

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17291 of 2022

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M/s. Anand Plastic Company through its Proprietor Vishwambhar Kumar,
Gender- Male, aged about 40 years, S/o Rajaram Poddar, R/o. Marwari
Mohalla, Ghee Gali, Ward No. 22, District- Begusarai, Bihar- 851101.

... .. Petitioner/s

Versus

1. The State of Bihar through the 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, (BIADA) Patna, Bihar.
6. The Executive Director, North, Bihar Industrial Area Development Authority (BIADA).
7. The Deputy General Manager, Begusarai Cluster, Bihar Industrial Area Development Authority (BIADA), Regional Office, Patna.
8. The Area Incharge, Industrial Area- Begusarai, Bihar Industrial Area Development Authority (BIADA).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan, Advocate Mr. Sachin Kumar, Advocate Mr. Abhishek Kumar Pandey, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, SC-9 Ms. Deepika Sharma, A.C. to S.C. 9 Mr. Aayush Abhishek, Advocate Mrs. Binita Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-01-2023

Heard learned counsel for the parties.

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



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- i. For setting aside the order bearing Memo No. 14 Dated 20.07.2022 passed by the Respondent No. 5, Joint Managing Director, BIADA whereby and where under an area of 26,136 Sq. Ft. bearing Plot No 105 (Part), within the Industrial Area-Hajipur has been cancelled on non-est and with-standing the basic tenants of Natural Justice
- ii. For quashing and modification of the order dated 13.10.2022 passed in Appeal Case No. 149/2022 communicated vide memo no. 4696 dated 20.10.22 by the Respondent No. 2 whereby and where under while allowing the appeal filed by the petitioner has imposed the conditions of Bank guarantee of Rupees 2 Lakhs, which is in teeth of the which are without the sanction of law and against the provisions of BIADA Amnesty Policy, 2021 and in teeth of various orders of this Hon'ble Court whereby upon submission of undertaking an extension of time is being granted for initiating the commercial production on the unit of the petitioner.
- iii. For declaration and to hold that the aforesaid impugned order dated 13.10.2022 passed in Appeal Case No. 149/2022 communicated vide memo no. 4696 dated 20.10.22 is illegal and in contravention to the settled principles of law i.e. *Nemo Judex in Causa Sua* (No one should be made a judge on his own cause) as the impugned order vide Memo No. 14 dated 20.07.2022 has been passed by Respondent No. 4 Managing Director and the order dated 13.10.2022 passed in Appeal Case No. 149/2022 communicated vide memo no. 4696 dated 20.10.22 has been passed by respondent no. 2 Principal Secretary, Department of Industries who is holding the same post at same time and as such liable to be quashed on this ground itself.



- iv. For directing the respondents forthwith not to take any coercive steps against the allotment of petitioner till disposal of this writ application.
- v. For any other relief or reliefs for which the petitioner be found entitled in the eye of law.

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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 24.01.2023 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:-

“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 me/recall of the order of cancellation. Failing to do. BIADA shall take over vacant and peaceful possession of the premises from me.

ii. That I also undertakes that within six/nine months, I 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 also undertakes that I shall clear all up-to-date dues payable to BIADA and shall be done within four weeks from the date of handing over possession/recall of order of cancellation.

iv. That I also undertake to make itself compliant with all mandatory statutory requirements, including the ones protecting the interest of the employees, I 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 me to comply with the undertaking, BIADA shall take over vacant and peaceful possession of the premises from me with liberty for further allotment to 3rd party, with losing all rights therein.

vi. That I further undertake I shall be liable for initiation of proceedings for contempt for having violated the undertaking furnished to the 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)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	25.01.2023
Transmission Date	

