

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.401 of 2023

In

Civil Writ Jurisdiction Case No.9778 of 2016

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M/s Esskan Industries C-15, Industrial Area, Buxar, through its Proprietor Surendra Prasad Singh, aged about 63 years son of Sheo Dyal Singh, resident of Village- Rajapur, P.S.- Koilwar, District- Bhojpur, Address for Communication at present C-15 Industrial Area, Buxar, near Police Station, Niranjanpuar, P.S.- Buxar, District- Buxar.

... .. Petitioner/s

Versus

1. Sandeep Pondarik, Secretary, Department of Industries The State of Bihar, Patna.
2. Anil Kumar, Deputy Secretary Department of Industries, The State of Bihar, Patna.
3. Shambhu Prasad Singh, The Executive Director, Bihar Industrial Area Development Authority (BIADA), 1st Floor, Industries Building, Patna.
4. Sandeep Pondrik, The Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, 1st Floor, East Gandhi Maidan, Patna.
5. Gopal Prasad, Regional In- Charge, Industrial Area, Buxar.
6. Shambhu Prasad Singh, The Development Officer, Bihar Industrial Area Development Authority (BIADA), Patna.

... .. Opposite Party/s

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with

CIVIL REVIEW No. 216 of 2023

In

Civil Writ Jurisdiction Case No.9778 of 2016

- =====
1. The Managing Director Bihar Industrial Area Development Authority Udyog Bhawan, 1st Floor, East Gan.
 2. The Secretary, Department of Industries, Govt. of Bihar, Patna.
 3. The Deputy Secretary, Department of Industries, Govt. of Bihar, Patna.
 4. The Executive Director, Bihar Industrial Area Development Authority, 1st Floor, Industry Building.
 5. The Regional In-charge, Industrial Area, Buxar.
 6. The Development Officer, Bihar Industrial Area Development Authority, Patna.

... .. Petitioner/s

Versus

1. M/s Esskan Industries Resident of Village- Rajapur, P.S.- Koilwar, District- Bhojpur, Address for Communication at Present C-15 Industrial Area,



- Buxar.
2. The State of Bihar Bihar.

... .. Opposite Party/s

Appearance :

(In Miscellaneous Jurisdiction Case No. 401 of 2023)

For the Petitioner/s : Mr. Bindhyachal Singh, Sr. Advcoate

For the BIADA : Mr. Binita Singh, Advocate

For the Opposite Party/s : Mr.Subhash Prasad Singh, GA 3

(In CIVIL REVIEW No. 216 of 2023)

For the Petitioner/s : Mr. Bindhyachal Singh, Sr. Advcoate

Mr.Binita Singh, Advocate

For the Opposite Party/s : Mr.Rajiv Ranjan Kr. Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

6 23-01-2024

Re: Civil Review No. 216 of 2023.

The present Civil Review Petition is filed for recalling the order dated 12.09.2022 passed in C.W.J.C No. 9778 of 2016. In the aforementioned writ petition on 29.08.2022 Co-ordinate Bench has passed the following order:

“Learned counsel for BIADA states that as on date no 3rd party right stands created.

Statement accepted and taken on record.

As agreed, petitioner will file an undertaking to this Court to the effect that (a) within 60 days, petitioner will start commercial production in the Unit, should the respondents hand over possession



of the premises to the petitioner/recall the order of cancellation, failing which petitioner shall give vacant and peaceful possession of the premises to BIADA; (b) within six months, petitioner shall make the Unit fully operational and functional in terms of the product sanctioned and allowed to be manufactured as per the original terms of allotment; (c) petitioner shall clear all the dues payable to BIADA as on date; (d) petitioner shall make itself compliant with all the statutory requirements, including the ones protecting interest of the employees; (e) in the event of failure on the part of the petitioner to comply with the undertaking, petitioner shall hand over the vacant and peaceful possession of the premises to BIADA with liberty for further allotment to 3rd party, when petitioner shall lose all rights therein and (f) petitioner shall be liable for initiation of proceedings for contempt for having violated the undertaking furnished to the Court.

Petitioner is ready and willing to furnish such an undertaking within next seven working days, failing which the petition shall stand dismissed for default.

Copy of the undertaking be supplied to learned counsel for the respondents.

However, BIADA has to recall the orders passed cancelling the allotment of the premises.



Let BIADA take a call on the offer made by the petitioner.

We are sure that the respondent BIADA would take a decision in the affirmative, which, in our considered view, would be in public interest as also in the interest of the State to generate economic growth as also provide employment to the people.

List on 12.09.2022 so as to enable learned counsel for the petitioner to file an undertaking on affidavit to the aforesaid effect.”

2. Whereas Respondent – M/s Esskan Industries filed an undertaking along with the supplementary affidavit on 05.09.2022 and the same has been recorded with reference to para -3 of the affidavit and it reads as under:

“3. That petitioner undertakes that he will start (if earlier not in a functioned) the unit as per his representation dated 23.05.2007, the said representation was with regards to change the unit, and at the time of setting up the present center, petitioner informed the Managing Director, BIADA, about the change of its trade. (Annexure- ‘3’ of the writ petition).”

3. Counsel for BIADA without examining the order dated 29.08.2022 and conditions stipulated therein failed to apprise this Court to the extent that respondent failed to adhere to the order dated 29.08.2022 passed in



C.W.J.C No. 9778 of 2016 in which five conditions have been stipulated, whereas, the undertaking given by the Respondent was not in terms of the order dated 29.08.2022 in respect of those five conditions stipulated. Co-ordinate Bench has also not noticed the undertaking of the respondent whether was it in terms of the order dated 29.08.2022 or not? To that effect, there is a *prima facie* error occurred on the face of the record. Respondent has not sought to modify the order dated 29.08.2022 in so far as conditions. In other words order dated 29.08.2022 is intact and it is binding on the respective parties. Thus the review-petitioners have made out a case so as to recall the order dated 12.09.2022 passed in C.W.J.C No. 9778 of 2016. Civil Review petition No. 216 of 2023 stands allowed.

Re: C.W.J.C No. 9778 of 2016

C.W.J.C No. 9778 of 2016 stands restored on the file. Registry is hereby directed to list C.W.J.C No. 9778 of 2016 before the concerned Roster Bench at the earliest.

Re: M.J.C. No.401 of 2023.

In the light of order passed in Civil Review No.



216 of 2023, the M.J.C. No. 401 of 2023 does not survive for consideration. Accordingly, M.J.C. No. 401 of 2023 stands disposed off.

At this stage, learned counsel for the respondent submitted that the review - petitioners are likely to displace him and disturb his activities. If it is so, he is permitted to make necessary application before the writ court in seeking interim relief, if any.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

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