

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9215 of 2023

M/s M.B. Tiles and Construction Private Limited having its registered office at Flat No. 5, Prakash Deep Tower, Jai Durga Nagar, Bomikhal, Police Station-Laxmi Sagar, District-Khurda, Bhuneshwar-751006, Orissa through one of its Directors namely Nil Kamal Bengani (Male) aged about 59 years, son of Sohan Lal Bengani, resident of Ward No. 42, Kaptan Para, Khushki Bagh, Police Station-Sadar, District-Purnia.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Industries, Government of Bihar, Patna.
2. The Additional Chief Secretary-cum-The Appellate Authority, Department of Industries, Government of Bihar, Patna.
3. The Bihar Industrial Area Development Authority (BIADA) through the Chairman-cum-Managing Director, Head Office-Udyog Bhawan, 1st Floor, East Gandhi Maidan, Patna-800004.
4. The Chairman-cum-Managing Director, The Bihar Industrial Area Development Authority (BIADA), Head Office-Udyog Bhawan, 1st Floor, East Gandhi Maidan, Patna-800004.
5. The Joint Managing Director, Bihar Industrial Area Development Authority (BIADA), Head Office-Udyog Bhawan, 1st Floor, East Gandhi Maidan, Patna-800004.
6. The Deputy General Manager, Cluster Office, Industrial Development Centre, Purnea, District-Purnea.
7. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Bihar Industrial Development Authority, Regional Office, Barari, Bhagalpur, District-Bhagalpur.
8. The Development Officer, Bihar Industrial Area Development Authority, Regional Office, Barari, Bhagalpur, District-Bhagalpur.
9. The Regional-in-Charge, Industrial Growth Centre, Maranga, Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Adv.
	:	Mr. Pravashanker Mishra, Adv.
For the Respondent/s	:	Mr. Kumar Manish (Sc 5)

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

Date : 04-09-2023

Heard the learned counsel for the parties.



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

“i) To issue a Writ in nature of Certiorari for quashing the letter being no.507 dated 27.06.2022 whereby showcause notice has been issued to the petitioner company (as contained in Annexure-11) and quashing the Office Order as contained in Memo No.196 dated 07.12.2022 whereby the Plot No.18(B) admeasuring 43560 sq ft land allotted to the petitioner company has been cancelled by the order of Joint Managing Director, Bihar Industrial Area Development Authority, issued under the signature of Deputy General Manager, Bihar Industrial Area Development Authority, Cluster Office, Industrial Development Centre, Purnea. (as contained in Annexure-13)

ii) To issue a Writ in nature of Certiorari for quashing the Appellate Order dated 01.06.2023 issued by the Additional Chief Secretary, Department of Industries, Government of Bihar, Patna (as contained in Annexure-14)

iii) Consequent upon quashing of above, Issuance of Writ in the nature of Mandamus commanding the respondents to restore the Plot No.18(B) admeasuring 43560 sq ft land allotted to the petitioner company and to allow the petitioner company to function smoothly.

iv) For staying the operation of letter no.22 dated 05.06.2023 and letter no.319 dated 17.06.2023 during the pendency of the writ application and the respondents may be restrained to take possession of the cancelled land.



v) *To any other relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case.*”

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:-

“i. within 60 days, petitioner will start commercial production in the Unit, should the respondents hand over possession of the premises to the petitioner/recall the order of cancellation,



failing which petitioner shall give vacant and peaceful possession of the premises to BIADA;

ii. 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;

iii. petitioner shall clear all the dues payable to BIADA as on date; petitioner shall make itself compliant with all the statutory requirements, including the ones protecting interest of the employees;

v. 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

vi. petitioner shall be liable for initiation of proceedings for contempt for having violated the undertaking furnished to the Court.

vii. That the petitioner undertakes to augment and enhance the capacity of the production of the unit.

viii. Presently, the petitioner is currently producing around 5 to 6 lac pieces of precast concrete pavers (PCC Pavers) annually whereas, the petitioner undertakes to enhance the production of same to the tune of around 8 to 10 lac pieces of precast concrete pavers (PCC Pavers) annually within a period of 6 months. Since the unit has been closed by the respondents



therefore, two months time will be taken for resumption of the unit. Thereafter, the petitioner will start augmenting its production capacity. The said undertaking is being given by the petitioner on the ground that the petitioner has already invested huge amount and valuable time for setting up the present unit. Now, the petitioner after investing amount, labour and time, cannot be shunted out under the purported exercise of power by BIADA. Hence, the petitioner in order to continue the manufacturing activities at the said unit, undertakes to enhance the capacity to the tune of around 8 to 10 lac pieces of precast concrete pavers (PCC Pavers) annually within a period of 6 months.

ix. That also undertakes that the petitioner shall clear all up to date dues payable to BIADA if any and shall be done within 4 weeks from the date of handing over possession/recall of order of cancellation.

X. That the petitioner further undertakes that in the event of said unit not being made operational and functional by the petitioner within 6 months regarding enhanced production, the petitioner will handover and the vacant and peaceful possession to BIADA.

xi. That the petitioner further undertakes that the petitioner shall make complaint with all the statutory requirements including protecting the interest of the employees.

xii. That the petitioner further undertakes that in the event of default, the petitioner shall be



liable for being prosecuted for having committed contempt of this Hon'ble Court."

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. two lakhs 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 sixty 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 23.08.2023 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 07.12.2022 passed by respondent no. 5, the Joint Managing Director, Bihar Industrial



Area Development Authority (BIADA), issued vide Memo No. 196 **(Annexure-13)** and order dated 01.06.2023 passed in Appeal Case No. 175 of 2023 by Respondent No. 2, the Additional Chief Secretary-cum-the Appellate Authority, Department of Industry, Government of Bihar contained **(Annexure-14)** 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	11.09.2023.
Transmission Date	N/A

