

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.131 of 2023

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M/s Maa Jagdamba Agro Industries, through its Proprietor Sandeep Kumar, Male, Aged About 41 Years, Son of Suresh Prasad Gupta. Resident of Muhalla-Baijnath Bhawan, Station Road, Dehri-on-Sone P.S.-Dehri-on-Sone, District-Rohtas (Bihar) ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Vikash Bhawan, Govt. of Bihar, Patna.
2. Bihar Industrial Area Development Authority, Patna through its Secretary, 1st Floor, Udyog Bhawan, Gandhi Maidan, Patna.
3. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan East Gandhi Maidan, Patna-4
4. The Executive Director, Baida, Patna.
5. The Development Officer, Biada, Patna.
6. The Area Incharge, Industrial Area, Dehri-on-Sone, Bihar.
7. Archana Kumari, D/o Haribansh Pd. Singh, Wife of Ranjeet Kumar Resident of East Mohan Bigha, Dehri, P.S.- Dehri- on- Sone, District- Rohtas, Proprietor M/s Ujjwal Electric Udyog, Dehri. ... Respondents

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Appearance :

For the Petitioner	:	Mr.Jai Prakash Singh, Adv.
For the State	:	Mr.Abbas Haider, SC VI
For the BIADA	:	Mr. Yashraj Bhardhan, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

9 31-10-2023 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the following relief(s) :

I. For quashing the Notice dated 25.11.2022 issued under the signature of Incharge, Industrial Y.K. Chanchal, Area Area, dehri-on- sone, Bihar, whereby and whereunder the BIADA has taken possession of the petitioner's allotted N. S. 14 (P) without plot no-giving opportunity/notice for vacating the industrial plot, situated at dehri-on- sone and in violation of the order of the Hon'ble Court.

II. For commanding the Respondents to restrain from acting upon the Notice dated 25.11.2022 which



has been issued to take possession of the petitioner's industrial plot without giving any notice to the petitioner which is illegal, arbitrary and malafide and further restraining from creating third parties right over the said plot.

III. For a direction to the respondent to allow the petitioner to established and start the industry within time as per the order dt 31.08.2022 of this high court passed in CWJC NO- 22867/2018.

IV. For any other relief reliefs for which the Petitioner is entitled too.

3. Learned counsel for the petitioner has stated that the petitioner was allotted an area of 3500 sq.ft. in the year 2010, but, the actual possession of the subject property was given only in the year 2012 and, thereafter, the petitioner invested huge amounts for setting-up the industry. However, the authority concerned without taking the same into consideration the said fact has cancelled the allotment made to the petitioner. Learned counsel has stated that the order of cancellation was challenged by the petitioner by way of appeal, but, the Appellate Authority has also dismissed the same in a mechanical manner. Aggrieved by the orders of cancellation as well as the Appellate Authority, the petitioner had earlier preferred C.W.J.C. No. 22867 of 2018 before this Hon'ble Court and this Hon'ble Court vide judgment, dated 31.08.2022, has disposed off the said Writ Petition (C.W.J.C. No. 22867 of 2018) in favour of the



petitioner. Learned counsel has stated that the authority concerned without waiting for the period as per the terms of undertaking given by the petitioner have taken the possession of the subject land on 25.11.2022 and allotted the same to the third parties, i.e., Respondent No. 7 herein. Learned counsel has stated that the act of authorities in taking over the possession forcefully without putting the petitioner on show cause notice is violative of the principles of natural justice and equity and, therefore, the said action of the respondents is liable to deprecated and set aside. Learned counsel has stated that once the petitioner has given an undertaking that he will start the commercial production within the stipulated period the authorities ought not have taken possession even before expiry of the said period, therefore, prayed this Hon'ble Court to allow the Writ Petition.

4. Per contra, the learned counsel appearing on behalf of the Respondent-BIADA has vehemently opposed the very maintainability of the Writ Petition and stated that the petitioner did not file an iota of evidence to show that the petitioner has taken any steps to start the commercial production of the unit for which the land was allotted. The learned counsel has stated that the petitioner has been allotted the land way-back in the



year 2010 and even after lapse of 13 years, the petitioner has not undertaken any steps to establish the manufacturing unit as per the terms of allotment. Learned counsel has stated that the authorities duly taking into consideration the fact that the petitioner has not taken any steps to start the production even after giving an undertaking have cancelled the allotment made to the petitioner and the same also confirmed by the Appellate Authority. That the petitioner in C.W.J.C. No. 22867 of 2018 had given an undertaking stating that he will start production within 60 days. That as per the terms and conditions of the undertaking given by the petitioner, the petitioner was obligated to start the commercial production within a period of 60 days, but, the petitioner has not taken any steps to start the production or at least install the machinery for starting the commercial production. Therefore, the authority concerned duly taking into the fact the above lapses committed by the petitioner have taken over the possession and allotted the subject property to the 7th Respondent herein. That the 7th Respondent has already started the commercial production and, therefore, prayed to dismiss the CWJC.

The learned counsel appearing on behalf of the Respondent No. 7 while adopting the arguments made by the



counsel for the BIADA has also stated that Respondent No. 7 has invested huge amounts in procuring men and machinery and they have also started the commercial production of unit. Learned counsel has stated that the Respondent No. 7 has already started commercial production in the unit. The present Writ Petition filed by the petitioner is also liable to be dismissed on the ground that the petitioner violated the terms and conditions of the undertaking given by him before this Hon'ble Court.

5. Admittedly, in the present Writ Petition the allotment made to the petitioner was cancelled in the year 2022 and thereafter the petitioner being aggrieved by the same has filed an appeal which was also dismissed by the Appellate Authority on 09.05.2018 in Appeal No. 22 of 2016. Thereafter, the petitioner has approached this Hon'ble Court by way of C.W.J.C. No. 22867 of 2018 and based on the undertaking given by the petitioner this Hon'ble Court has disposed off the said C.W.J.C. No. 22867 of 2018 on 31.08.2022. It is pertinent to note that as per the terms of undertaking given by the petitioner which are extracted below :

“Petitioner has filed an undertaking being part of supplementary affidavit dated 29.08.2022 in the following terms:



a) That the petitioner unit shall start commercial production in the unit, within 60 days, should the respondents hand over possession of the premises to the petitioner/ recall the order of cancellation, failing which he shall hand over vacant and peaceful possession of the premises to BIADA,

(b) That the petitioner shall make the unit fully operational and functional within 6 months in terms of the production sanctioned and allowed to be manufactured as per the terms of allotment,

(c) That the petitioner unit has already paid the dues amount earlier, however, if any legal dues is communicated to him, he shall make payment of the same, as on date.

(d) That the petitioner shall make compliant with all statutory requirements including that of the compliance to all -applicable labor laws.

(e) That it is stated that if the petitioner fails to comply with aforesaid undertaking, he shall hand over the vacant and peaceful possession of the premises to BLADA with liberty for further allotment to 3rd party, when the petitioner shall loose all rights therein,

(f) That the petitioner shall be liable for initiation of proceedings for contempt for having violated the undertaking furnished to the court.

In view of the aforesaid, petitioner's undertaking is accepted and taken on record.

BIADA has no objection to the order being passed, as is so being passed in similarly situated cases to augment the industrial growth within the State of Bihar.

Petitioner's undertaking that he would revive the unit within six months and make it fully operational and functional, is accepted and taken on record.



Consequence of breach thereof stands explained through the learned counsel.

6. A perusal of the above undertaking given by the petitioner shows that the petitioner was obligated to start the commercial production within a period of 60 days and, thereafter, the petitioner had to revive the entire unit within six months operational and functional, however, the petitioner has not filed an iota of evidence to show that the petitioner has taken any step to establish the unit and start commercial production as envisaged under the terms of allotment. Though the counsel for the petitioner has tried to impress upon this Court that the petitioner has invested huge amounts for starting the industry there is absolutely no evidence to support the above said submission. Except the oral statement made by the counsel nothing has been placed on record to show that the petitioner has established the unit and started commercial production. Once the petitioner has given an undertaking before this Hon'ble Court the petitioner was obligated to comply with the terms and conditions of the said undertaking. The violation of undertaking cannot be condoned. More over, as seen from the record the allotment has already been made to Respondent No. 7 on 28.01.2023 and Respondent No. 7 has invested huge amounts



for setting-up the machinery and procuring the raw material and the commercial production has also started.

7. Having regard to the above mentioned facts and circumstances, this Court does not find any reason to interfere with the action taken by the respondents-authorities in taking over the possession of the subject property. This Court does not find any merits in the present Writ Petition which warrants any interference or for granting the relief claimed by the petitioner, the Writ Petition is devoid of merits and the same is accordingly **dismissed**.

8. However, it is made clear that this order does not prevent the petitioner from filing a fresh application to the authorities for allotment of any other land. In case the petitioner makes any such application the same shall be considered on its own merits strictly in accordance with law, without reference to the order of cancellation or the order passed by this Court.

(A. Abhishek Reddy , J)

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