

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.791 of 2018

In
Civil Writ Jurisdiction Case No.7803 of 2014

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M/s Bihar Engineering Corporation through its proprietor Ajit Kumar Singh
S/o Late Kedar Nath Singh, Resident of 58-D, S.K. Puri, P.S. S.K. Puri,
District and Town Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Industry Department, Government of Bihar.
2. Principal Secretary, Industry Department, Government of Bihar, Patna.
3. The District Magistrate, Patna.
4. Director Industry, Industry Department, Government of Bihar, Patna.
5. The Industrial Development Commissioner-cum-Appellate Authority, Department of Industries, Government of Bihar, Patna.
6. The Managing Director, Bihar Industrial Area Development Authority, Indira Bhawan, Bailey Road, Patna.
7. The Assistant Development Officer, Indira Bhawan, Bailey Road, Patna.
- 8.1. Ranjana Kumari Wife of Late Kanti Kumar, At present Resident of - B/9, Jai Prakash Nagar, Police Station - Rajiv Nagar, P.O. - Ashiana Nagar, District- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Harsh Singh, Advocate
For the State	:	Mr.Y.P. Sinha, AAG-7
		Mr. Rajeev Kumar Sinha AC to AAG-7
For the BIADA	:	Mr. Awinash Kumar, Advocate
For the Redpondent no.8:		Mrs. Nivedita Nirvikar, Sr. Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-12-2024



The appeal is filed by the 8th respondent in the writ petition against the rejection of his claim for re-allotment of a plot; which plot by the impugned judgment was directed to be allotted to the writ petitioner on certain conditions. The learned Single Judge had rejected the prayer of the appellant on the ground that his challenge against the cancellation had attained finality and there was no sustainable claim for re-allotment. The writ petitioner, a subsequent allottee, had successfully challenged his cancellation. In an LPA filed by Bihar Industrial Area Development Authority ('BIADA' for short), against the common judgment in a batch of cases; the allottees who were the writ petitioners were given a time of six months to establish the industrial unit if it has not been already established. The petitioner in the impugned judgment was one of the beneficiaries of the common judgment which was affirmed in appeal with further directions.

2. The facts leading to the allotment, cancellation and re-allotment have to be gone into in detail; which also has to be separately dealt with in the case of the appellant and the writ petitioner. The writ petitioner is no more and his wife has been impleaded in the appeal as the respondent No. 8.1. We refer to the parties, hence as the appellant and the writ petitioner; the



latter of whom is now deceased, his estate devolving on respondent no. 8.1

3. The appellant was allotted industrial plot no. 13 (10,000 sq. feet) within the industrial area, Patna on 17.12.1972 and a lease deed also stood executed on 02.06.1973 for a period of 99 years. The then Managing Director, BIADA, cancelled the allotment in favour of the appellant by order dated 16.10.2001. The appellant also preferred an appeal before the appellate authority. In the meanwhile industrial plot no. 13 was renumbered as industrial plot no. 17 and by order dated 22.08.2003, the same was allotted to the writ petitioner. The physical possession of the plot was also handed over to the writ petitioner on or about 22.10.2003.

4. The appellant by CWJC No. 2056 of 2004 challenged the order dated 16.10.2001, which cancelled the allotment of plot in their favour. The judgment in the said writ petition is produced as Annexure-7 in the writ petition. The writ petitioner here was the 10th respondent in that case. The challenge in the said writ petition was against the cancellation of the lease hold rights in favour of the appellant and the further allotment dated 07.01.2003 in favour of the writ petitioner. By Annexure-7 judgment it was found that the appellant had never approached



the appellate authority and had merely produced a document which was not genuine. The appellant was found to have by-passed the statutory remedy and attempted to deceive the Court by creating a document which was not genuine. It was categorically found that the appellant never took the question seriously and merely wanted to retain the property without fructifying the avowed objective of allotment, which was industrial use; the violation of which would lead to cancellation of allotment. It was also found, based on the electricity consumption, that no industry was being run in the property and BIADA on inspection had found the industrial plot lying vacant; which ultimately led to the cancellation. The electric connection was also disconnected. On the above reasoning the above writ petition was dismissed.

5. An appeal was filed as LPA No. 1112 of 2005, the judgment in which is produced as Annexure-R-8/A along with the counter affidavit filed by respondent no. 8. The appeal was sought to be withdrawn, enabling the appellant to pursue his remedy before respondent no. 3; the appellate authority who was the Industrial Development Commissioner. It was directed in the order permitting withdrawal, that the appeal would be considered by a speaking order, if the appellant renews its



prayer by way of fresh representation. Here, we have to notice that the appeal was only against the cancellation of the allotment made to the writ petitioner, while in the writ petition filed by the appellant, they had also challenged the subsequent allotment to the writ petitioner herein, who was the 10th respondent in that writ petition. While withdrawing the appeal, the cancellation of allotment to the appellant which was confirmed by the learned Single Judge was untouched and so was the subsequent allotment made to the writ petitioner herein, who was the 10th respondent in CWJC No. 2056 of 2004.

6. The appellant then approached the appellate authority which appeal also stood dismissed as per Annexure-R8/A. In appeal, the order of cancellation was upheld but an escape valve was provided, insofar as seeking for re-allotment if the rules permitted. Here, we have to emphasize that without interfering with the further allotment to the writ petitioner, there could not have been any re-allotment made to the appellant. The prayer for re-allotment hence was pre-empted by the subsequent allotment.

7. At the risk of repetition, the industrial plot which was first allotted to the appellant, was re-allotted to the petitioner and the appellant's allotment stood cancelled, which attained



finality. The writ petitioner's allotment also stood cancelled subsequently. CWJC No. 5730 of 2007 was filed against the cancellation of the writ petitioner's allotment and its confirmation in appeal, which orders are produced respectively as Annexure-12 and 13 to the writ petition. The said writ petition along with a batch of cases were allowed in **Deepak Paints Pvt. Ltd., Vs. BIADA** and its analogous cases (CWJC No. 7352 of 2007); finding that the Managing Director does not have the authority to cancel the allotment made by BIADA. An appeal was filed as LPA No. 353 of 2008 and analogous cases in which the Division Bench, while affirming the judgment of the learned Single Judge made certain modifications insofar as time of six months being granted to the various writ petitioners to establish the industries, wherever they are not established or to revive the industries, if they were already established and have become sick. Any intention to diversify was also directed to be applied for, before the BIADA. It was directed that, if the industry is thus not established or the closed one's revived within the stipulated time, the authorities can resume the land for further allotment. It is pursuant to the said order that the writ petitioner herein filed first, a contempt petition which was closed and later approached this Court with the instant writ



petition which was allowed by the learned Single Judge.

8. In the writ petition, as we noticed, the appellant was the 8th respondent, who was the earlier allottee. On cancellations being carried out of the various allotments, including that of the writ petitioner, the BIADA had come out with a paper publication for fresh allotment of such industrial plots. The appellant filed CWJC No. 7358 of 2007 against the publication for fresh allotment, which was tagged along with **Deepak Paints Private Ltd.** (supra), and disposed of along with other cases wherein cancellation was challenged.

9. The appellant despite having impleaded the writ petitioner in CWJC No. 2056 of 2004, wherein a challenge to the re-allotment of land to the writ petitioner was also raised, did not press the appeal against the order affirming the cancellation of allotment to the appellant and re-allotment to the writ petitioner. The further direction in the appeal filed against judgment in CWJC No. 2056 of 2004, to approach the appellate authority, was of no avail, insofar as the writ petitioner was already re-allotted the very same plot. The mere direction made to file a representation for re-allotment, which also had to be considered in accordance with rules, could not have helped the appellant since the writ petitioner's re-allotment stood affirmed



in CWJC No. 2056 of 2004.

10. The subsequent cancellation of the writ petitioner's allotment stood annulled by the judgment in CWJC No. 5730 of 2007 and analogous cases. Though CWJC No. 7358 of 2008 filed by the appellant also stood allowed, it can only lead to the advertisement of re-allotment being set aside. It cannot affect the cancellation of the first allotment to the appellant, which had attained finality. The subsequent re-allotment to the writ petitioner; which stood revived by the order passed in the writ petitioner's petition brought finality to the writ petitioner's case too.

11. Hence, as of now the appellant's cancellation stands upheld by the judgment in CWJC No. 2056 of 2004. The re-allotment of the plot, to the writ petitioner qua the appellant also stands affirmed by the said judgment. Though the writ petitioner's allotment was cancelled subsequently it has been set aside the writ petition disposed off; analogous with **Deepak Paints Private Ltd.**(supra). The appellant's subsequent writ petition though disposed of, along with **Deepak Paints Private Ltd.**(supra), it only interfered with the advertisement for fresh allotment. The cancellation of allotment to the writ petitioner having been set aside in **Deepak Paints Private Ltd.** (supra),



the appellant cannot have any subsisting interest in the plot.

12. After the judgment in **Deepak Paints Private Ltd.** (supra), it is pointed out that BIADA restored the allotment to both the appellant and the writ petitioner. The restoration of the appellant’s allotment was patently wrong, since the cancellation of that allotment already became final and then it was not, and could not, have been challenged, in the subsequent writ petition filed by the appellant.

13. We find absolutely no reason to interfere with the impugned judgment and reject the appeal.

14. The parties shall suffer their respective costs.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Ranjan/-..

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