

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.14026 of 2015**

=====

M/s R. N. Udyog, Plot No. N.S. Part, Large Industrial Estate, Barari, District – Bhagalpur, Pin. 812003 through its Proprietor Binod Kumar Kejriwal, son of Late Ram Nath Kejriwal resident of Mohalla- Sujaganj, Bhagwan Das Lane, Marwali Tola, P.S.- Kotwali, Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Industry, govt. of Bihar, Patna
2. The Bihar Industrial Area Development Authority, Patna through its Managing Director, Udyog Bhawan, P.O. and P.S.- Gandhi Maidan, District- Patna
3. The Managing Director, Bihar Industrial Area Development Authority, Patna Udyog Bhawan, P.O. and P.S.- Gandhi Maidan, District- Patna
4. The Executive Director, Regional Office, Large Industrial Estate, Bihar Industrial Area Development Authority, Barari, P.S.-Barari, distt-Bhagalpur
5. The Development Officer, Bihar Industrial Area Development Authority, Regional Office, Barari, P.S.-Barari, Distt-Bhagalpur
6. The Area Incharge, Large Industrial Estate, Bihar Industrial Area Development Authority, P.S.-Barari, Distt-Bhagalpur
7. The District Magistrate, Bhagalpur
8. The Officer-in-Charge, Barari Industrial Police Station, Bhagalpur

... .. Respondents

=====

**Appearance :**

For the Petitioner/s : Mr. Shakti Suman Kumar, Advocate  
For the Respondent/s : Mr. Gautam Bose, Advocate

=====

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

**Date : 23-09-2024**

1. The Writ petition of Certiorari has been filed for quashing the order dated 20.04.2015 purportedly passed by the respondent No. 3 which was received by petitioner on 19.05.2015, whereby respondent No. 3 has cancelled the allotment of additional plot admeasuring 5000 Sq.ft, which



was allotted in the favor of the petitioner and further to direct the respondents to allot an alternative plot of equal measurement against the payment made by the petitioner previously, prior to cancellation of the plot.

2. The brief facts culled out of the Writ petition is that the Petitioner's firm is a proprietorship firm and deals in manufacturing of "Regenerated Cotton". On account of expansion of the work, the petitioner-firm applied for additional land and accordingly, additional land admeasuring 5000 Sq. Ft. on Plot No. D-14 (P) at Barai was allotted through an allotment letter *vide* Letter No. 907/D dated 22.06.2013 after submitting all required and necessary documents. Subsequent to the allotment, the possession of additional land was not handed over to the petitioner by the respondents. The petitioner requested the respondents to hand over the physical possession of the land *vide* letter dated 15.07.2013 after depositing Rs. 38,042/- (Thirty Eight Thousand Forty Two) i.e. 30% of the value of the land, cost of pillar, service tax, maintenance charges and demarcation charges (Annexure-2). The petitioner visited the allotted plot on 01.08.2013 and found that the said plot was under



encroachment by some unknown persons. Further, the petitioner made a representation to the respondents dated 02.08.2013, directing them to hand over the physical possession of the allotted land (Annexure-3). In turn, the respondents informed the petitioner that they have started the proceedings for removal of the encroachments from the said land, for which they have issued Letter No. 413/BGP dated 12.07.2013 to the Inspector, In-charge of Industrial Police Station, Barari, Bhagalpur, wherein it disclose that respondent No. 6 directed the Inspector, In-charge of Industrial Police Station, Barari, Bhagalpur to lodge an FIR against the unknown persons, who illegally occupied the land. Further, respondent No. 5 also issued a letter bearing No. 1249/D dated 29.08.2013 (Reminder Letter) directing the Inspector In-charge of Industrial Police Station, Barari, Bhagalpur to remove the encroachments by the unknown persons and to expedite the removal of encroachment (Anx-4 series).

**3.** Further, the petitioner deposited Rs. 1,75,000/- (One Lakh Seventy Five Thousand) on 18.10.2013 on account of valuation of the said plot and requested for handing over the physical possession of the allotted land *vide* letter dated



18.10.2013 (Annexure5 series). The respondent No. 5 issued an office order *vide* Memo No. 1622/D dated 30.10.2013, wherein he confirmed that the petitioner has deposited initial payment of the cost of the land and also the cost of demarcation and directed the petitioner to contact Area-In-Charge of Large Industrial Estate, Barari, Bhagalpur (Annexure-6).

4. It is further contended in the Writ petition that the respondents have failed to remove the encroachment and hand over the physical possession of the land area either through their officials or through the local police and thereafter, respondent No. 2 issued a Letter No. 679 dated 06.02.2014 to the District Magistrate, Bhagalpur for deployment of a Magistrate and Female Police force for removal of the encroachment over the land (Annexure-7).

5. On 26.02.2014, the petitioner submitted a representation to the respondents informing that he has obtained loan from the market on interest to get the additional land and due to delay in handing over the physical possession, the petitioner was not able to commence his work over the allotted additional land (Annexure-8). The petitioner also



submitted numerous letters and representations to the respondents for handing over the physical possession of the additional allotted plot (Annexure-9 series). The respondent No. 3 again addressed a letter dated 27.06.2014, No. 661/D to respondent No. 7, whereby the respondent No. 3 requested for deployment of a Magistrate for removal of encroachment over the allotted land (Annexure-10). In response to the representation dated 05.06.2014 of the petitioner, the respondent No. 5 through Letter No. 674/D dated 30.06.2014, instructed the petitioner to await for the appointment of the Magistrate (Annexure-11).

6. Instead of handing over the physical possession of the land, respondent No. 2 *vide* Letter No. 453/D dated 19.05.2015 (received date by the petitioner) cancelled the allotment of Plot No. D-14, on the ground that the physical possession of the plot could not be handed over to the petitioner in view of the illegal encroachment (Annexure-12 i.e. impugned order).

7. It is submitted by the Learned counsel for the petitioner that the order cancelling the allotment of additional land is bad in the eye of law as the same was done by the



respondent without issuing any show cause notice. It is further contended by the Learned counsel that instead of returning the amount to the petitioner, the respondents ought to have allotted an alternative land and, therefore, prayed to allow the Writ petition, directing the respondents to allot an alternative land on the same rate for which he was allotted with the additional land in the year 2013.

8. A detailed counter was filed by respondent Nos. 2 to 6 accepting the contention of allotment of the additional land to the petitioner but denied other allegations. The counter disclose that the additional allotment of land was encroached by one Mahendra Jha along with his two sons Kailash Jha and Bhagwan Jha, which was used for their residential purpose. The respondent unit have already started the proceeding for removal of the encroachment from the said land and for which they have issued letters to Inspector In-charge of Industrial Police Station, Barari, Bhagalpur to lodge an FIR against the encroachers, but no action was taken by the Police. Thereafter the respondent unit have also addressed a letter to the District Magistrate, Bhagalpur for deployment of Magistrate and Female Police force for removal of



encroachment over the land. The working Director, BIADA, Bhagalpur also issued a Letter No. 1007/D dated 08.09.2014 to the Superintendent of Police for removal of the said encroachments over the land (Annexure B, C and D). A regular communication was arranged by the respondent unit through various letters for the physical possession of the allotted land to the petitioner and in respect of removal of encroachment in order to hand it over to the petitioner (Annexure-E, F and G). In response, BIADA clearly mentioned in the Letter dated 25.11.2014 that there is no issue in the allotment letter about payment of interest of amount which had been given at the time of allotment and it is also clear on the issue of physical possession of allotted land again and again it was communicated to the police officer for removal of encroachment.

**9.** Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondents.

**10.** It is specific contention of the Learned counsel for the respondent that inspite of the best efforts made by the BIADA, the encroachments initially could not be removed from the additional allotted land, therefore, the



respondents are constrained to cancel the allotment *vide* letter dated 24.02.2015 which was alleged to have received to petitioner on 19.05.2015, and pursuant to it the BIADA has also returned the amount *vide* Demand Draft on 01.08.2015 for an amount of Rs. 2,13,042/- (Two Lakhs Thirteen Thousand Forty Two) which was received by the petitioner. It is further contended by the Learned counsel for the respondents that every issue related to BIADA is available on its website and if at all, the petitioner intends to have any alternative land, it is for him to choose from the website and to make an appropriate application for allotment of the additional land. It is specific contention of the Learned counsel for the petitioner that without issuing show cause notice, the impugned order has been passed and, therefore, it is just and necessary to set aside the impugned order (Annexure 12).

**11.** On perusal of the entire record it is found that BIADA has initially allotted the land on 22.06.2013 and subsequently, it received the payment from the petitioner as to its 30% of the land cost and other charges etc. As the allotted land was encroached by unknown offenders, namely, Mahendra Jha and his two sons, the BIADA has taken



sufficient steps to remove the encroachments from the said land in order to hand over the same land to the petitioner which is evident from the letters addressed to the Police officials and to the District Magistrate. In spite of it, BIADA could not remove the illegal encroachments from the said land and failed to hand over the physical possession to the petitioner, for which BIADA has cancelled the allotment of the land and returned the amount to the petitioner by way of Demand Draft dt. 24.04.2015.

**12.** On perusal of records, it is evident that subsequent to the cancellation of allotment of additional land, the Writ petition has been preferred by the petitioner. However, the petitioner did not make any application before the BIADA for allotment of alternative land. Admittedly, no show cause notice was issued, but this Court is of the considerable view that as there is no possibility of performance of handing over of the land to the petitioner, as it is under encroachment and therefore, BIADA has no option except to cancel the allotment made. However, it is for the BIADA to allot alternative land to the petitioner, as the petitioner intends to expand his business and is in necessity of



the additional land. Therefore the petitioner is directed to make an appropriate application before BIADA for allotment of additional land, which shall be considered by BIADA.

**13.** It is the contention of the petitioner that the allotment has been made as per the cost of the land of the year 2013. It is left open to the BIADA to consider the request of petitioners. Taking into consideration, that the additional land allotted could not be handover, for no fault of the petitioner, BIADA shall consider the application of the petitioner and shall pass appropriate orders.

**14.** At this juncture, the Learned counsel for the petitioner brought to the notice of this Court that though the petitioner received the Demand Draft, it was not encashed and now it is not possible for him to encash the said amount. As the amount is still in the account of BIADA, it shall be adjusted by BIADA while considering the allotment of the additional land. At the time of making the application, the petitioner is also directed to produce a copy of the Demand Draft along with the application, in turn BIADA shall verify with the Bank whether the said amount was encashed or not.



15. Interlocutory application(s), if any, also stands disposed of.

16. With the aforesaid discussion, the Writ petition stands disposed of.

(G. Anupama Chakravarthy, J)

Shanu, Suruchi/-

|                   |             |
|-------------------|-------------|
| AFR/NAFR          | NAFR        |
| CAV DATE          | NA          |
| Uploading Date    | 08.10.2024. |
| Transmission Date | NA          |

