

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15416 of 2022

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M/s. C and B Masscon Pvt. Ltd. represented through its Director- Chandra Bhushan Kumar Male, aged about- 39 years, S/o- Birendra Kumar Singh, R/o- Kasba Maker, Pachim Thahara, P.O. and P.S.- Maker, District- Saran, Bihar- 841215.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Industries, Govt. of Bihar.
2. The Principal Secretary, Department of Industries, Govt. of Bihar.
3. The Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna through its Managing Director.
4. The Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
5. The Joint Managing Director, Bihar Industrial Area Development Authority Govt. of Bihar.
6. The Executive Director, South, Bihar Industrial Area Development Authority (BIADA), Regional Office, Bhagalpur.
7. The Deputy General Manager, Purnea Cluster, Bihar Industrial Area Development Authority (BIADA).
8. The Area Incharge, Maranga, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sachin Kumar, Advocate
For the State : Mr.Ashutosh Kumar Upadhyaya, AC to SC 9

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

5 14-03-2023 The petitioner by way of this writ petition assails the order dated 08.09.2022, whereby the Principal Secretary, Department of Industries has noticed and passed an order granting one month further time to the petitioner to deposit 30% of the lease amount, which was originally required to be



deposited within 60 days. The Principal Secretary further allowed the petitioner to start the unit within six months, failing which he was to hand over the land to the BIADA without recourse to any further legal remedy. Additionally, he was also asked to submit a bank guarantee of Rs.05 lac in support of his claim, which can be forfeited, if he fails to start the units in six months. The matter was further directed by the Principal Secretary to be placed on 11th of October, 2022.

2. However, without depositing 30% of the amount within one month, the petitioner preferred this writ petition on the spacious ground of conditions of imposing of 05 lac bank guarantee being illegal. The writ petition was filed on 18th of October, 2022.

3. This Court had initially, vide order dated 11.11.2022, directed as under : -

“As agreed, 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/recall the order of cancellation, 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 seven 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.

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 23rd of November, 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.”

4. The said order was passed on the basis of the statement of the counsel for the BIADA that as on date third



party right has not been created. On 24.11.2022, the learned counsel for the BIADA informed that the unit already stood allotted to the third party for a sum of Rs.01,90,32,090/- deposited on 05.11.2022. This Court, therefore, directed the parties to maintain *status quo* as on date.

5. Learned counsel for the petitioner submits that the condition of bank guarantee was cumbersome and there is no such condition provided under the rules of allotment. The condition was beyond rules and therefore the order dated 08.09.2022 itself could not have been passed.

6. I have considered the submissions. It is apparent that the petitioner has tried to mislead this Court. Originally, the petitioner was allotted the land, vide order dated 07.04.2022 on lease amount and other charges of sum of Rs.2,21,99,999/- however, he did not deposit even a single penny from April, 2022 till September, 2022. In September, 2022 the Principal Secretary again granted indulgence of one amount to deposit 30% of the lease amount, which was also not deposited by the petitioner and he instead of complying and asking for relaxation of bank guarantee, proceeded to prefer a writ petition on different premises altogether. The *bona fide* of the petitioner/company is thus found to be missing. This Court is of



Equity and the person who comes before this Court must come with clean hands. A person who has failed to comply with the conditions of allotment and also further not paying the amount as allowed by the additional indulgence can not come before the Court and claim equity. It is noticed that the original amount on which the land was to be allotted to the petitioner is much less than the amount on which the land has now been allotted to one another party.

7. The amount already deposited by the other party, to whom allotment has been made, is a considerable amount. It is informed that the total amount on which land has now been allotted is Rs.4,85,10,000/-. Thus, this Court finds that the value of the property has increased almost twice. In such circumstances, no indulgence can be granted on grounds of personal illness of one of the directors of the Company, it being a separate entity.

8. The writ petition is devoid of merit and accordingly dismissed.

(Sanjeev Prakash Sharma, J)

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