IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4168 of 2023

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M/s Baba Safety Glass a proprietorship firm having its office at Plot No. 24 Industrial Growth Centre, Maranga, Purena, through its Proprietor Shri Vikash Kumar Mishra, S/o Shankar Mishra, Gender-Male, aged around 43 years, Resident of Sarvodya Nagar, P.S. K. Hat, District-Purnea.

... ... 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, Maranga, Bihar Industrial Area Development Authority (BIADA), Maranga, Purnea.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Brisketu Sharan Pandey, Adv.
For the Respondent/s	:	Mr. Lalit Kishore, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

15 29-01-2024 Heard the learned counsel for the parties.

2. This writ petition has been filed for the following relief(s):-

> *"For issuing a writ in the nature of certiorari or any other appropriate writ quashing the Appellate Order dated 28.01.2023 (Annexure-P/1) by the Respondent No.2 whereby and whereunder the appeal preferred by the petitioner bearing Appeal No. 290/2022 against the Office order dated*

04.08.2022/16.08.2022 passed by the Respondent No.5 has been dismissed on the ground that the petitioner (appellant therein) had failed to take proper steps in carrying out industrial activities.

B. For issuing a writ in the nature of certiorari or any other appropriate writ quashing the Officer Order dated 04.08.2022 as also modification order dated 16.08.2022 passed by Respondent No. 5 (DGM, Maranga, Purnea) upon the directions of Respondent No. 3, whereby the allotment of Plot No: 24-A admeasuring a total area of 6240 Sq. Ft which was allotted to the Petitioner in the Year 2009 in the Industrial Growth Centre, Maranga, Purnea given in the name of M/s Baba Safety Glass has been cancelled.

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 appropriate order(s) staying all further proceedings and consequential actions pursuant to the Appellate Order dated 28.01.2023 (Annexure-P/1).”

3. The facts of the case are that the petitioner has been allotted a plot No. 24-A by the respondent authority for an area of 6240 Sq. Ft. in the year 2009 for the purpose of M/s Baba Safety Glass. Learned counsel for the petitioner has stated that the authority without taking into account the fact that the petitioner has established the unit and that the unit of the petitioner is a running unit has cancelled the allotment on vague legally untenable and flimsy ground. Learned counsel has stated that once the authorities have allotted the land to the petitioner and the petitioner has established the unit as per the terms and conditions of the allotment, the allotment cannot be cancelled on the ground that the petitioner is not operating the unit at its full capacity. Learned counsel has stated that due to Covid-19 and the present market conditions, the petitioner had to cut down his production and the unit cannot operate at 100 per cent capacity all the time. That basing on the orders received, the petitioner manufactures the safety glass for various purposes. Learned counsel has also stated that both the primary as well as the appellate authority have committed a grave error in cancelling the allotment made in favour of the petitioner without adverting to the above factors. Learned counsel has stated that though the petitioner has preferred an

appeal against the order of cancellation, the appellate authority without verifying the fact that the petitioner has already established the Unit has dealt the appeal in a mechanical manner and came to the conclusion that the petitioner has not started the production which runs contrary to the Inspection Report. That the petitioner was issued the show cause notice by the primary authority on the ground that the petitioner is not operating at full capacity and it is nobody's case that the petitioner has not established the unit nor is operating the unit as on the date of cancellation. Therefore, learned counsel for the petitioner has prayed this Hon'ble Court to set aside the order of the primary as well as the appellate authority and allow the C.W.J.C.

4. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and has stated that both the primary as well as the appellate authority duly taking into consideration the previous notices issued to the petitioner, the conduct of the petitioner and the Inspection Reports have passed reasoned orders and there is nothing wrong in the order which warrants any interference by this Hon'ble Court. Learned counsel has stated that though the petitioner has been

allotted the land wayback in the year 2009, the petitioner was unable to utilize the same to the maximum capacity and, therefore, the authorities left with no other alternative have decided to cancel the allotment. Learned counsel has stated that though the petitioner has been granted ample opportunities to ramp up the production of the Unit, still the petitioner has failed to do so. Therefore, learned counsel has prayed to this Hon'ble Court to dismiss the present writ petition.

5. Admittedly in the present case, the petitioner has been allotted the land wayback in the year 2009 and put in possession in the year 2012. The fact that the petitioner has established the glass unit is not under dispute.

6. A perusal of the show cause notice issued to the petitioner clearly demonstrates that the ground on which the allotment was sought to be cancelled was that the petitioner is not using the unit to the full capacity i.e. 100 per cent production. The Inspection Report reveals that the unit of the petitioner has been established and that the petitioner is manufacturing the product for which purpose the land has been allotted. However, the primary authority has cancelled the allotment on the sole ground that the petitioner is not operating the unit at full capacity. Though the petitioner has preferred the

statutory appeal before the appellate authority, the appellate authority has dismissed the appeal on the ground that the petitioner has not even started the unit. The above said finding recorded by the appellate authority is contrary to the record. The appellate authority without calling for a fresh Inspection Report or looking at the various documents filed by the petitioner, namely, G.S.T. Bills, Sales Invoices, Purchase Invoices etc., has passed the order in a mechanical manner. When the primary authority has passed the order of cancellation on the ground that the petitioner is not putting the unit to a full capacity, the conclusion reached by the appellate authority that the petitioner has not even started the unit goes contra to the show cause notice, the findings of the primary authority and also the Inspection Report dated 04.08.2022, therefore, the order of the appellate authority has to be necessarily set aside and the matter remanded back to the authority concerned for passing orders afresh. The appellate authority shall pass orders afresh duly taking into consideration the Inspection Report dated 04.08.2022, the documents filed by the petitioner i.e. G.S.T. Invoices, E.Way Bills, Sales Invoices and any other document which established that the petitioner has already established the unit and producing the products for which the land was allotted. The authority shall also consider the fact that the production of any product is market driven and the manufacturer cannot run the unit at 100 per cent capacity utilization all through the year.

7. Having regard to the above, the impugned order passed by the appellate authority is set aside and the matter remanded back to the Appellate Authority for passing orders afresh duly putting the petitioner on notice and giving him an opportunity of hearing. The entire exercise shall be completed as expeditiously as possible preferably within a period of four weeks from the date of receipt of the copy of this order. Any order passed shall be communicated to the parties.

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

(A. Abhishek Reddy , J)

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