

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1047 of 2023

M/s Purwa Industries A proprietorship Firm, having its office at Zara Toli, Anandi, Ormanjhi, District- Ranchi, State- Jharkhand, through its proprietor Vivek Kumar (Male) aged about 33 years, S/o Anand Kishore Gupta, R/o 2nd Street, Church Road, P.S.- Lower Bazar Thana, District- Ranchi, Jharkhand.

... .. Petitioner/s

Versus

1. The Bihar Industrial Area Development Authority (BIADA) Udyog Bhawan, Gandhi Maidan, Patna through its Chairman cum- Managing Director.
2. The Chairman cum Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
3. The Joint Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
4. The Executive Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
5. The DGM, Industrial Area, Patna Cluster, Bihar Industrial Area Development Authority (BIADA), Patna.
6. The Bihar State Financial Corporation, Patna, through its Managing Director.
7. Managing Director, The Bihar State Financial Corporation, Patna.
8. M/s Saawra Foods having its office at Gulzarbag Station Rd, Gulzarbagh, Meena Bazar, Sadikpur, Patna, Bihar - 800007.

... .. Respondent/s

with

Miscellaneous Jurisdiction Case No. 2560 of 2023

In

Civil Writ Jurisdiction Case No.1047 of 2023

In Suo Motu cognizance taken by the Honble Court for initiation of contempt proceeding vide Honble Courts order dated 11.08.2023 passed in CWJC No. 1047/2023

... .. Petitioner/s

Versus

M/s Saawra Foods having its office at Gulzarbagh Station Road, Gulzarbagh, Meena Bazar, Sadikpur, Patna, Bihar, Pin-800007

... .. Opposite Party/s

Appearance :

(In Civil Writ Jurisdiction Case No. 1047 of 2023)

For the Petitioner/s	:	Mr. Pushkar Narain, Sr. Adv.
	:	Mr. Brisketu Sharan Pandey, Adv.
For the Respondent/s	:	Mr. Lalit Kishore, Sr. Adv.
	:	Mr. Aijt Kumar, Adv.
For Respondent No. 6	:	Mr. Arjun Kumar, Adv.
For BSFC	:	Mr. Abhimanyu Pratap, Adv.

(In Miscellaneous Jurisdiction Case No. 2560 of 2023)



For the Petitioner/s : Mr. X
For the Opposite Party/s : Mr. Arjun Kumar

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
CAV JUDGMENT

Date : 07-10-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

reliefs:-

“A. For issuing appropriate writ including a writ of certiorari and thereby quashing the letter dated 29.12.2022 whereby and whereunder the petitioner was informed (by Respondent No 5) regarding rejection of his application for transfer of Plot No C-1 admeasuring 15000 square feet of industrial land (in the Industrial Area Fatuha) by the Respondent No. 2 without any justifiable reason whatsoever.

B. For issuing a writ in the nature of mandamus or any other appropriate writ directing the Respondent Authority to bring on record the orders or letters by which the land auction- purchased by the petitioner bearing Plot No. C1, Industrial Area, Fatua (herein after referred to as "The Land") has been allotted to new allottee.

C. For issuing a writ in the nature of certiorari or any other appropriate writ quashing the orders or letters so produced, by which the land auction-purchased by the petitioner bearing Plot No. C1, Industrial Area, Fatua has been allotted to new allottee.

D. For issuing a writ of mandamus directing the respondents to produce the letter whereby and whereunder the request of the petitioner for transfer of the land in favour of the petitioner was rejected by the Respondent No 2 but the copy of the same was never served to the petitioner; the petitioner also prays for quashing of the said letter once the same is produced.

E. For issuing a writ of mandamus directing the Respondent Authority to hand over the possession of the Land to the Petitioner.

F. For issuing appropriate order (s) staying all further proceedings and consequential actions pursuant to the allotment of land to the new allottee.

G. For passing such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.”



3. Shorn of details, the facts in the present writ petition necessary for adjudicating the issues involved are that the petitioner has purchased the leasehold rights in auction held by the Bihar State Financial Corporation i.e., the respondent No. 6 herein in an open auction. The original allottee in whose favour the allotment was made by BIADA has mortgaged the subject property to the respondent No. 6 and due to the non-payment of the loans due to the respondent No. 6, the subject property was put to open auction. The petitioner being the highest bidder, the agreement of sale was entered between the petitioner and the respondent No. 6 on 10.01.2014. Thereafter, the petitioner has paid the entire amount due to respondent No. 6 and 'No Dues Certificate' was issued to the petitioner on 31.01.2017.

4. It is the case of the petitioner that he has been taking necessary steps for getting the requisite loans and permissions for setting up the unit. That in the said process he has applied for transfer of the subject land in his name to the BIADA on 27.08.2020. That the petitioner was willing to pay the necessary transfer fee and other fees for transferring the plot into his name. That vide letter dated 14.01.2020, the petitioner was informed to submit certain documents for finalising the transfer. That due to the Covid-19 Pandemic which commenced in the month of March



2020, the petitioner could not submit the necessary documents to the respondents. After that the petitioner procured the necessary documents, he submitted the same in the Month of September 2020. Thereafter, the authority on 09.12.2022 issued a letter calling for his explanation for approaching the authority after a period of seven years from the date of purchase. That the petitioner vide letter dated 17.12.2022 informed the BIADA the reasons for delay in applying for the transfer. However, the authority without considering the same, has vide letter dated 29.12.2022 informed the petitioner that the application made by the petitioner was cancelled by the Chairman-cum-Managing Director (MD) on 06.09.2022 itself on the ground that there was delay in making the transfer application.

5. Learned counsel for the petitioner has argued that the letter dated 29.12.2022 informing the petitioner that the transfer of the land was rejected by the Managing Director on 06.09.2022 is an antedated one, concocted for the purpose of defeating the rights of the petitioner and against the principle of natural justice and equity. That the authority did not take into consideration the explanation submitted by the petitioner stating that the 'No Dues Certificate' was issued by the respondent No. 6 only in the year 2017. The contention of the authorities that the petitioner has



approached them with a delay of seven years for seeking transfer of the land is factually not correct and without any legal basis. Further, the authorities have not taken into consideration the Covid-19 Pandemic situation prevailing in the entire country. That the entire country was under lock down, and, therefore, the petitioner could not submit the documents which were sought by the BIADA. Further, it is stated that the cancellation order dated 06.09.2022 purported to have been issued by the Chairman-Managing Director BIADA on 06.09.2022 is a false and concocted one made only for the purpose of defeating the rightful claim of the petitioner. Learned counsel has stated that the authorities did not have the power to reject his application as he is not an allottee of BIADA but an auction purchaser from the respondents. That a registered lease deed was executed in his favour by the respondent No. 6 and the application for transfer of the property in the name of the petitioner is only a consequential one. Learned counsel has further stated that as on the date the authorities have not brought on record the purported rejection order dated 06.09.2022. Except the letter dated 29.12.2022 stating that the Chairman-cum-Managing Director had taken a decision on 06.09.2022 to reject the application of the petitioner, till date the purported letter of rejection has not been served on the petitioner nor brought on



record. Learned counsel has stated that as per the provisions of the BIADA Act, the Managing Director did not have any authority to reject the transfer application made by the petitioner. Learned counsel has further stated that the purported taking of possession by the authority is also a false one as the entire unit is enclosed with a compound wall, under lock and key of the petitioner and till date the petitioner is in physical possession of the same. Learned counsel has also stated that allotment made subsequently to the respondent No. 08 is also a post haste decision taken by the authorities only to defeat the rights of the petitioner herein. That even before the order of rejection was passed, the authorities have taken a conscious decision to allot the subject property to the respondent No. 08 and rejected the application made by the petitioner in a whimsical and arbitrary manner. Learned counsel for the petitioner has relied on the judgment of this Hon'ble Court in the case of **Deepak Paints (P) Ltd. v. State of Bihar** reported in **2008 (2) PLJR** to buttress his case. Learned counsel has therefore, prayed this Hon'ble to set aside the impugned order passed and also the subsequent allotment made to the respondent No. 08.

6. Learned counsel appearing on behalf of the BIADA has stated that the petitioner having purchased the leasehold rights in the year 2013 has made the application for transfer only in the



year 2019 i.e., after a lapse of almost seven years. Further, learned counsel has stated that the petitioner did not take any steps to set up any manufacturing unit till date. That the petitioner having stepped into the shoes of the original allottee ought to have taken a necessary steps for setting up the unit and started the commercial production but even after a lapse of almost nine years, the petitioner did not take any steps. That the authority left with no other option has rightly rejected the transfer application made by the petitioner.

7. Learned counsel for the respondent No. 8 has also vehemently opposed the very maintainability of the present writ petition and stated that the petitioner does not have the bona fides to start an industry. That the petitioner did not take any steps for a period of more than nine years to set up any industry. That the authorities duly taking into consideration the fact that the petitioner has not complied with the conditions imposed by the BIADA authority have rightly rejected the same. Further, it is stated that the respondent No. 08 is a bona fide allottee who has applied to the authorities when the subject property was advertised. That the respondent No. 08 has paid substantial amounts to BIADA towards the allotment of the land and also invested huge amounts for starting the unit and is making



necessary civil constructions. Learned counsel has therefore, prayed for dismissing the present CWJC.

8. Admittedly as seen from the record, the petitioner is an auction purchaser having purchased the leasehold rights in respect of a plot which was originally allotted to one M/s Bihar Rubber Products. Due to the default committed by the said industry, the respondent No. 6 has put the subject property to auction and the petitioner has purchased the same after the same was published in the newspapers. The agreement of sale was entered in the year 2014, and the petitioner was granted four years time for paying the amounts due to the respondent No. 6 i.e., still January 2018. The petitioner has paid the entire amounts due to the respondent No. 6 within a period of four years i.e., by the year 2017 and was issued 'No Objection Certificate'. The petitioner thereafter, has applied to the respondent BIADA for transfer of the said plot in his name on 27.08.2019, the respondent BIADA vide letter dated 14.01.2020 had informed the petitioner to submit some documents for finalising the transfer process. Admittedly, during this period the entire world was in the grip of Covid-19 Pandemic starting from the fag end of 2019, thereafter, the entire country was under lock down from March 2020 on wards. There was no way the petitioner could have submitted the required documents to the



BIADA authorities when the entire country was under lock down. The petitioner has submitted the documents subsequently in the year 2022 vide letter dated 06.09.2022, however, the authorities for reasons best known to them have kept quiet and issued a letter dated 09.12.2022 (Annexure-P/4) seeking an explanation from the petitioner as to why he has kept quiet for a period of almost seven years before applying for the transferring the subject property into his name. The petitioner has submitted his reply on 17.12.2022, however, the authorities vide letter dated 29.12.2022 communicated to the petitioner that the Chairman-cum-Managing Director had taken a decision to reject the application for transfer on 06.09.2022 itself. The copy of the rejection has not been served on the petitioner nor the same has been produced by the respondent-BIADA along with its counter-affidavit. The rejection order dated 06.09.2022 appears to be a sham and concocted one (if at all it is in existence), had the said decision being taken by the M.D., on 06.09.2022 itself the authorities could have communicated the same to the petitioner and could not had issued the show cause notice dated 09.12.2022 asking for his explanation. When the decision was already taken by the M.D., on 06.09.2022 rejecting the application of the petitioner, the question of asking the petitioner for an explanation vide letter dated 09.12.2022



cannot be countenanced. Further, as seen from the record, the petitioner was not given any show cause notice or his explanation sought for before a decision was taken by the Chairman-cum-Managing Director while taking a decision to reject his application on 06.09.2022. A Division Bench of the this Hon'ble Court in the case of **Deepak Paints (P) Ltd. v. State of Bihar** reported in **2008 (2) PLJR** has held as under;

“23. From the varying submissions which have been made by the contending parties to the present dispute, the Court records its opinion as under on the issues:-

1. For the reasons stated and indicated in the earlier part of the order the writ applications filed on behalf of the petitioners against the action taken by the Managing Director or his nominees are maintainable before this Court as their acts of omission and commission relate to the exercise of power under the ambit of a statute and the Act and not under the lease agreement.

2. The power of cancellation under Section 6(2) of the Act is vested in the "Authority" i.e. the Board of Directors of which the Managing Director is a part. In view of the same any unilateral exercise of power of cancellation under Section 6(2) of the Act by the Managing Director or his subordinates is an illegal exercise of authority de hors the law and the same are liable to be struck down. The power of cancellation under Section 6(2) has to be exercised by the "Authority" and none else. Therefore, in all such matters the power of cancellation exercised by the Managing Director is de- clared null and void.

3. Since steps taken by the Managing Director or his subordinates in the direction of cancellation of lease, repossession, resettlement or auctioning is an illegal exercise of power, the BIADA authorities would be liable to restore pos- session and hand over the land, property, plant and machinery to the respective lessees as if the power under Section 6(2) was never exercised against them.



4. The power of allotment and cancellation of land under Rule 3(1) of 1981 Rules is vested in the Managing Director only to the extent of initial allotment and cancellation and not beyond. This exercise of power vested in the Managing Director under the Rule cannot be read to confer on him and all inclusive power or authority exercisable under the Act muchless section 6(2).

5. In all such matters where a lease agreement stands executed and concluded and the parties have thereafter enjoyed the lease hold property the only way the respondent BIADA authorities can dispossess them would be by moving a Civil Court of competent jurisdiction by adopting due process of law and only on such a declaration in favour by the competent court in this regard.

6. Any third party interest which may have/has been created because of such illegal acts of BIADA will not create any right, title or interest in the leased property since a right or claim flowing from an illegal act will not confer any legal right in them.”

9. The above decision has attained the finality and the same is binding on this Court.

10. Further, it is to be noticed that the authority vide letter dated 29.12.2022 has stated that a decision was taken by the Chairman-cum-Managing Director on 06.09.2022 rejecting the transfer application and the same was informed to the petitioner on 29.12.2022 (Annexure-P/6), the possession of the subject property is taken on 07.01.2023. The taking of possession even if true is contrary to the guidelines issued by the authority themselves, which reads as under;

“1. CASES IN WHICH THE RESUMPTION OF POSSESSION SHALL REMAIN STAYED



1.1 The Authority shall resume possession of the land/shed under section 6(2)(b) of the BIADA Act after one month since the date of passing of the order of cancellation of allotment of the land if the allottee does not prefer an appeal under section 6(2)(a) of the BIADA Act before the State Government within one month and if the allottee prefers an appeal, the possession shall not be resumed during pendency of such appeal.

1.2 If the appeal preferred by the allottee under section 6(2)(a) of the BIADA Act before the State Government is dismissed, the Authority shall resume possession of the land in accordance with the procedure under clause 3 of the Policy.

1.3 In the presence of a stay order issued by the Hon'ble High Court or any competent court of jurisdiction prior to the initiation of resumption of possession, the process shall remain suspended until the date when the stay order/ no coercive action subsequently vacated. During this period, no action shall be taken to resume possession in adherence to the legal requirements and due process dictated by the prevailing stay/no coercive action/no third party allotment order.

2. PROCEDURE OF RESUMPTION OF POSSESSION

2.1 If the allottee fails to file an appeal within the prescribed period of one month or if the appeal is dismissed by the Appellate Authority, and no stay/no coercive action order has been issued by any competent court of jurisdiction, the Cluster Incharge (DGM ID) concerned shall duly serve a notice upon the allottee, allowing a period of one week for voluntary surrender of possession. The notice shall be delivered to the allottee or representative of the allottee at the registered address of the unit through registered post, electronic means such as email or WhatsApp. In the event that the allottee or representative is not present at the unit or refuse to take the notice and diligent efforts to serve the notice have been made, it



shall be affixed to a conspicuous part of the unit's boundary or at the primary entrance gate, in the presence of two witnesses.

2.2 A proof of service of such notice shall be preserved in official records at cluster office.

2.3 On the designated date and time, the duly authorized Area Manager/Asst. Area Manager shall effectuate the process of possession resumption for the unit's land and shed, if applicable, in the presence of the allottee, should they choose to be present.

i. Comprehensive visual documentation, both internally and externally, shall be made capturing conclusive photographic evidence substantiating the handover of possession for future reference.

ii. An inventory list shall be prepared, providing comprehensive details of the unit's existing physical condition and layout at the time of resumption of possession encompassing all pertinent elements, including but not limited to any constructions or structures such as buildings or sheds, presence of machinery or equipment, raw materials, and any other relevant articles over the land. A copy of the inventory list shall be furnished to the allottee, should they be present during the process.

iii. If, at the time of resumption of possession, the unit is locked and allottee is not present, the Authority shall take constructive possession over the land by putting a lock of BIADA and affixing a notice to that effect on any conspicuous part of the boundary of the unit or at the main entrance gate. A formal certificate, denoting the takeover of possession and including the inventory to the extent practicable, shall be prepared and forwarded to the allottee, along with a request to promptly remove the lock, failing which shall necessitate the removal of the lock by the Magistrate, as per prevailing legal procedures.

iv. In case of any resistance or obstruction encountered by the allottee during the possession resumption process, appropriate assistance shall be sought through the involvement of the



District/Police Administration, ensuring the maintenance of law and order.

V. The signatures of two witnesses, preferably independent, shall be procured on the possession documents and inventory list. In the event that independent witnesses are not available, the signatures of BIADA personnel present at the site shall be duly obtained, accompanied by a declaration stating the unavailability of independent witnesses during the inventory and possession resumption process.

vi. A copy of the possession letter, inventory list, and accompanying photographs shall be expeditiously transmitted via email to the Executive Director (E.D.) concerned/ DGM (Legal) on the same day. If any writ petition has been filed by the allottee before the Hon'ble High Court, the notification of possession taken by BIADA shall be promptly conveyed to the legal counsel representing BIADA, ensuring that the Hon'ble High Court is duly informed at the earliest opportunity.

vii. Following the successful possession resumption of the plot/shed, the allottee shall be granted a grace period of 15 days to remove their plants and machinery and any other relevant articles, failing which shall result in the initiation of auction proceedings for the aforementioned assets.

viii. Where any auction has been taken against such plant and machinery and other relevant articles, all costs, charges and expenses which, in the opinion of the authority, have been incurred by him or any expenses incidental thereto, shall be recoverable from the proceeds of auction, to be held by the authority in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of BIADA and the residue of the money so received shall be paid to the allottee entitled thereto in accordance with his rights and interests.

3. The contents of this order may be brought to the notice of all concerned in the Authority for strict adherence.”



11. Further, the allotment of the land to respondent No. 08 appears to be a hasty decision taken by the authorities to defeat the claim of the petitioner. Once the initial order of rejection is found to be bad, the subsequent action taken by the authority in allotting the land to the private respondent No. 8 cannot survive on its own. Though, the learned counsel for the respondent No. 8 has stated that he has spent considerable amount towards the construction and he will suffer irreparable loss, the same cannot be a ground for sustaining the order passed by the authority. At the time of admission on 04.07.2023 the counsel appearing on behalf of respondent No. 8 has stated that his client has stopped the construction and no construction is being taken. On the said undertaking being given, the interim orders were not passed and respondent No. 8 was directed to file the photographs of the site. However, the respondent No. 8 contrary to the said undertaking has commenced the construction therefore, this Court was constrained to pass an order on 11.08.2023 restraining the respondent No. 8 from making any further construction. There cannot be any equities in favour of a person who has deliberately violated the undertaking given before this Court.

12. In view of the above mentioned facts and circumstances, the impugned order dated 29.12.2022 passed by the



respondent No. 05 rejecting the application made by the petitioner for transfer in his favour is set aside and the allotment made in favour of the respondent No. 8 is also set aside. The respondents are directed to put the petitioner in possession of the subject property forthwith. However, in case the petitioner is desirous of taking any alternate site, the authorities shall take necessary steps for allotting the same.

13. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	27.06.2024.
Uploading Date	20.11.2024.
Transmission Date	NA

