

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3097 of 2023

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M/s New Janta Shauchalay @ M/s New Janta Sauchalay through its
Proprietor Shambhu Prasad Pal @ Sabhu Prasad Pal Resident of Silwatiya
Bargon, Sonkhar, West Champaran, PS Ram Nagar, District-West Champaran.

... .. 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, Muzaffarpur Cluster, Bihar Industrial Area Development Authority (BIADA).14.11.2022

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Brisketu Sharan Pandey, Advocate
For the BIADA	:	Mr. Parth Gaurav, Advocate

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

13 24-01-2024 Heard the parties.

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

A. For issuing a writ in the nature of certiorari or any other appropriate writ quashing the Appellate Order dated 06.02.2023 (Annexure-P/1) by the Respondent No.2 whereby and whereunder the appeal preferred by the petitioner bearing Appeal No. 333/2022 against the Office Order dated 14.11.2022 passed by the Respondent No. 5 has been dismissed on wrong appreciation facts.

B. For issuing a writ in the nature of



certiorari or any other appropriate writ quashing the Office Order dated 14.11.2022 passed by Respondent No. 5 (The DGM, Industrial Area, Muzaffarpur Cluster), whereby the allotment of Plot No. N.S-11 (P) and N.S-11 measuring an area of 2500 Sq. Ft each (total area of 5000 Sq Ft) which was allotted to the Petitioner in the year 2007 in the Industrial Area, Ram Nagar, West Champaran.

C. For issuing a writ of mandamus or any other appropriate writ directing the Respondents to restore the possession (if taken during the pendency of this writ application) and allow the Petitioner to continue to work and run the unit on the allotted land.

D. For issuing the appropriate order(s) staying all further proceedings and consequential actions pursuant to the Appellate Order dated 06.02.2023 (Annexure P/1).

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

3. Learned counsel for the petitioner has stated that the petitioner was allotted an area of 5000 Sq Ft for the purpose of manufacturing Cast Latrine Set in the year 2007 in two phases. Thereafter, the petitioner has established a unit and started production. Learned counsel has stated that the authority has issued a show-cause notice to the petitioner seeking an explanation as to why the allotment made to the petitioner be not cancelled. The petitioner has given a detailed reply along with supporting documents well within the time granted.



Further, learned counsel has stated that the authorities without considering the explanation to the said show-cause notice has cancelled the allotment made to the petitioner. Thereafter, the petitioner was offered amnesty to start production within six months vide letter dated 21.04.2022. That the petitioner has again received a show-cause notice on 01.11.2022 directing the petitioner to start commercial production within a period of seven days. Learned counsel has stated that the authorities concerned without verifying the fact as to whether the petitioner has started the production within the time stipulated vide letter dated 01.11.2022 and without waiting for the expiry of the seven days granted by the very same authority, has passed the impugned order of cancellation on 04.11.2022 i.e., within a period of three days from the date of issuance of the show cause Notice dated 01.11.2022. Further he has stated that though the petitioner has preferred an appeal, the appellate authority has not considered the grounds raised by the petitioner and dealt with the appeal in a mechanical manner confirming the order of the cancellation. Learned counsel has stated that the unit of the petitioner is in production and being a seasonal one, the unit will be closed during the rainy season. Learned counsel has stated that the primary as well as appellate authority without



considering the said fact have passed the order of cancellation, therefore, prayed this Hon'ble Court to allow the present CWJC and set aside the order of cancellation and the order passed by the appellate authority dated 06.02.2023.

4. *Per contra*, learned counsel appearing for BIADA has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner has been granted ample opportunity to start commercial production but he has failed to do so. Further, learned counsel has stated that the petitioner has been allotted approximately 5000 Sq Ft. However, the petitioner is only utilizing 1000 Sq Ft, and the balance area of 4000 Sq Ft is not being utilized. Further, the learned counsel has stated that though the petitioner has been granted amnesty vide letter dated 21.04.2022, he has not started the commercial production within the time stipulated. That even after the reminder notice dated 01.11.2022, the petitioner has not bothered to reply to the same or started any commercial production. Learned counsel has stated the both appellate as well as primary authority have passed the well reasoned order which does not require any interference by this Hon'ble Court and prayed for dismissal of the present CWJC.

5. Admittedly, in the present case, the allotment has



been made to the petitioner in the year 2007 and thereafter, the petitioner has established the industry for the purpose of manufacturing Cast Latrine Set. The authority in the order of cancellation dated 04.11.2022 has stated that the unit was not in production as on the date of inspection i.e., 20.10.2022 and earlier also notices were issued dated 01.02.2010, 04.02.2011, 13.02.2012, 09.04.2013, 17.01.2019, 11.12.2021, 21.04.2022 and 01.11.2022. However, it is to be noted that in the order of cancellation two dates are shown i.e., dated 04.11.2022/14.11.2022. It is pertinent to mention that earlier the petitioner was offered amnesty vide letter dated 21.04.2022 granting six months time to start commercial production and thereafter the petitioner was given a reminder vide letter dated 01.11.2022 asking him to start production within seven days. That even before the expiry of the seven days, the impugned order of cancellation has being passed on 04.11.2022. Moreover, it is to be noted that in the letter of cancellation it is stated that on 20.10.2022, the inspection has taken place and it was found that the unit was closed. Learned counsel for the petitioner has stated that the unit was closed due to Diwali and Chhath Puja festival and therefore, the Unit could not function during the said period and the same appears to be valid reason.



6. The authorities having issued the reminder notice on 01.11.2022 directing the petitioner to start commercial production within seven days ought to have waited for the expiry of the above period before passing the impugned order but the impugned order of cancellation was passed on 04.11.2022 itself. Though the counsel for the Respondents/BIADA has stated that the order of cancellation was passed on 14.11.2022, a perusal of the order shows that the order was signed on 14.11.2022 but the decision has been taken on 04.11.2022 i.e., even before the expiry of seven days granted to the petitioner. Moreover, the authorities have not made any inspection before passing the order of cancellation. The photos and the e-mail notice sent to the authorities on 11.11.2022 clearly establish the fact that the unit of the petitioner is in production. The other photos filed by the petitioner also establish the fact that the petitioner is manufacturing the Cast Latrine Set and the reliance of the BIADA authorities on the inspection report dated 20.10.2022 is misplaced.

7. Admittedly, the Diwali and Chhath Puja festivals were intervening on the day of inspection and the contention of the petitioner that the unit was closed for the said festivals has to be necessarily taken note of by this Court. The appellate



authority while passing the order in 20123 has taken into account the inspection report dated 04.02.2011, 14.07.2011, 13.02.2011 and 09.04.2011, if the notices were really issued to the petitioner in the year 2011, it is not understandable as to why the authority has waited for a period of more than 11 years for passing the impugned order for cancellation.

8. Insofar as the contention of the Respondents/BIADA that the petitioner is not utilizing the entire area for which he has been allotted is concerned, it is to be noted that for manufacturing Cast Latrine Set rings are concerned which are basically made from RCC require huge area for the purpose of manufacturing and curing therefore, the said objection is also not correct. Admittedly, the photos filed by the petitioner show that the entire area is being utilized for the purpose for which it was allotted, merely because the shed is over an area of 1000 Sq Ft, it cannot be said that the entire area allotted to the petitioner is not being utilized.

9. Having regards to the fact that the petitioner has been granted amnesty *vide* letter dated 21.04.2022 and issued notice dated 01.11.2022 granting seven days time to start production and also reply given by the petitioner stating that the unit is in the production on 11.11.2022 itself the order of



cancellation passed by the authority cannot be countenanced and legally tenable, therefore, the same is accordingly set aside.

10. Having regard to the above mentioned facts and circumstances, the impugned orders passed by the appellate as well as primary authority are set aside now.

11. However, it is made clear that in future the petitioner violates any of the terms and conditions of the allotment letter, the authorities are free to take necessary action strictly in accordance with law.

12. With the above direction, the present writ petition is allowed to the extent indicated above.

(A. Abhishek Reddy , J)

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