

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17129 of 2022

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Sarvashree Shakuntala Food Industries, In Large Industrial Estate, Barari, Bhagalpur through its Proprietor, Kumar Kumar Sah, aged about 41 years, Gender- Male, Son of Saudagar Sah, Resident of Housing Board New Colony, House No.- LH-80, Barari, Bhagalpur.

... .. Petitioner/s

Versus

1. The Principal Secretary-cum-Chairman, Bihar Industrial Area Development Authority, Department of Industries, Govt. of Bihar, Patna.
2. Bihar Industrial Area Development Authority through the Principal Secretary, Department of Industries, Govt. of Bihar, Patna.
3. The Managing Director, Bihar Industrial Area Development Authority, Udhog Bhawan, East Gandhi Maidan, Patna -4.
4. The Secretary, Bihar Industrial Area Development Authority, Udhog Bhawan, East Gandhi Maidan, Patna -4.
5. The Executive Director, Bihar Industrial Area Development Authority, Udhog Bhawan, East Gandhi Maidan, Patna -4.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Singh, Advocate

For the Respondent/s : Mr. Girijish Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-01-2023

Heard learned counsel for the parties.

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

“I. For issuance of an appropriate writ in the nature of certiorari for quashing order dated 02.11.2022 passed by the Managing Director, Bihar Industrial Area



Development Authority (hereinafter referred to 'BIADA') in purported compliance of judgment dated 30.06.2022, passed in C.W.J.C. No. 8800 of 2022; the order dated 17.05.2022 passed in Appeal Case No. 20 of 2021 by the Principal Secretary, Department of Industries, Govt. of Bihar, Patna which was communicated to the petitioner by the Deputy Secretary, Department of Industries, Govt. of Bihar, Patna to the petitioner under Memo No. 2160, dated 23.05.2022 as well for quashing the order dated 28.08.2021, under Memo No. 494, issued under the signature of Executive Director, BIADA by which allotted land measuring area 5000 sq. feet Plot No. D-14 has been cancelled.

II. For issuance of an appropriate writ in the nature of mandamus commanding the respondents after setting aside the impugned orders, as contained in Annexure-P/1 series, restore the status of unit in question, inter alia, on the sole reason unit is in fully commercial production.

III. For any other relief/reliefs for which petitioner is entitled under law/rule as well as facts and circumstances of the case.”

On 16.12.2022, we had passed the following order:-

“ Learned counsel for the petitioner states that as on date possession of the unit/plot has not been taken over, which fact is seriously disputed by the learned counsel for the respondent BIADA. However, it is not in dispute that, as on date, no third party right stands created.

Statement accepted and taken on record.

As agreed, petitioner will file an undertaking before this Court to the effect that (a) within sixty/ninety days, petitioner will start commercial production with BIADA handing over possession of the premises to the petitioner/recall of the order of cancellation. With the



petitioner failing to do, BIADA shall take over vacant and peaceful possession of the premises from the petitioner; (b) within six/nine months, petitioner shall make the Unit fully operational and functional at least to the capacity of 80% for the product sanctioned and allowed to be manufactured as per the original terms of allotment; (c) petitioner shall clear all upto date dues payable to BIADA. This shall be done within four weeks from the date of handing over possession/recall of order of cancellation; (d) petitioner shall make itself compliant with all mandatory statutory requirements, including the ones protecting the interest of the employees; Petitioner shall clear all other statutory dues including G.S.T./electricity charges etc.; (e) in the event of failure on the part of the petitioner to comply with the undertaking, BIADA shall take over vacant and peaceful possession of the premises from the petitioner with liberty for further allotment to 3rd party, with the petitioner losing 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 be deemed to have been 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 23.01.2023 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.”

Pursuant to our order dated 16.12.2022, petitioner has filed an undertaking on affidavit dated 21.12.2022, in the following terms:-

“2. That in pursuance of the order dated 16.12.2022 passed by the Hon’ble High Court in the aforesaid case, the petitioner is filing the undertaking as follows:-

(i) That, I hereby undertake that within sixty/ninety days, I will start commercial production with BIADA handing over possession of the premises to the petitioner/recall of the order of cancellation, failing which petitioner shall give vacant and peaceful possession of the premises to BIADA.

(ii) That I also undertakes that within Sixty/ninety months, petitioner shall make the Unit fully operational and functional at least to the capacity of 80% for the product sanctioned and allowed to be manufactured as per the original terms of allotment.

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

(iv) That, I also undertake, petitioner shall make itself



complaint with all mandatory statutory requirements, including the ones protecting the interest of the employees and shall clear all other statutory dues including G.S.T./electricity charges etc.

(v) That, I also undertake in the event of failure on the part of the petitioner to comply with the undertaking, BIADA shall take over vacant and peaceful possession of the premises from the petitioner with liberty for further allotment to 3rd party.

(vi) That I further undertake that in the event of default/violated the undertakings, I shall be liable for initiation of proceedings for contempt of this Hon'ble Court"

Learned counsel for the BIADA states that petition can be disposed of in terms of the undertaking so furnished.

The undertaking is accepted and taken on record.

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

As such, petition is disposed of in the following terms:-

(a). Undertaking of the petitioner dated 21.12.2022 (reproduced supra) is accepted and taken on record;

(b) Petitioner has been made aware of the consequences of breach thereof, including initiation of



proceedings for contempt;

(c) In the event of failure on the part of the petitioner to comply with the undertaking, BIADA shall take over vacant and peaceful possession of the premises from the petitioner with liberty for further allotment to 3rd party, with the petitioner losing all rights therein and petitioner shall be liable for initiation of proceedings for contempt for having violated the undertaking furnished to the Court.

(d) Also, liberty reserved to BIADA, to approach this Court, should the petitioner fail to abide by the undertaking furnished before this Court.

(e) BIADA shall immediately recall the order and/or hand over possession of the unit to the petitioner, whatever the case may be. Learned counsel for the BIADA states that needful shall be done, positively, within a period of four weeks from today.

(f) The timeline for commencement of the period of undertaking furnished by the petitioner shall be reckoned from such date, i.e. from the date the order is recalled and/or possession of the unit is handed over by the respondent-BIADA to the petitioner, whichever is later and as the case may be.



Petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	25.01.2023
Transmission Date	

