

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No. 17805 of 2022**

M/s A.K. Industries, Large Industrial Estate, Barari Bhagalpur through its Proprietor Satish Kumar aged about 54 Years, Gender-Male, Son of late Adyanand Singh, HIG 16, Housing Board Colony, Barari, Bhagalpur, Police Station-Barari, District-Bhagalpur.

... .. Petitioner/s

Versus

1. The Principal Secretary-Cum-Chairman of Bihar Bihar Industrial Area Development Authority, Department of Industries, Govt. of Bihar, Patna.
2. The Bihar Industrial Area Development Authority through its Managing Director, Udhyog Bhawan, East Gandhi Maidan, Patna-4.
3. The Managing Director, Bihar Industrial Area Development Authority Director, Udhyog Bhawan, East Gandhi Maidan, Patna-4.
4. The Executive Director (Headquarter), Bihar Industrial Area Development Authority Udhyog Bhawan, East Gandhi Maidan, Patna-4.
5. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Barari, Bhagalpur.
6. The Deputy General Manager, Bihar Industrial Area Development Authority Director, Bhagalpur Cluster.
7. The Area Incharge, Bihar Industrial Area Development Authority, Barari, Bhagalpur.

... .. Respondent/s

**Appearance :**

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| For the Petitioner/s | : | Mr.Ranjan Kumar Singh, Adv      |
| For the State        | : | Mr. P.K. Shahi, A.G.            |
| For the BIADA        | : | Mr. Kumar Priya Ranjan, Adv     |
|                      |   | Mr. Girish Nandan Abhishek, Adv |

**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE PARTHA SARTHY**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 01-02-2023**

Heard learned counsel for the parties.

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

“(i) For issuance of a direction to the respondent authority to allow the petitioner to start his business under trade and commerce which has been prevented by the respondent in most arbitrary and callouses manner for no fault



on the part of the petitioner.

(ii) For issuance of a direction to the respondent authority for taking all necessary step with knowledge and consent of the petitioner for bringing conducive atmosphere in which the petitioner can start its industrial activity by providing necessary help and support of law and other machinery.

(iii) For issuance of an appropriate writ in the nature of certiorari for quashing the appellate order dated 21.11.2022 passed in Appeal Case No. 186 of Secretary, Govt. 2022 by the Principal Department of Industry, of Bihar as well for quashing the original cancellation order dated 13.08.2022 under Memo No. 631, by the Deputy General Manager, Bihar Industrial Area Development Authority (hereafter referred to as 'BIADA'), Bhagalpur Cluster by which allotted land measuring bearing Plot area 10000 sq. feet No. D-45/F-9, 11(P) has been cancelled.

(iv) For issuance of an appropriate writ in the nature of mandamus commanding the respondent authorities to restore the status of the unit in question, inter alia, on the sole reason that the unit is in fully commercial production.”

On 19.01.2023, 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 3<sup>rd</sup> 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 1<sup>st</sup> of February, 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 19.01.2023, petitioner has filed an undertaking on affidavit dated 23.01.2023, in the following terms:-

“1. That I am Proprietor in this case and as am well acquainted with the facts and circumstances of the case.

2. That in it is humbly submitted here that in the aforesaid case, the petitioner is filing the revised 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.

(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 3<sup>rd</sup> 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 23.01.2023,



(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 3<sup>rd</sup> 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)**

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