

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1099 of 2024

In
Civil Writ Jurisdiction Case No.1904 of 2024

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M/s. Bihar Trade Towers Pvt. Ltd. (Earlier known as M/s. Aishwarya Foundation) Having its Registered Office at 46, Patliputra Colony, Near Sahyog Hospital, Patna - 800013 through its Authorized Signatory, Anand Kumar, Male, Aged about 38 years, son of Sri Jai Nandan Prasad, Resident of Near Shivajee Mandir, Gandhi Mela Path, Tundi Road, P.S. Govindpur, District Dhanbad (Jharkhand)

... .. Petitioner/s

Versus

1. The State of Bihar through the Sri Chaitanya Prasad, Development Commissioner cum Chairman, State Investment Promotion Board, Government of Bihar, Main Secretariat, Patna.
2. Sri Sandip Pondrik, The Additional Chief Secretary, Department of Industry, Government of Bihar cum Chairman and Managing Director, Bihar Industrial Area Development Authority, Bikas Bhavan, Bailey Road, Patna.
3. The Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, Patna through Sri Sandip Pondrik, its Chairman cum Managing Director, Patna.
4. Sri Sandip Pondrik, The Additional Chief Secretary cum Managing Director, Bihar Industrial Area Development Authority, Udyog Bhavan, Gandhi Maidan, Patna
5. Sri Chandra Shekhar Singh, The Executive Director, Bihar Industrial Area Development Authority, Udyog Bhavan, Gandhi Maidan, Patna.
6. Sri Soumya Verma, Deputy General Manager, Bihar Industrial Area Development Authority, Udyog Bhavan, Gandhi Maidan, Patna Cluster, Patna.

... .. Opposite Party/s

with

Civil Writ Jurisdiction Case No. 1904 of 2024

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M/s Bihar Trade Towers Pvt Ltd earlier known as M/S Aishwarya Foundation, Regd. Address- 46, Patliputra Colony, Near Sahyog Hospital, Patna- 800013 Unit Address- Plot No. E2- E3, Patliputra Industrical Area, Patna- 800013 through its Authorized Signatory namely Anand Kumar, Male, Aged about 38 years, Son of Shri Jai Nandan Prasad, Resident of Near Shivji Mandir, Gandhi Mela Path, Tundi Road, P.S.- Govindpur, District- Dhanbad (Jharkhand).

... .. Petitioner/s

Versus

1. The State Of Bihar through the Development Commissioner-cum-Chairman of State Investment Promotion Board, Government of Bihar, Patna.
2. The additional Chief Secretary, Industries Department-cum-Chairman and



Managing Director, Bihar Industrial Area Development Authority (BIADA), Patna, Bihar.

- 3. The Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna through its Chairman-cum-Managing Director.
- 4. The Additional Chief Secretary-cum-Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
- 5. The Executive Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
- 6. The Deputy General Manager, BIADA, Patna Cluster, Patna.

... .. Respondent/s

Appearance :

(In Miscellaneous Jurisdiction Case No. 1099 of 2024)

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Adv.
: Mr. Mohit Agarwal, Adv.
: Mr. Vishal Kumar, Adv.
For BIADA : Mr. Lalit Kishore, Sr. Adv.
: Mr. Avinash Kumar, Adv.
: Mr. Ajay Kumar Mehta, Adv.

For the Opposite Party/s : Mr. Standing Counsel 3

(In Civil Writ Jurisdiction Case No. 1904 of 2024)

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Adv.
: Mr. Mohit Agarwal, Adv.
: Mr. Vishal Kumar, Adv.
For BIADA : Mr. Lalit Kishore, Sr. Adv.
: Mr. Avinash Kumar, Adv.
: Mr. Ajay Kumar Mehta, Adv.
For the Respondent/s : Mr. Standing Counsel (3)

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

Date : 07-10-2024

Civil Writ Jurisdiction Case No. 1904 of 2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following reliefs:-

“a) For quashing of the order dated 24.01.2024 under the signature of the Deputy General Manager, BIADA, Patna Cluster, Patna communicated vide letter No. 84 dated 24.01.2024 by which the Industrial Plot No. E2 & E3 having area of 72527 sq. ft. in the Patliputra



Industrial Area, Patna of the petitioner for setting up an I. T. Park has been cancelled by restoring an earlier order of cancellation dated 16.01.2020 (which was set aside in Appeal earlier) in most arbitrary and malafide manner and being wholly without jurisdiction and without any authority of law;

b) For quashing of the order dated 24.01.2024 by the Respondent Deputy General Manager, Bihar Industrial Area Development Authority, Patna Cluster, Patna restoring the earlier order of cancellation dated 16.01.2020 by the then Executive Director under the direction of the then Managing Director, being wholly illegal and without any authority of law;

(c) For quashing the order dated 16.01.2024 passed by the Chairman cum Managing Director cum Additional Chief Secretary, Department of Industries, Government of Bihar by which he has directed the Petitioner to deposit a sum of Rs. 20.00 lakhs and a Bank Guarantee of Rs. 50.00 Lakh to be treated as voluntary act as the Chairman cum Managing Director was doing it to extend one year time for completion of construction of building of I.T. Park which is under construction at an advance stage;

d) For a declaration that in terms of Section 6(2)(a) of BIADA Act, the provision of appeal before the State Government has been made illusory as the Managing Director who is the part of the authority is exercising the power of appeal which is to be exercised by the State Government, therefore, no appeal could have been preferred or can be preferred before the Managing Director in the facts of the present case;

(e) For restraining the Respondents from taking any action to dispossess the Petitioner from Plot Nos. E-2 & E-3 as such action is wholly without any authority of law and not sanctioned by the provisions of the BIADA Act;

(f) For a direction to the Respondents to allow the Petitioner and not to



make any disturbance in completing the remaining work in its project;

(g) For restraining the respondents to create any third party right in haste by denying the petitioner to avail the remedy for which is entitled in the law; and to grant such other relief or reliefs before this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. It is the case of the petitioner that the petitioner had purchased the subject property from one Asset Reconstruction Company. That the original allottee had mortgaged the property to a financial institution and as the original allottee could not repay the loan amounts due to the financial institution, the leasehold rights of the subject property were auctioned. That the petitioner had participated in the auction and being the highest bidder, was given the leasehold rights in perpetuity and registered documents were executed in his favour.

4. Learned counsel for the petitioner has stated that the subject matter of the property are Plots Nos. E-2 & E-3 total admeasuring 72,527 Sq. ft. The petitioner thereafter, had approached the respondent/ authorities for mutating his name and after payment of the amounts as demanded by the respondent-BIADA, the name of the petitioner was mutated. Further, it is stated as it was not feasible for starting the steel industry which was the original purpose of allotment of the original allottee, the petitioner applied for change of industry from steel industry to



construction of I.T. Park and the said permission was granted by the authority concerned vide Memo No. 529 dated 18.03.2013. Learned counsel has stated that the petitioner thereafter has started the necessary work for construction of the I.T. Park but, due to several logistic problems, he could not start the project in time. That the petitioner after overcoming the initial difficulties faced by him and getting the necessary approvals from the concerned Department, started the construction in the right earnest. That as on the date of passing of the impugned order of cancellation, the petitioner had constructed basement, ground floor plus five floors. Learned counsel has stated that in the year 2020, the official respondents without any valid reason had cancelled the allotment made to the petitioner and aggrieved by the order of cancellation, the petitioner has approached the appellate authority who vide order dated 08.03.2021 in Appeal No. 12/2020 has allowed the appeal by setting aside the order of cancellation dated 16.01.2020 and granting a further period of two years time to the petitioner to complete the construction. Learned counsel has stated that the time period of two years granted by the appellate authority came to an end in the month of February, 2023. That the petitioner has again approached the appellate authority by way of application dated 12.09.2024 seeking extension of the time period by a further



period of one year. However, the appellate authority imposed a condition while proposing to grant extension directing the petitioner to pay an amount of Rs. 20,00,000/- to BIADA as compensation and also furnish a bank guarantee of Rs. 50,00,000/- for extending the time period vide order dated 16.01.2024. That even before the petitioner could respond to the order dated 16.01.2024 passed by the appellate authority, the impugned order dated 24.01.2024 has been passed by the authority cancelling the allotment made to the petitioner by reviving the earlier order of cancellation dated 16.01.2020 which was already set aside by the appellate authority vide order dated 08.03.2021. Learned counsel has stated that once the order of cancellation has been set aside by the appellate authority, the question of reviving the said order by the original authority cannot be permitted and it is against the well established principles of law. Further, learned counsel has stated that no show cause notice was given to the petitioner before the order of cancellation dated 16.01.2020 was passed. Learned counsel has further stated that once the application made by the petitioner for extension of the time was pending adjudication by the appellate authority, the original authority ought not to have passed the order of cancellation impugned in the present writ petition. That when the authorities were trying to take back



physical possession of the subject property in a high-handed manner, the petitioner had to approach this Hon'ble Court and this Court vide order dated 02.02.2024 had granted the interim protection to the petitioner. Learned counsel for the petitioner has therefore, prayed for setting aside the impugned order dated 24.01.2024 and also the order dated 16.01.2024 passed by the appellate authority and grant sufficient time to the petitioner to complete the project.

5. *Per contra*, the learned Senior Counsel, Mr. Lalit Kishore, assisted by Mr. Avinash Kumar counsel appearing on behalf of the respondent-BIADA has vehemently opposed the very maintainability of the present writ petition and stated that the present writ petition is liable to be dismissed on the sole ground that the petitioner has an alternative and effective remedy of filing an appeal before the appellate authority. Learned counsel has stated that the petitioner has purchased the leasehold rights in an auction more than 14 years back and the petitioner has not made any progress in establishing the hotel. That the petitioner is taking his own sweet time to complete the construction of the I.T. Park. Learned counsel has further stated that the authority concerned duly taking into consideration the fact that the petitioner has miserably failed in making any progress in the construction of the



hotel has rightly cancelled the allotment made and there is nothing wrong in the impugned order which warrants any interference by this Court. Learned counsel has therefore, prayed this Court to dismiss the present CWJC.

6. Admittedly in the present case as seen from record, the petitioner is not the original allottee of the subject property but he is an auction purchaser from one Asset Reconstruction Company. The petitioner has purchased the leasehold rights by way of registered documents and, thereafter, he has approached the authorities for mutating his name and also for change of product. The petitioner has informed the authority that it could not be feasible to set up a steel industry and the product was changed to construction of I.T. Park. The fact that the petitioner has started the construction of I.T. Park has not been denied either in the counter-affidavit or in the impugned order.

7. A perusal of the impugned order, the site inspection reports and also the photos filed by the parties clearly establish the fact that the petitioner has started the construction of I.T. Park. The reasons for delay in completing the construction as stated by the petitioner is due to the Covid Pandemic situation which was in existence from the year 2020 till the end of 2021 appear to be true. Further, as seen from the record, the petitioner has been making



the construction of the I.T. Park and admittedly even as per the orders passed, the photos filed and the inspection reports, the petitioner has already completed basement, ground floor plus five floors as on the date of passing of the impugned order. Therefore, it cannot be said that the petitioner has been sitting idle and doing nothing or that there is no progress in the construction. Irrespective of the fact that the petitioner has been making any construction or not, a perusal of the impugned order reveals that the order of cancellation dated 16.01.2020 which was set aside by the appellate authority vide order dated 08.03.2021 has again been revived by the original authority. Once an order has been set aside by an appellate authority or by a superior forum, the original authority will not have any jurisdiction to revive the earlier order. For all purpose the earlier order of cancellation dated 16.01.2020 was not in existence and therefore, the question of reviving the same does not arise. If at all the respondents wanted to take any action against the petitioner, they ought to have put the petitioner on fresh notice seeking an explanation as to why the allotment should not be cancelled as the petitioner had failed to complete the construction within the time granted by the appellate authority. But they cannot revive the earlier order of cancellation which was admittedly set aside by the appellate authority and not in existence for all



purposes. Further, the application made by the petitioner seeking extension of the time was pending before the appellate authority and the next date of hearing was put on 25.01.2024 however, the impugned order of cancellation was passed on 24.01.2024 itself, that too without putting the petitioner on prior notice. Irrespective of the fact as to whether subsequently the appellate authority had dismissed the application/ appeal filed by the petitioner as withdrawn or not, the fact remains that the impugned order dated 16.01.2020 passed by the authority reviving the earlier order of cancellation already set aside by the appellate authority has to be held as one without jurisdiction, illegal, bad, arbitrary exercise of powers not vested with the authority, non-est in the eyes of law and therefore, liable to be set aside and is accordingly set aside. Further, it is to be noted that the petitioner has already completed basement, ground floor plus five floors, therefore, this Court is of the opinion that the ends of justice would be best served if the petitioner is directed to give an undertaking to the authority concerned stating that he will complete the civil construction and commence operation within a period of one year from the date of putting the petitioner in possession. The petitioner shall also submit a bank guarantee for the sum of Rs. 25,00,000/- along with the undertaking. Both the undertaking and bank guarantee will be



given to BIADA within a period of two weeks from the date of receipt of a copy of this order. On such undertaking along with bank guarantee being given, the official respondents shall forthwith unseal the premises and permit the petitioner to continue the construction work. The petitioner shall complete the civil construction and commence operation of I.T. Park within a period of one year from the date of handing over the possession.

8. It is made clear that the amount of Rs. 25,00,000/- in the form of bank guarantee furnished by the petitioner will be treated as a performance guarantee and in case of default by the petitioner to complete the civil construction and commence the operations of the I.T. Park within the stipulated time granted by this Court, the respondent authorities are free to encash the bank guarantee and take necessary steps to cancel the allotment, in accordance with law and as per the procedure contemplated under the Bihar Industrial Area Development Authority Act, 1974.

9. With the above directions, the present writ petition stands allowed to the extent indicated.

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In view of the orders passed in the main writ petition, the MJC is closed. However, with a caveat to the opposite party(s) that when the cases are pending adjudication before the High



Court, the authorities should not try to overreach the orders of this Court. The act of the opposite party(s) in sealing the subject premises, is contrary to the undertaking given before this Court and contemptuous. However, this Court is restraining itself from passing any orders in the MJC and closing the MJC with a caution that such acts of defiance will not be appreciated or tolerated in future.

2. The present MJC is closed accordingly.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	08.07.2024.
Uploading Date	08.10.2024.
Transmission Date	NA

