

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2619 of 2023

Roshan Lal Mishra, aged about 47 years, Male, Son of Late Ganga Sagar Mishra, Resident of Bangali Tola, Buxar, Post Office and Police Station-Buxar, District- Buxar, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industry, Government of Bihar, Patna.
2. The Managing Director, Bihar Industrial Area Development Authority, Patna.
3. The Joint Managing Director, Bihar Industrial Area Development Authority, Patna.
4. The Deputy General Manager, Patna Cluster, BIADA, 1st Floor, Udyog Bhawan, Gandhi Maidan.
5. Regional Assistant Manager, Industrial Area, Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Pathak, Advocate.
For the Respondent/s : Mr. Vikash Kumar, SC 11.
For the BIADA : Mr. Prashant Pratap, Advocate.

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

3 25-04-2024 Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the following reliefs:-

“(i) For setting aside the order dated 26.12.2022 passed by the Respondent No. 3, the Joint Managing Director, Bihar Industrial Area Development Authority (hereinafter referred to as ‘The BIADA’) whereby and whereunder the Respondent No. 3 has cancelled the allotment of 7500 Sq. Ft. land appertaining to plot No. B-24 in the name of Sarvshri Buxar Udyog owned and operated by the Late father of the petitioner.

(ii) For directing the respondents to



allow the transfer of the aforesaid allotment in the name of the petitioner, son of the Late allottee Ganga Sagar Mishra after withdrawing the letter No. 490 dated 15.11.2022 under which the application for transfer by the petitioner was rejected.

(iii) For directing the respondents to extend the benefit of amnesty granted in the light of the order dated passed by the Hon'ble High Court in CWJC No. 6883 of 2020."

3. Learned counsel appearing on behalf of the petitioner has stated that initially the subject Unit was allotted in the name of the father of the petitioner and, thereafter, his father became sick and died in the year 2021. That immediately, thereafter, the petitioner has made an application for change of the name, however, the authorities without giving any valid reason have rejected the application made for change of the name of the proprietorship. That subsequently the authorities have cancelled the allotment on the ground that the petitioner is not running the Unit. Learned counsel has stated that the petitioner has submitted number of documents to substantiate that the Unit was in production but the same was not taken into consideration by the authority. Learned counsel has, therefore, prayed this Court to set aside the impugned order and remand the matter back to the authorities for considering the matter afresh duly taking into account the documents submitted by the petitioner.



4. Per contra, the learned counsel for the respondents has vehemently opposed the very maintainability of the present writ petition and stated that in spite of giving several opportunities to the petitioner, the petitioner has failed to keep the Unit in production. That even as per the own admission of the petitioner, the petitioner has kept the Unit idle. Further, it is stated that though the petitioner has been granted the opportunity under the amnesty policy, the petitioner has failed to avail the same, therefore, left with no other alternative the authorities have cancelled the allotment. Learned counsel has stated that the petitioner is having an alternative and effective remedy of filing an appeal before the Additional Chief Secretary-cum-Chairman of the Respondent-BIADA but without availing the said statutory remedy, he has straightway approached this Court by way of the present writ petition.

5. The Hon'ble Supreme Court in the case of ***Thansingh Nathmal Vs. Superintendent of Taxes, Dhubri & Ors.*** reported in 1964 SCC OnLine SC 13 has held as under:-

“.....The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it



will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming Jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

6. Having regard to the above made submission, without going into the merits or demerits of the case, the present writ petition is disposed of granting liberty to the petitioner to avail the alternate remedy of filing an appeal before the competent authority within a period of four weeks from today. In case, any appeal is filed, the same shall be entertained and necessary orders passed on merits duly taking into consideration the grounds raised and documents filed by the petitioner.

7. It is needless to mention that before passing any



order the petitioner shall be put on notice and given an opportunity of hearing. The entire exercise shall be completed as expeditiously as possible preferably within a period of twelve weeks from the date of receipt of the appeal. Any order passed shall be communicated to the party. The Interim order granted by this Hon'ble Court on 21.03.2023 directing the authorities not to create any third party interest shall continue till the appeal is filed. In case, any interlocutory application is filed by the petitioner seeking suspension of the order of cancellation, the same shall be considered on merits in accordance with law.

8. With the above directions, the present Writ Petition stands **disposed of** to the extent indicated.

(A. Abhishek Reddy, J)

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