

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10512 of 2024

M/S Poorvanchal Urja (P) Limited through its Director namely Surendra Kumar Singh @ Surender Kumar Singh, Gender- Male, aged about 63 years, Son of Late Raghav Singh, R/O - RZ- 1/57, Street- 1, Tughlkabad Extn., Kalkaji, P.S. - Govindpuri, South Delhi- 110019.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Industries, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industries, Government of Bihar, Patna.
3. The Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna through its Managing Director.
4. The Managing Director, 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 (Administration), Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
7. The Deputy General Manager, Bihar Industrial Area Development Authority (BIADA), Bihta Cluster, Industrial Area, Sekunderpur, Bihta.
8. Area In-charge, BIADA, Industrial Area, Bihar Industrial Area Development Authority (BIADA), Buxar.
9. The Assistant Area In-Charge, Industrial Area, Bihar Industrial Area Development Authority (BIADA), Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Adv.
	:	Mr. Lal Babu Singh, Adv.
For BIADA	:	Mr. Prashant Pratap, Adv.
	:	Mr. Shadwal Harsh, Adv.
For the State	:	Mr. DK Verma, AC to SC11

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

Date : 25-07-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

reliefs:-



“i. For setting aside the order dated 29.06.2024 (Annexure-P/15) passed by the Respondent No. 5, the Joint Managing Director whereby and where under the reply of the petitioner to the show cause notice has been rejected on non-est, non sustainable ground in complete violation of principles of natural justice and fair play.

ii. For quashing of the subsequent order of the Respondent Deputy General Manager, Respondent No. 7 dated 04.07.2024 contained in Letter No. 1326 (Annexure-P/16) whereby the petitioner has been directed to vacate the land and ensure the handing over the land to the BIADA within 7 days.

iii. For a further direction to the respondents not to take any coercive step against the allotment of the petitioner and possession of the land bearing Plot No. - H-4 to H-7, C-17(P), C-18, to C-23 admeasuring to total area of 1,52,460 Sq.ft. till the disposal of this writ application and thus to maintain the status quo as of date.

iv. For any other relief(s) or consequential relief(s) to which the petitioner may be found entitled to in the facts and circumstances of this case.””

3. The admitted facts are that pursuant to the order passed by this Court in CWJC No. 3682 of 2024 dated 13.05.2024 (Annexure-P/12), the authority has issued a fresh show cause notice dated 11.06.2024 (Annexure-P/13). The petitioner has given his reply dated 28.06.2024 (Annexure-P/14) and, thereafter, the impugned order dated 29.06.2024 has been passed (Annexure-P/15).

4. Learned counsel for the petitioner has stated that the impugned order is not a speaking order and does not indicate that



the authority has cancelled the allotment made in favour of the petitioner. That without there being any order of cancellation, the authorities have passed the impugned order (Annexure-P/16) directing the petitioner to hand over the possession of the subject property. Learned counsel has stated that the said action of the respondents in issuing the letter dated 04.07.2024 (Annexure-P/16) is contrary to the well settled principles of law and also the provisions of the Bihar Industrial Area Development Authority Act, 1974 (BIADA Act), more particularly, Section 6 (2)(a) of the BIADA Act. Further, learned counsel has stated that the authority has not considered the explanation submitted by the petitioner and passed the impugned order in a post haste manner. Learned counsel has stated that the explanation to the show cause notice was submitted by the petitioner on 28.06.2024 and the impugned order is passed on 29.06.2024. Learned counsel has therefore, prayed this Hon'ble Court to set aside the impugned order passed by the authority concerned. Further, it is also prayed that the Sub-Divisional Officer, Buxar has deputed the Block Development Officer on 22.07.2024 as Magistrate to take the possession of the subject land today i.e., on 25.07.2024.

5. *Per contra*, the learned counsel for the respondents has vehemently opposed the very maintainability of the present



writ petition and stated that the petitioner is having an alternative and effective remedy of filing an appeal under the provisions of the BIADA Act. Learned counsel has tried to impress upon this Court that the order impugned in the present writ petition is sustainable on the facts of the case and does not need any interference.

6. When queried by this Court as to whether the impugned order dated 29.06.2024 (Annexur-P/15) can be construed as an order of cancellation, the counsel has tried to support the same on the basis of the earlier order of cancellation and the order passed by the appellate authority.

7. This Court vide order dated 13.05.2024 passed in CWJC No. 3682 of 2024 has set aside the earlier order of cancellation passed by the BIADA authorities and directed them to issue a fresh show cause notice, if they are desirous of cancelling the allotment made to the petitioner, call for an explanation from the petitioner and, thereafter, pass a reasoned order. The authority concerned has issued show cause notice to the petitioner dated 11.06.2024 and to which a suitable reply has been given by the petitioner. However, while passing the order dated 29.06.2024 (Annexure-P/15), the authority has in the operative portion stated that the representation of the petitioner is rejected on the ground



that it is found to be unsatisfactory. There is no order of cancellation of the allotment made to the petitioner. In the absence of any order to the effect that the allotment made to the petitioner has been cancelled the letter dated 04.07.2024 (Annexure-P/16) cannot be sustained. It is well settled principle of law that the subsequent counter-affidavit filed by the respondents nor the arguments of the counsel to support the order dated 29.06.2024 (Annexure-P/15) can be allowed. Once an order is passed, the said order cannot be subsequently improved by way of a counter-affidavit or on the submissions made by the counsel. The Hon'ble Supreme Court in the case of ***Mohinder Singh Gill & Anr vs The Chief Election Commissioner & Ors.*** reported in ***1978 SCC (1) 405*** has held as under;

“when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji;

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect



and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

8. Having regard to the above, the impugned orders dated 29.06.2024 & 04.07.2024 (Annexure-P/15 & P/16) are hereby set aside, the matter is remanded back to the authority concerned for passing orders afresh duly taking into consideration the explanation submitted by the petitioner and also the documents filed by them.

9. It is needless to mention that before passing any orders, the petitioner shall be given an opportunity of hearing. The authority concerned shall duly take into consideration the documents filed by the petitioner in support of his case and pass a reasoned order. Any order passed shall be communicated to the parties.

10. Having regard to the fact that the impugned order dated 29.06.2024 & 04.07.2024 (Annexure-P/15) & (Annexure-P/16) are set aside, the subsequent communication dated 22.07.2024 issued to the Block Development Officer has to be necessarily held to be illegal and bad. Learned counsel for the BIADA as well as the counsel for the State shall inform the concerned officers not to take the physical possession of the subject property or give effect to the Letter No. 420 dated



22.07.2024. In case the possession is taken, the same shall be handed back the petitioner immediately.

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

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.07.2024.
Transmission Date	NA

