opportunity may be given to the petitioner to start commercial production.

4. Learned counsel for the petitioner has stated that under the similar circumstances, a Division Bench of this Hon'ble Court in C.W.J.C. No. 15567 of 2022 (***M/s Maa Kali Food Products Industrial Growth Centre, Maranga Vs. The State of Bihar & Ors.***)



dated 02.12.2022 has set aside the order of Bihar Industrial Area Development Authority (hereinafter referred to as “the BIADA”) based on the undertaking given by the petitioner therein and an opportunity was given to the industry to start its commercial production.

5. Learned counsel for the petitioner has stated that the petitioner has also filed an undertaking before this Court which reads as under:-

“1. That I am Petitioner in the present case and sole proprietor of M/s Prerna Agro Food Products and as such am well acquainted with the facts and circumstances of the case.

2. That in compliance of the order dated 15.09.2023 passed by this Hon'ble Court in C.W.J.C No. 5269/2023, I am giving the present undertaking on affidavit.

3. That I shall start commercial production within 90 days from the date on which the order of cancellation dated 07.06.2018 is recalled by the BIADA.

4. That I further undertake that within nine months I shall make the unit fully operational and functional at least to the capacity of 80% production as per original term of the allotment.

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

6. That the petitioner further undertakes and ready to give bank guarantee of Rs 1, 00,000/- (Rupees One Lakhs) vide Performance Bank Guarantee No. 4403IPEBG230002 Date: 04.10.2023 for an amount of Rs. 1,00,000/-.

7. That I shall clear all the dues against GST/Electricity charges.



8. That I further undertake that in the event of failure to comply with the undertaking given by me, BIADA shall take over vacant and peaceful possession of the premises with liberty for further allotment to 3rd party and I shall loose all rights over the land/ premises.

9. That I shall be liable for the initiation of the contempt proceedings for having violated the present undertaking furnished to this Hon'ble Court.

10. That I will abide myself by the contents as given in the present undertaking.”

6. Having regard to the above said undertakings which is reproduced above and the judgment of this Hon'ble Court passed in C.W.J.C. No. 15567 of 2022 dated 02.12.2022, wherein this Hon'ble Court duly taking into account the undertaking given by the petitioner therein has set aside the order of the appellate authority as well as the order of cancellation passed by the BIADA and granted an opportunity to the petitioner to start its commercial production.

7. Having regard to the above and also the submissions made by the learned counsel for the BIADA, this Court is of the considered opinion that the ends of Justice would be met if, the undertaking given by the petitioner is accepted and the petitioner given an opportunity of starting commercial production. The Court makes the following orders:-

8 (i). As it is stated that possession has been taken by the BIADA, the same shall be handed over to the petitioner immediately after the receipt of this order. The petitioner shall then furnish a bank guarantee for an amount of Rs. one lakh within one week from



the date of handing over the possession. Thereafter, the petitioner shall clear all the outstanding dues, if any of the BIADA within a period of two weeks thereof. The petitioner shall start the commercial production within ninety days from the date of handing over the possession and start manufacturing plan as approved by the Bihar Industries Commercial Policy, 2016.

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

8.(iii) Undertaking of the petitioner dated 11.10.2023 is accepted and taken on record.

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

8.(v) In the event of default of the undertaking, petitioner shall hand over vacant and peaceful possession of the allotted property to BIADA within a period of two weeks;

8.(vi) It is made clear that, in case the petitioner fails to start the full commercial production within the stipulated time and also fails to hand over the vacant and peaceful possession of the allotted property to BIADA within a period of two weeks thereof,



the authorities of the BIADA are free to take possession of the premises in question.

8.(vii) Consequently, the order dated 29.12.2022 passed by Respondent No. 6, the Deputy General Manager, Patna Cluster, Bihar Industrial Area Development Authority (BIADA), issued vide Memo No. 801 (**Annexure-5**) and order dated 07.03.2023 passed in Appeal Case No. 102 of 2023 by Respondent No. 2, the Principal Secretary-cum-the Appellate Authority, Department of Industry, Government of Bihar contained (**Annexure-6**) are accordingly quashed and set aside.

9. With the above observations, the present writ petition stands allowed.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.11.2023.
Transmission Date	N/A

