

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17354 of 2022

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Shree Shyam Industries a Proprietorship Firm having its Place of Business at Plot No.-19,20, Industrial Area, Barauni, District-Begusarai through its Power of attorney holder namely Anil Kumar Tulsyan Male aged about 55 Years Son of Late Devi Prasad Tulsyan resident of Ward no. 21, Near Heera Lal Chowk, Main Road, Begusarai, District-Begusarai-851101.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary Department of Industries, Government of Bihar, New Secretariat, Bailey Road, Patna.
2. The Secretary, Department of Industries, Government of Bihar, New Secretariat, Bailey Road, Patna.
3. The Bihar Industrial Area Development Authority, Udyogh Bhawan, East Gandhi Maidan, Patna through its Managing Director.
4. The Managing Director, Bihar Industrial Area Development Authority, Udyogh Bhawan, East Gandhi Maidan, Patna.
5. The Joint Managing Director, Regional Office, Bihar Industrial Area Development Authority, Begusarai Cluster, Begusarai.
6. The Deputy General Manager, Bihar Industrial Area Development Authority, Begusarai Cluster, Begusarai.
7. The Regional Officer, Bihar Industrial Area Development Authority, Barauni Industrial Area, Barauni, Begusarai.
8. The Area In-Charge, Bihar Industrial Area Development Authority, Barauni Industrial Area, Barauni, Begusarai .

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Mukund Kumar, Advocate Mr. Alok Kumar Jha, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, SC-9 Mr. Piyush Lall, Advocate Mr. Yashraj Bardhan, Advocate Ms. Deepika Sharma, A.C. to S.C. 9 Mr. Aayush Abhishek, 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):-

“

- (I) For issuance of a writ in the nature of certiorari for quashing of the order dated 19.11.2022 passed and issued vide memo no. 236 by the respondent number 5 i.e., Joint Managing Director, Bihar Industrial Area Development Authority (hereinafter referred to as the BIADA for short) Begusari Cluster, Begusarai cancelling the allotment of industrial plot no.- 19 and 20 at Industrial Area, Baruni, Begusarai which has been cancelled and the amount fully paid against the land has been forfeited without any consideration of the reply dated 15.11.2022 submitted by the petitioner in response to the notice dated 14.10.2022;
- (II) For issuance of a writ in the nature of prohibition restraining the respondent BIADA and its authorities from physical dispossession or any other action pursuant to the impugned order dated 19.11.2022 cancelling the allotment of the industrial plot of the petitioner;
- (III) For holding and a declaration that the action taken by the respondent BIADA is illegal, arbitrary, and violative of the principles of natural justice;
- (IV) For any other relief(s) to which the petitioner is found entitled in the facts and circumstances of this 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 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 23.12.2022, in the following terms:-

- “a) The petitioner shall commence/resume commercial production within 60/90 days from the date of handing over of possession of the industrial unit/recall of the order of cancellation of allotment by the respondent BIADA.
- b) The petitioner shall make the industrial unit fully operational and at least to the extent of 80% within six/nine months and functional in terms of the product sanctioned and allowed to be manufactured as per the original terms of allotment/different product approved by BIADA.
- c) The petitioner shall clear all the dues payable to



BIADA as on date within 4 weeks from the date of acceptance of this undertaking.

d) The petitioner shall make itself compliant with all the statutory requirements, including the ones protecting interest of the employees. The 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.

f) The petitioner shall be liable for initiation of proceedings for contempt for having violated the undertaking furnished to the honourable 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 23.12.2022



(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	

