

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8745 of 2023

1. M/s Durgawati Steel Industries through its Proprietor Anil Kumar Trivedi, S/o Late Jagnarayan Trivedi, R/o Mohl-Purana Chowk, Ward No.-25, Buxar, Registered Office at Industrial Area, Buxar, Bihar.
2. Smt. Shobha Singh, W/o Sri Ashutosh Kumar Singh, Authorised representatie-cum-partener of M/S Durgawati Steel Industries, R/o Mohl-Shivratri Sadan, Maharaja Hata, Buxar, Registered Office at Industrial Area, Buxar, Bihar

... Petitioners

Versus

1. The State of Bihar through Industry Commissioner, Industry Department, Patna.
2. The Additional Chief Secretary, Industry Department, Government of Bihar, Patna.
3. The Secretary, Industry Department, Government of Bihar, Patna.
4. The Managing Director, the Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
5. The Joint Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
6. The Executive Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
7. The Deputy General Manager, Bihar Industrial Area Development Authority (BIADA), Buxar.
8. The Assistant Regional Manager, Bihar Industrial Area Development Authority (BIADA), Buxar.
9. The Area In-Charge, Bihar Industrial Area Development Authority, Industrial Area, Buxar, P.s. Buxar (Industrial Area), District Buxar.

... Respondents

Appearance :

For the Petitioners : Mr.Rajiv Ranjan Kr. Pandey, Adv.
For the Respondents : Mr.Vikash Kumar (Sc11)

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

15 22-04-2024 Heard the parties.

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



- i) For issuance of a writ or writs, order or orders, direction or directions for commanding to the respondents and issue an appropriate writ in the nature of certiorari to set aside the Impugned order dated 01.06.2023 passed by the Additional chief Secretary, Industry Department, Government of Bihar, Patna, whereby and where under he has affirmed the order of cancellation passed by the Deputy General Assistant, Bihar Industrial Area Patna Cluster, Patna. Development Authority, Industrial Area, Buxar, vides Memo No-578 dated 26.11.2022, the Deputy General Assistant, Bihar Industrial Area Patna Cluster, Patna, vide his order dated 26.11.2022 cancel the plots admeasuring about 33,000 sq. Ft which was allotted to the petitioner No-1 and also permission was granted to establish the Industries in the Industrial Estate, Buxar. The said industries run in the name and style of M/s Durgawati Steel Industries,
- ii) For also quashing the Notice vide Letter no 155 dated 05.06.2023, issued under the signature of the Assistant Regional Manager, Bihar Industrial Area Development Authority, Industrial Area, Buxar, (Respondent No-8) whereby and where under he has ordered the petitioner to Handed Over the unit within one week, otherwise with the help of administration they will forcefully take over the 'Unit' of the petitioner i.e. M/s Durgawati Steel Industries. Respondents have not given the proper opportunity of hearing to the petitioner, while the said unit is producing at its full capacity.
- iii) For direction to the respondents to grant permission to the petitioner to change the unit as per the products,



iv) For that direct of the Respondents to not evict or dispossess the petitioner from peaceful physical possession over the land in question.

v) For that stay the operation of Impugned Notice contained as Annexure-'I' till the disposal of this writ application and further restrained to the respondents to not taken any harass action against the petitioner and his unit.

3. Learned counsel for the petitioner has stated that the petitioner has been allotted 33,000 Sq. Ft land way back in the year 1981 and initially the same was allotted to the petitioner for the purpose of establishing a steel industry. Learned counsel has stated that thereafter the petitioner has established the said industry but due to various contingencies the same could not be continued. That the petitioner has made an application for change of product use to rice mill, thereafter, to masala (spices) and lastly for production of cement tiles and other allied products made of cement. However, the authorities have issued a show cause notice alleging that the petitioner is indulging in manufacturing of products made from fly-ash and the same is prohibited in Bihar State. Learned counsel has stated that the petitioner has applied for change of products in the month of February, 2022, but till date no orders are passed either rejecting his application or accepting his application. Further, learned counsel has stated that the authority without



considering the explanation submitted by the petitioner on the wrong premise that the cement bags are stored in the unit of the petitioner have cancelled the allotment made to the petitioner. That even though the petitioner has filed appeal, the Appellate Authority without considering the norms nor the inspection report has rejected the appeal in a mechanical manner. Learned counsel has further stated that in the year 2019, the petitioner has applied for change of constitution of the unit, but, till date no orders are passed. That the findings given by the Appellate Authority that the petitioner has failed to establish any unit is contrary to the inspection report. Learned counsel has, therefore, prayed this Hon'ble Court to set aside the impugned orders and remand the matter back to the primary authorities for passing orders afresh duly taking into consideration the explanation submitted by the petitioner.

4. Per contra the learned counsel appearing on behalf of the respondent-BIADA has vehemently opposed the very maintainability of the present Writ Petition. Learned counsel has stated that both the Primary as well as the Appellate Authority duly taking into account the fact that the petitioner is not running the unit for the purpose for which it was originally allotted and that he has illegally using premises for the purpose of storage of cement bags have passed the orders of cancellation. Learned counsel has stated that the petitioner



failed to establish the unit for the purpose for which the same was allotted even after lapse of more than 30 years, therefore, left with no other option, the allotment made to the petitioner was cancelled. Learned counsel has stated that the Appellate as well as Primary Authorities have taken note of fact that the petitioner is not running the unit and using the same for illegal storage of cement have passed the order and the same does not call for any interference by this Hon'ble Court.

5. A perusal of the pleadings as well as the documents filed by the parties to the present case reveals that the petitioner has been allotted 33,000/- Sq. Ft of land initially for the purpose of establishing the steel plant way back in the year 1981. Admittedly, the petitioner seems to have established the steel industry and, thereafter, applied for change of products. The fact that the petitioner has applied for change of constitution of the unit in the year 2019 has not been denied by the authorities and it is to be noted that the petitioner also made an application for change of product for manufacturing cement tiles and other allied products made of cement. However, the authorities instead of considering the said applications made by the petitioner for some strange reason have come to the conclusion that the petitioner is trying to manufacture products made from fly-ash which is banned in the State of Bihar. The points on which the authorities have come to the conclusion that the



petitioner is using fly-ash for making the tiles and other products is not clear from the orders passed nor properly explained by the authorities. As a matter of fact in the counter affidavit it is stated that the petitioner has applied for change of product for manufacturing cement tiles and other allied products made of cement. The show cause notice issued to the petitioner and also the impugned order of cancellation, dated 26.11.2022, reveals that the authorities have come to the conclusion that the petitioner is trying to manufacture tiles and other products made from fly-ash, but, as a matter of fact they have found cement bags in the unit. The explanation submitted by the petitioner that the cement is being used for the manufacture of cement tiles and other allied products made from cement is plausible. When there is no iota of proof to show that the petitioner is using fly-ash for the purpose of manufacturing tiles and other products, the conclusion reaching by the respondents that the petitioner is using fly-ash is totally misconceived and wrong. The Appellate Authority while dealing with the appeal did not consider this aspect and dismissed the appeal.

6. Having regard to the above facts and circumstances, this Court is of the opinion that the ends of justice would be met if the impugned order passed by the Appellate Authority, dated 01.06.2023, and the order passed by the Primary Authority, dated 26.11.2022, cancelling the



allotment made to the petitioner are set aside and the matter is remanded back to the Primary Authority for passing order afresh duly taking into account the above observation and the explanation submitted by the petitioner. As it is stated that the possession of the subject property has been taken by the authorities, the same shall be restored to the petitioner immediately. The petitioner shall be issued a fresh show cause notice containing the detail of the violation, if any, committed and given an opportunity of submitting his explanation. After receipt of the explanation the authority shall pass a reasoned order duly taking into account the explanation submitted by the petitioner. The entire exercise shall be completed as expeditiously as possible, preferably within a period of 12 weeks from the date of receipt of a copy of this order. It is needless to observe that before passing any order, the petitioner shall be given a reasonable opportunity of hearing. Any orders passed shall be communicated to the parties.

7. With the above direction, the Writ Petition stands **allowed** to the extent indicated.

(A. Abhishek Reddy , J)

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