

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5930 of 2015

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Ajay Kumar Gupta S/o Late Shyam Bihari Prasad @ Late Shyam Bihari Prasad Gupta. Resident of Mohalla - Kali Bagh, P.S.- Bettiah Town, District - West Champaran. Partner of M/S Neelkanth Industries, Plot No. C-12 P, BIADA, Industrial Area, Bettiah, District - West Champaran.

... .. Petitioner/s

Versus

1. The Bihar Industrial Area Development Authority, Bihar, Patna through its Managing Director
2. The Managing Director, the Bihar Industrial Area Development Authority, Bihar, Patna.
3. The Executive Director, the Bihar Industrial Area Development Authority, Regional Office, Muzaffarpur.
4. Area Incharge, Industrial Area BIADA, Bettiah, West Champaran.
5. Sarfun Nesa. W/o Late Gheyasuddin (Proprietor M/S/ Star Printers, Industrial Area, Bettiah) Resident of Mohalla - Ujjain Tola, P.S.- Bettiah Town, District - West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Binod Kumar Sinha, Advocate
	:	Ms. Ankita Roy, Advocate
For the Respondent/s	:	Mr.Ravi Kumar, Advocate (for BIADA)
	:	Mr. Prashant Sinha, Advocate (for Resp. No. 5)

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 07-10-2024

1. The Writ Petition has been filed for the

following reliefs:-

A. For quashing the order dated 13.03.2015 contained in memo no. 397 issued by the respondent no. 3 to the extent the same relates to directing the petitioner to hand over the possession of the land allotted to his industrial unit (M/s Neelkanth Industries) to the private respondent as the allotment made in favour of the petitioner's firm has not been



cancelled as yet and the petitioner is running his industrial unit over the said plot after construction of permanent building and he has made huge investment over the said land and the petitioner and his entire family would be on the road as a consequence of the implementation of the impugned order in question.

B. *To direct the respondents for the following:-*

I. *To treat the annexure – 10 to the petition to be nullity and non-est in the eye of law.*

II. *To hold that the without providing any opportunity of hearing, the official respondents cannot direct the respondents to vacate his land, to dismantle his industrial unit and to hand over the vacant possession of the same to the private respondent.*

III. *To hold that without cancelling the allotment letter given in favour of the petitioner's unit, the official respondents are not entitled to direct the petitioner to hand over the possession of his industrial unit to the private respondent.*

2. The brief facts culled out of the petition are that the 3rd respondent vide letter no. 514 dated 11.03.2008 allotted Plot No. C-12 (P) admeasuring 5400



square feet in favour of M/s Nilkanth Soap Industries (Annexure-1). Pursuant to the said allotment, the 3rd respondent vide order dated 18.11.2008 contained in Memo No. 1215 directed the 4th respondent to handover the possession of land in question to M/s Nilkanth Soap Industries (Annexure-2). Accordingly, the 4th respondent handed over the physical possession of the plot to the petitioner-industries on 19.11.2008 (Annexure-3). At the time of delivering the possession, the 1st respondent received an amount of Rs. 31,000/- from the petitioner as compensation towards some Kachha shed, lying over the land in question and also issued a money receipt dated 11.11.2008 (Annexure-4). On 08.07.2011 Sri Mukesh Mishra the then proprietor of M/s Nilkanth Soap Industries gave an application to the 3rd respondent praying to allow partnership with the petitioner and to change the name of the firm from M/s Nilkant Soap Industries to M/s Nilkant Industries and also prayed to change the product i.e. from “Soap” to “Chura”. The said



application was received in the office of 3rd respondent on 13.11.2011 (Annexure-5). The 3rd respondent vide Letter No. 2176 dated 04.11.2011 demanded the necessary fees/charges vide Annexure-6. As per the demand of the 3rd respondent the petitioner deposited the aforesaid charges/fees. Further the 3rd respondent vide office Order dated 17.11.2011, Memo No. 2260 gave the following orders:-

I. The name of the firm was changed to “M/s Neelkanth Industries” from “M/s Nilkanth Soap Industries”.

II. The product of the unit was changed to “Chura” from “Soap”.

III. The constitution of unit was changed from “proprietorship” to “partnership” and the petitioner was allowed to enter into 50-50% partnership with Mukesh Mishra, the erstwhile proprietor of M/s Nilkanth Soap Industries (Annexure-7).



Since then, the petitioner was running Chura Mill over the premises in question as per the license given by the 3rd respondent vide Memo No. 143 dated 25.01.2012 (Annexure-8).

3. The petitioner made huge investments over the land in question and he is running Chura Mill. The estimated cost of the investment made by the petitioner on the plot in question is approximately Rs. 18,00,000/- (Annexure-9). From the date of allotment the petitioner is paying taxes to the Commercial Tax Department and to the Electricity Department without any blemish from any quarter. All of a sudden the petitioner received an Order dated 13.03.2015 vide Memo No. 397 issued by the 3rd respondent wherein the petitioner was directed to handover the vacant possession of the land, to the 5th respondent (Annexure-10).

4. It is specific contention of the Learned counsel for the petitioner that the petitioner was not provided with any opportunity of hearing prior to



impugned order. It is also contended by the Learned counsel for the petitioner that without cancelling the allotment, the impugned order was passed by the 3rd respondent which is arbitrary and illegal.

5. Further, the contents of the Writ Petition disclose that earlier the plot which was allotted to the petitioner was initially allotted to the husband of the 5th respondent in the year 1998, but as the husband of the 5th respondent did not start any business in the industrial area and as such the 3rd respondent cancelled the allotment of the 5th respondent and BIADA automatically assured the ownership of the land vide order dated 17.06.2006 vide Memo No. 548.

6. Aggrieved by the same, the husband of the 5th respondent preferred statutory appeal and the same was allowed vide order dated 02.02.2007 with a condition that the BIADA/the respondents shall re-allot the land to the 5th respondent and in turn the 5th respondent shall start the production within 2 months. It is further



contended in the Writ Petition that as the 5th respondent or her husband did not commenced any business, the allotment of the said land was again cancelled on 14.02.2008. Later, the said land was allotted to Mukesh Mishra who is the proprietor of M/s Nilkanth Soap Industry on 11.03.2008.

7. Being aggrieved by the orders of BIADA, the 5th respondent preferred a Writ Petition C.W.J.C. No. 10504 of 2010, wherein this Court disposed of the said Writ Petition on 24.06.2013 and the operative portion of the Order reads as follows:-

“The impugned order, contained in Annexure – 1, dated 14.02.2008, is required to be quashed on the sole ground that it falls foul of the ratio and the principle, which this High Court had decided in the case of Deepak Paints and other analogous cases, reported in 2008 (2) PLJR 293.



Writ Application is allowed with liberty to the respondents to take a decision in accordance with law.

The objection of the private-respondent is of no avail, since he has acquired right arising from an illegal order.”

8. It is also contended by the Learned counsel for the petitioner that the 5th respondent preferred a Contempt application vide M.J.C. No. 2840 of 2014 and in compliance of the orders of C.W.J.C. No. 10504 of 2010 the petitioner was directed to handover the possession of the land as expeditiously as possible, to enable BIADA to handover the same to the 5th respondent.

9. It is also the specific contention of the Learned counsel for the petitioner that the impugned order is passed in violation of *Audi Alteram Partem* and Principles of Natural Justice for which the petitioner was



constrained to approach this Court and therefore, prayed to set aside the impugned order.

10. A detailed counter affidavit was filed by the respondent Nos. 1 to 4 denying the allegations. It is contended in the counter affidavit that the cancellation is just, proper and reasonable as M/s Nilkanth Soap Industries through his proprietor Sri Mukesh Mishra made an application for allotment of plot vide letter dated 10.03.2008 and in light of the said request land was allotted to M/s Nilkanth Soap Industries to an extent of 5400 square feet in Plot No. C-12 (Part), Industrial Area, West Champaran for establishment of manufacturing of Laundry Soap vide Letter No. 514 dated 11.03.2008.

11. On perusal of the counter affidavit, it is evident that the respondent nos. 1 to 4 has admitted each and every fact mentioned in the Writ Petition. However it is contended that in compliance of the Orders of this Court in C.W.J.C. No. 10504 of 2010, the respondents



have directed the petitioner to handover the land, to enable them to hand it over to the 5th respondent.

12. The counter affidavit also disclose that twice the land was allotted to the 5th respondent and the same was cancelled by BIADA as the 5th respondent could not commence any industry on the said land. Further the 5th respondent preferred a Writ Petition for quashing the cancellation, and the said Writ petition was allowed by this Court, giving liberty to the respondents to take appropriate decision in accordance with law and therefore, there was no error or irregularity on the part of BIADA in directing the petitioner to handover the land to the 3th respondent to enable them to hand it over to the 5th respondent.

13. A detailed counter affidavit was filed by the son of the 5th respondent under her authorization, admitting the fact about the initial allotment made to the husband of the 5th respondent, to an extent of 5400 square feet dated 20.03.1998 and also about its



cancellation. Further, the counter affidavit of the 5th respondent disclose that the husband of the 5th respondent commenced construction over the land i.e. filling of earth and construction of two rooms. When the 3rd room was under construction the husband of the 5th respondent faced financial crisis, later he suffered with serious heart problem and underwent treatment and could not commence the business. The counter affidavit further disclose that BIADA cancelled the allotment of the land made to the 5th respondent on 17.06.2006 for which the husband of the 5th respondent preferred an appeal before the Industrial Development Commissioner, Bihar and the said appeal was disposed of vide order dated 20.02.2007 directing BIADA to give the 5th respondent two months time to commence the production. Even prior to the revival of the business within the stipulated time i.e. 05.04.2007 the husband of the 5th respondent passed away in AIIMS Delhi on 17.03.2007. After the demise of her husband, the 5th



respondent opted for OTS 2007 brought by BIADA, in order to clear the old dues of the Unit. As per the requirement of the OTS, the 5th respondent deposited Rs. 7,164/- on 21.06.2007 and Rs. 64/- on 04.08.2007. The respondent-BIADA accepted the dues under the OTS scheme and issued notice vide Letter No. 1767 dated 08.08.2007 directing the 5th respondent to start production and to pay dues of BIADA, within a period of 15 days, otherwise the allotment of land would be cancelled. In reply to the said notice, the 5th respondent informed the Executive Director, BIADA, Muzaffarpur vide Letter dated 23.08.2007 about the demise of her husband and requested to transfer the said land, in the name of her son, so that the unit may start production.

14. It is the contention of the 5th respondent that instead of permitting the son of the 5th respondent to commence the business, the respondent BIADA allotted the same land to the petitioner, which is illegal and arbitrary.



15. Being aggrieved by the acts of the BIADA the 5th respondent was constrained to file C.W.J.C. No. 10504 of 2010 and in said Writ Petition M/s Nilkanth Industries was impleaded as 3rd respondent and this Hon'ble Court was pleased to dispose of the Writ petition, directing the respondent-BIADA to take appropriate decision in accordance with law. In spite of the orders of this Court in C.W.J.C. No. 10504 of 2010 dated 24.06.2013, the BIADA did not allot any land to the 5th respondent, for which she was constrained to prefer Contempt Petition bearing M.J.C. No. 2840 of 2014.

16. It is the contention of the Learned counsel for the 5th respondent that the Order of this Court clearly disclose that the private respondent i.e. M/s Nilkanth Industries allotment order was illegal and therefore, the present Writ Petition is liable to be dismissed as it is devoid of merits.



17. Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondents and the Learned counsel for the private respondent no. 5. Perused the records.

18. On perusal of the entire record, it is evident that the land C-12 (Part) admeasuring 5400 square feet was initially allotted to the husband of the 5th respondent in the year 1998. As the husband of the 5th respondent could not start any industry, the respondent-BIADA cancelled the allotment on 17.06.2006. Being aggrieved by the same, the husband of the 5th respondent preferred statutory appeal before the Commissioner which was allowed on 20.02.2017 directing the husband of the 5th respondent, to commence the production in the unit within two months. As the husband of the 5th respondent passed away, the said unit could not be commenced. It was not brought to the knowledge of BIADA, about the death of the husband of the 5th respondent. Further BIADA cancelled the allotment of land of the husband of



the 5th respondent on 14.02.2008 and re-allotted the land to M/s Nilkanth Soap Industries, a proprietorship firm on 11.03.2008 i.e. within a span of 25 days. Later, a representation was made by the 5th respondent to BIADA on 23.08.2007 bringing to the notice of BIADA about the death of her husband.

19. It is specific contention of the 5th respondent that the statutory appeal was allowed on 20.02.2007 and the husband of the 5th respondent died on 17.03.2007 and that the revival order of BIADA was made in the name of the husband of the 5th respondent on 05.04.2007 and as no industry came up the BIADA cancelled the allotment on 14.02.2008 and allotted the same land to the petitioner on 11.03.2008. Since 11.03.2008 the petitioner along with Mukesh Mishra used to run Soap Industry and in the year 2011, the name of M/s Nilkanth Soap Industries was changed to M/s Nilkanth Industries and the proprietorship was changed to partnership firm and



for all the said changes the BIADA gave permission to the petitioner.

20. Furthermore, the impugned order clearly disclose that the petitioner was directed to handover the possession of the land to BIADA as expeditiously as possible. The impugned order, however, did not disclose about the cancellation of the allotment of land. Further, the Principles of Natural Justice is violated, as the petitioner was not given any opportunity of hearing and no notice was issued prior to the impugned order.

21. It is evident that as the 5th respondent preferred a contempt application, the present impugned order was passed by the BIADA, directing the petitioner to handover the vacant possession of land, in order to hand it over to the 5th respondent.

22. Admittedly, the Industry is running on the said land from 11.03.2008 by one Mukesh Mishra and subsequently, by the partnership firm, from 2011 till date. At this juncture, the Learned counsel for the



petitioner relied on Annexure-P/12 wherein office order of the Executive Director, BIADA dated 14.03.2014 clearly disclose that subsequent to the orders of this Court in C.W.J.C. No. 10504 of 2010 dated 24.06.2013 the BIADA allotted 7600 square feet of land to the 5th respondent. It is specific contention of the Learned counsel for the 5th respondent that the 5th respondent did not accept the said land as there is no pathway or approach road to the said land.

23. It is contended by the Learned counsel for the petitioner that apart from the extent of land of 5400 square feet in C-12 (Part) there is some more land to an extent of 2200 square feet in C-12 (Part) and if the said land is also allotted to the 5th respondent there can be a pathway or an approach road to the land admeasuring 7600 square feet. In order to settle the *lis* between the parties, this Court is of considerable view that BIADA can allot the land of 2200 square feet to the 5th



respondent apart from 7600 square feet to enable a pathway to the 5th respondent.

24. Admittedly, the petitioner has also invested huge amount for the industry and he is running the industry and paying all necessary taxes to the Commercial Tax and Electricity Department and has also paid necessary charges to the BIADA. Further, there is no blemish from any quarter on the part of the petitioner. Pursuant to the orders of this Court, BIADA is duty bound to allot land to 5th respondent. Therefore, BIADA shall take necessary decision for allotting the land of 2200 square feet to the 5th respondent so that he would have a pathway to the land which initially was allotted to an extent of 7600 square feet so that the *lis* would end between the parties.

25. If the said land of 2200 square feet could not be allotted by BIADA, BIADA shall give an approach way or a pathway to the land of 7600 square feet so that 5th respondent can also set up his industry.



26. With the above said observation, the writ petition is disposed of.

27. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

amitkr/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.12.2024
Transmission Date	N/A

