

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15164 of 2023

M/s Balaji Industries Industrial Area, Betiah, through its Proprietor Sushil Kumar Motani, aged about 62 years, Gender- Male, son of Ram Gopal Motani, R/o Sarvsiddhi Niwas, Church Road, Near Andhra Bank, Betiah, District West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Industries, Government of Bihar.
2. The Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna through its Managing Director.
3. The Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
4. The Joint Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
5. The Deputy General Manager, Bihar Industrial Area Development Authority (BIADA), Muzaffarpur Cluster, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dewendra Narayan Singh, Adv.
For BIADA	:	Mr. Ravi Kumar, Adv.
For the State	:	Mr. Vikash Kumar, SC11
	:	Mr. Dhirdyuti Kumar Verma, AC to SC11

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

Date : 20-06-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

reliefs:-

“For setting aside the order dated 08.09.2023 passed in Appeal No. 211 of 2023 by the Additional Chief Secretary, Department of Industries, Patna, Bihar (contained in Annexure P-8), whereby and where under the appeal, preferred against the order contained in Memo No. 02 dated 03.01.2023 by the petitioner, has been rejected on non-sustainable grounds without taking into consideration the facts and circumstances as well as the materials available on record of the case in its proper perspective and without even giving the petitioner opportunity to file



rejoinder to the counter-affidavit filed on behalf of the opposite party in the aforesaid Appeal No. 211 of 2023.

(II) For quashing of the order contained in Memo No. 02 dated 03.01.2023 (contained in Annexure P-6) passed by the respondent No. 4 cancelling allotment of land, appertaining to plot No. B-14 & 15 measuring an area of 0.50 acre (21780 sq. ft.) in the Industrial Area, Betiah allotted in favour of the petitioner; arbitrarily and whimsically and the amount deposited against the land in question has been forfeited on erroneous grounds.

(iii) For restraining the respondent authorities from taking possession over the land in question and creating third party right over the land in question by re-allotting the land in favour of any new allottee, till the disposal of the present writ petition.

(iv) For restraining the respondent authorities from taking any coercive steps against the petitioner during pendency of the present writ petition.

(v) For any other relief/reliefs for which the petitioner is found entitled.”

3. It is the case of the petitioner that he was allotted 0.50

acres way back in the year 1985 for the purpose of establishing a laundry soap and detergent factory. That the petitioner has established the said factory and was continuing the production till 2003. That thereafter, the petitioner due to unfavorable market conditions had to shift into the business of production of flour, *besan* and *choker* and to that effect an application was made to the authorities and permission was granted for change of activity. That the petitioner continued to run his industry of production of flour, *besan* and *choker* till 2018. Thereafter, due to the road repair works undertaken by BIADA, the height of the road in front of the subject property was raised by more than one feet and during the



rainy season, the factory of the petitioner was getting waterlogged and therefore, the petitioner had to stop the production. That the petitioner from July 2022 onwards has taken necessary steps to raise the floor level of the factory and start production. Learned counsel has stated that due to ongoing civil works carried out by the petitioner, the petitioner had to stop the production however, the authority without taking the same into consideration have issued the show cause notice directing the petitioner to start commercial production within the fifteen days from the date of receipt of the copy of the show cause notice. That though, the petitioner has explained the difficulties faced by him, the authorities without considering the explanation submitted by the petitioner have passed the order of cancellation. That the petitioner has preferred an appeal before the appellate authority but the same was dismissed in a mechanical manner without adverting to the grounds raised by the petitioner. Learned counsel has stated that the primary authority as well as the appellate authority have passed the order of cancellation based on the inspection report dated 19.07.2022 & 07.08.2023 respectively in a pedantic and mechanical manner without any application of mind. Learned counsel has stated that a perusal of the inspection report reveals that as on the date of inspection i.e., 07.08.2023, the unit of the



petitioner was in production. That the appellate authority without considering the same has passed the impugned order. Learned counsel has further stated that the petitioner has started the commercial production immediately after the initial order of allotment was made and thereafter, taking due permission for change of product has also started the production of the new product however, the authority without considering the same and also not taking into account the fact that the factory of the petitioner was inundated with water has passed the order of cancellation and the same was confirmed by the appellate authority. Learned counsel has therefore, prayed this Hon'ble Court to allow the present writ petition.

4. *Per contra*, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that though the petitioner was allotted the land in the way back year 1985, the petitioner has not established the factory and utilized the land for the purpose for which it was allotted. Learned counsel has stated that both the primary as well as the appellate authority have passed a well reasoned order and the same does not call for any interference. Further, learned counsel has stated that as on the date of inspection i.e., 19.07.2022 the factory of the petitioner was closed and there



was no production as alleged by the petitioner. That the order of the appellate authority is a well reasoned order which does not warrant any interference by this Court. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. A perusal of the impugned order of cancellation passed by the primary authority as well as the order passed by the appellate authority reveals that they have relied on the inspection report dated 19.07.2022 & 07.08.2023 while passing the order. The initial inspection of the premises was done on 19.07.2022 and the authority concerned found that as on the date of inspection the factory was closed. Based on the said inspection report, the show cause notice dated 10.09.2022 was issued to the petitioner (Annexure P-4) to which the petitioner has given a reply (Annexure P-5). The primary authority has passed the order of cancellation on 03.01.2023 (Annexure P-6) and the petitioner has preferred an appeal before the statutory authority. The appellate authority vide order dated 08.09.2023 (Annexure-P-8) has dismissed the appeal confirming the order of the primary authority. It is pertinent to note that during the pendency of the appeal, the appellate authority was pleased to call for the fresh inspection report and the same was submitted by the concerned authority vide



inspection report dated 07.08.2023. However, the appellate authority except referring to the said inspection report dated 07.08.2023 has not adverted to the contents of the report and has dealt with the appeal in a mechanical manner. The appellate authority came to the conclusion that the petitioner has failed to establish the industry over the allotted land or show any promising way forward to the direction of establishing and running the industry over the said land. Further, it is stated that the valuable land in the industrial area has been kept in an abandoned condition which is detrimental for the industrial growth as well as violation of the terms of the allotment. However, the site inspection report dated 07.08.2023 and the photos enclosed along with the site inspection report reveals that the petitioner has established the industry for the purpose of production of *atta*, *besan* and *sattu* and except for an area of 10000 sq. ft., the rest of the area is covered by the factory. Further, as seen from the documents filed by the petitioner, more specifically, the tax invoices, the GST receipts, the various permissions taken by the petitioner and as well as the tax returns filed under the Bihar Value Added Tax Act reveal that the petitioner had not only established the industry but the same was in production. Merely because on the date of inspection, the factory was found to be closed, it cannot be said that the petitioner



has failed to establish the factory or that he has stopped production altogether. Further, the inspection report dated 19.07.2022 does not state that the petitioner has failed to establish the industry. The reasons given by the petitioner that due to the raising of the road by the BIADA authorities, the entire land of the petitioner was flooded by water has not been denied by the authorities. Even though the petitioner has raised the said specific plea before the authority concerned, the same has not been dealt with. This is not a case where the allottee has failed to establish the factory at all. But on the counter, there is ample evidence to show that the petitioner has not only establish the industry but the same is in production.

6. Having regard to the above mentioned facts and circumstances, the impugned order passed by the appellate as well as the primary authority are set aside. As it is stated by the counsel for the petitioner that during the pendency of the present writ petition, the physical possession of the factory has been taken over by the BIADA authorities, the authorities are directed to put the petitioner back in possession of the subject property within a period of four weeks from the date of receipt of a copy of this order. On being put in possession, the petitioner shall start his production within a period of three months thereof. In future, if the petitioner is found to violate the terms and conditions of the



allotment order, the authorities are free to take necessary action strictly in accordance with law.

7. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.06.2024.
Transmission Date	NA

