

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.79 of 2023

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Poonamika Foods (India) Pvt. Ltd. Having its industrial unit at 17-188, Industrial Area, Hajipur, District Vaishali (Bihar) through its Director Poonam Singh, female, aged 53 years, w/o Kumar Aksharanand Mithilesh, R/o Ward No.- 7, Salaha, P.S.- Jandaha, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Industries, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Industries, Govt. of Bihar, Patna.
3. Industries Development Commissioner, Department of Industries, Govt. of Bihar, Patna.
4. The Bihar Industrial Area Development Authority (BIADA), through its Managing Director, 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna.
5. The Managing Director, Bihar Industrial Area Development Authority (BIADA), Managing Director, 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna.
6. The Executive Director, Bihar Industrial Area Development Authority (BIADA), Managing Director, 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna.
7. The Deputy General Manager, Hajipur Cluster, Bihar Industrial Area Development Authority (BIADA), Hajipur Cluster Industrial Area, Hajipur, Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Harsh Singh, Advocate
For the State	:	Mr. Kinkar Kumar, S.C.-9
For the BIADA	:	Mr. Lalit Kishore, Sr. Advocate
		Mr. Ravi Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 08-02-2024

Heard the parties.

2. The present writ application has been filed

for the following reliefs:-



(i) for issuance of a writ, order or direction in the nature of writ of certiorari for quashing order dated 01.11.2022 passed in Appeal No. 226/2022 passed by the Principal Secretary, Department of Industries, Bihar, Patna (Respondent No. 2) whereby and whereunder the appeal preferred against order dated 27.08.2022 contained in memo no. 77/D passed by the Deputy General Manager, Hajipur Cluster, Bihar Industrial Area Development Authority (BIADA), Hajipur Cluster Industrial Area, Hajipur, Vaishali (Respondent No. 7) cancelling the allotment of Industrial Plot No. B-16P, 17 and 18P at Industrial Area, Hajipur granted to Petitioner has been upheld;

(ii) for issuance of a writ, order or direction in the nature of writ of certiorari for quashing order dated 27.08.2022 contained in memo no. 77/D passed by the Deputy General Manager, Hajipur Cluster, Bihar Industrial Area Development Authority (BIADA), Hajipur Cluster Industrial Area, Hajipur, Vaishali (Respondent No.



7) whereby and whereunder the allotment of Industrial Plot No. B-16P, 17 and 18P at Industrial Area, Hajipur granted to Petitioner has been cancelled;

(iii) for issuance of a writ, order or direction in the nature of writ of mandamus commanding the respondent authorities to restore the allotment and possession of petitioner with respect to Industrial Plot No. B-16P, 17 and 18P at Industrial Area, Hajipur, where all plants and machinery of Petitioner are still lying and forceful possession has been taken without preparing any inventory;

(iv) for issuance of a writ, order or direction in the nature of writ of mandamus commanding the respondent authorities to allow adequate and reasonable time to Petitioner to settle such dues against Bihar State Credit & Investment Corporation, which was liquidated by respondent- Bihar Industrial Area Development Authority (BIADA), behind the back of Petitioner as also to enable Petitioner to get its industrial unit



back in operation, upon restoration of petitioner's allotment and possession.

3. The matrix of facts giving rise to present appeal is/are as follows:-

4. The petitioner is a Private Limited Company having its registered office at Hajipur represented through its Director.

5. As per the writ petition, the State Government in the year 1995 came out with its Industrial Policy-1995 whereby and whereunder, the food & food processing industries were identified as one of the thrust industries for accelerated development and industrialization of the State.

6. The petitioner applied and was allotted an Industrial plot bearing no. B-16P, 17 & 18P (43560 sq ft.) by the Bihar Industrial Area Development Authority (henceforth for short 'the BIADA') at Industrial Area, Hajipur vide letter no. 131 dated 15.05.1992 for establishing a biscuit manufacturing unit. The petitioner was registered with the Directorate of Industries and was granted a Permanent Registration Certificate as a Small Scale Industry for manufacturing/ processing biscuits on 20.09.1995.



7. According to the petitioner, the industrial unit could not run smoothly and was rendered sick in the year 2000. Left with no option, he approached the appropriate authorities for declaring the unit sick and it was declared as such vide letter no. 1058 dated 19.05.2000 of the Director, Industries, Bihar.

8. Later, the State Government revised its Industrial Policy in the year 2006 and came out with an Industrial Incentive Policy, 2006 wherein under Clause 3.2(viii), certain facilities were to be provided to sick and closed units which reads as under:

3.2 (viii) Facility provided to the sick and closed units: Exemptions from Annual Minimum Guarantee (AMG), Monthly Minimum Guarantee (MMG) and Delayed Payment Surcharge (DPS) would be available to the unit from the date of declaration of the unit as a sick unit. This facility would be admissible for a period of five years.

9. The aforesaid Industrial Policy was further revised in the year 2011 vide the Industrial Policy, 2011 wherein under Clause 5(vii) the same benefits were to be extended to a sick unit which had been accrued to them under previous



industrial policy. Clause 5(vii) which pertains to small scale industries reads as under:

5 (vii) Those sick units which have availed the benefits of any Industrial Policy it may avail the facilities under this policy even a second time. If any sick unit wants to avail the benefits under the Industrial Policy for the second time it will avail only the difference between the prior availed amount and the proposed amount under new policy. But this facility for rehabilitation to the unit will be made available only on the recommendation of the concerned committee constituted by the State Government. Such facility to the unit can be made available a maximum of two times only.

10. Armed with the new industrial incentive policies of the State Government, the petitioner claims that he was able to generate resources and capital from willing investors including from Bihar State Credit & Investment Corporation Ltd. (henceforth for short 'the BICICO'). However, the unit could not be revived and the COVID 19 pandemic led to complete halt of all manufacturing process. He further became defaulter of 'the BIADA'. However, as he sincerely wanted to revive the industrial unit and commercial activities,



once again the petitioner approached 'the BIADA' for settlement of all dues and accordingly, vide letter no. 356 dated 09.03.2019, Respondent No. 6 extended the benefit of One Time Settlement Scheme (OTS-19) to him calculating the dues at Rs 6,54,621/-.

11. Availing the said benefit, the petitioner claims to have deposited the aforesaid amount by way of demand draft bearing number 268413 dated 30.03.2019. He further claims to have made several investments and purchases in the year 2019 with respect to raw materials and inventories for reviving the industrial unit.

12. However, vide memo no. 4360/D dated 15.12.2021 passed by Respondent No. 6 on the ground that Rs. 6,54,621/- remained unpaid and the unit was found closed on spot verification, proceeded to cancel the allotment of the petitioner's unit.

13. The grievance is that the respondent authorities failed to provide any opportunity to petitioner to demonstrate his intent in respect of running the industrial unit in as much as he was negotiating with top biscuit manufacturing companies for revival of the unit. The petitioner represented on 04.01.2022 before the Respondent No. 6 and requested that the



order of cancellation be reconsidered and withdrawn but without success.

14. Thereafter the petitioner preferred Appeal No. 15 of 2022 filed on 09.02.2022 before the Industries Development Commissioner, Department of Industries, Govt. of Bihar, Patna, the Appellate Authority (Respondent No. 3). The appellate authority allowed the appeal by passing an order on 08.04.2022 observing that petitioner had agreed to start its trial production in 3 months and commercial production in 6 months after clearing any dues of 'the BIADA' within the next one month. Thereafter Respondent No. 6 vide letter no. 1794/D dated 06.05.2022 intimated the petitioner that the current dues were Rs 25,228.00.

15. The petitioner immediately thereafter submitted letter dated 23.05.2022 enclosing a demand draft bearing no. 705981 (4671) dated 23.05.2022 of the aforesaid amount of Rs 25,228/- to the Respondent No. 6 for clearing the dues in terms of order passed by the Appellate authority.

16. The petitioner claims that in the entire month of June and July 2022, the industrial activities came to be hugely restricted on account of rains, which had flooded the premises. However, the petitioner kept the industrial unit



running and also paid the electricity bills. Rs 72,035/- on 30.07.2022 and another electricity bill for July 2022 was also generated on 05.08.2022.

17. However, another order vide memo no. 77/D dated 27.08.2022 was passed by respondent no. 7 by cancelling the allotment of industrial land of the petitioner on the premise that on site inspection carried out on 29.07.2022, it was found that no industrial activity was going on and that the electrical connection of the petitioner was disconnected.

18. Left with no option, the petitioner preferred another appeal wherein all the aforesaid facts were brought to the notice of the Appellate authority vide Appeal Case No. 226 of 2022 filed on 29.09.2022. Meanwhile, 'the BIADA' took possession of the land.

19. The petitioner claims that the Appellate Authority vide order dated 01.11.2022 dismissed petitioner's appeal solely on the basis of the earlier order dated 08.04.2022 passed in Appeal No. 15 of 2022.

20. Learned Counsel submits that from the various orders passed by the respondent 'BIADA', it is evident that it was taking vacillating stand only to justify the cancellation of petitioner's allotment of industrial land.



21. He submits that it is an admitted position that the impugned order of cancellation of allotment was in the teeth of principles of natural justice in as much as no opportunity to even show cause much less of effective hearing was provided to him prior to cancellation of petitioner's plot and as such interference is required in the matter.

22. As per the respondents, the Hajipur Industrial Area is also one of such industrial area where 'the BIADA' is responsible for its planned development and allied activities.

23. Further, it had allotted One acre land bearing Plot No. B-16(part), B-17 and B-18 (part) situated at Industrial Area, Hajipur to the petitioner unit to establish and run industry vide letter no. 131 dated 15.05.1992, subject to fulfillment of terms and conditions of allotment letter. Thereafter, the physical possession of aforesaid land has been handed over to the petitioner on 20.05.1992. However, in view of the non performance of the petitioner, Industrial Directorate issued letter no. 1508 dated 19.05.2000 declaring the petitioner's unit sick for the period of five years or till rehabilitation, whichever is earlier. However, even thereafter no commercial production took place.



24. Since the Unit of the petitioner had huge dues of Rs.25,42,038/- and commercial production had not been commenced since long, 'the BIADA' issued notice letter no. 182 dated 04.07.2007 giving instruction to deposit the due amounts within a period of 15 days and to ensure commercial production in the Unit. In the absence of response from the petitioner, a reminder notice was issued vide letter no. 651 dated 03.08.2011. It was made clear in the first intimation itself that failure to act would lead to cancellation of allotment of land.

25. Under the circumstances, several show cause notices vide letter no. 7220 dated 19.12.2011, letter no. 1245 dated 08.02.2013 and letter no. 2580/D dated 24.04.2013 have been issued to the petitioner's unit for starting the commercial production and for remitting due amounts, but no steps whatever were taken by the petitioner..

26. Later, the Regional Incharge, Industrial Area, Hajipur informed to its authority vide letter dated 14.03.2000 that petitioner's Unit has neither deposited dues amount of Rs. 6,54,621/- to 'the BIADA' nor performing any Industrial activity and as such, action be taken against unit. In view of the aforesaid information, 'the BIADA' authority issued final notice to the petitioner vide letter no. 324 dated 17.03.2020



directing him to deposit dues amount within 15 days and to start production accordingly. However, there was no response from the petitioner's side.

27. Ultimately, the Development Officer of 'the BIADA' again issued final notice vide memo. no. 559 dated 04.06.2021 in this regard, but nothing has been done by the petitioner.

28. The Development Officer of 'the BIADA' again inspected the Unit and found therein that petitioner has not taken any effort towards industrialization of the land. Accordingly, an inspection report vide memo no. 283 dated 27.11.2021 was made.

29. Ultimately, under the circumstances, the Executive Director of 'the BIADA' issued order as contained in letter no. 4360/D dated 15.12.2021 whereby the allotment of aforesaid land in favour of the petitioner was cancelled.

30. An appeal was preferred by the petitioner vide Appeal No. 15/2022, which was allowed on 08.04.2022 by the Appellate Authority with the direction that petitioner will start trial production within a period of three months from date of issuance of order and will start commercial production within a period of six months. The petitioner further undertook to pay



the due amounts within one month. As he did nothing even thereafter, the allotment of the land was cancelled on 27.08.2022 and the appeal so preferred vide Appeal No. 226/2022 too was dismissed on 01.11.2022.

31. Learned Counsel submits that the petitioner's Unit had been financed by 'the BICICO' and the dues have accrued upto Rs. 106 Lakhs. He further submitted that in the interest of Industrialization under the agreement between 'the BIADA' and 'BICICO', 'the BIADA' has purchased the land of petitioner after making huge payment of Rs.88 Lakhs to 'the BICICO' vide letter no. 343 dated 18.02.2022 and possession thereof has already been handed over to 'the BIADA' by 'the BICICO'. Hence, the petitioner has now lost every right over the said land.

32. We have taken note of the facts of the case as also the submissions put forward. The admitted fact is that the petitioner, Poonamika Foods (India) Pvt. Ltd. (henceforth for short 'the Poonamika Foods') was allotted 1 acre of land at Industrial Area, Hajipur in the year 1992.

33. Clause 6 and 8 of the said letter dated 15.05.1992 (Annexure-R/A to the said counter affidavit) read as follows:-



“6. You will get plan of factory/shed approved by the authority within two months of the date of the allotment order for which you must submit necessary plans to the proper authority within a month from the date of your taking possession of the land/shed allotted to you.

8. Your Industrial unit should go into production or you should show positive progress training in your factory to displaced persons/locals people of the area.”

34. Clause 10 further made it clear that non-compliance and/or deviation or acts of commission on violation of the terms and conditions will result into cancellation of the allotment and the authority shall be entitled to enter upon it and realize the damage in accordance with law.

35. Clause 10 read as follows:-

“Non-compliance with or deviation from or acts of commission on violation of the terms and conditions herein contained or the conenants stipulated in the enclosed bond and the dead of lease in the prescribed from by you will entitled renovation or cancellation of the allotment of the allotment of land/shed and will entitled the Authority to enter upon and take hold allotted land/shed and realize from you all lessees caused and damage done to and injury done to and injury suffered by the Authority by reason of your non-



compliance with the terms and conditions herein contained or deviation from compass stipulated in the deed of lease or act of commission or commissions in violated thereon.

You are requested to intimate in writing your acceptance of the terms and conditions herein contained is also the terms and conditions in the prescribed form of the deed of lease of the allotted land/shed and comply with the necessary pre-conditions in terms hereof in due time for the taking of possession of the allotted shed/land.”

36. ‘The Poonamika Food’ took possession of the land on 20.05.1992 itself. Eight years later, in the year 2000, it was declared sick and no commercial production was ever commenced. In that background, ‘the BIADA’ issued notice dated 04.07.2007 followed by reminder notice dated 03.08.2011 to ensure commercial production failing which allotment of land was to be cancelled (Annexure – R/D to the counter affidavit). This followed the letter dated 19.12.2011, 08.02.2013 and 24.04.2013 but without any response from the petitioner’s side.

37. The petitioner was thereafter issued the letter dated 17.03.2020 by which he was informed that under one time settlement scheme, he may take benefit. However, no payment was made as also no industrial work was initiated and



in that background he was noticed as to why the allotment be not cancelled and land taken back (Annexure-R/F to the counter affidavit).

38. This followed another notice dated 04.06.2021. However, it too failed to elicit any response from the petitioner and in that background, allotted plot was visited by the Area Officer of 'the BIADA' on 27.11.2021 and a detailed report was submitted alongwith photographs to show that there is no industrial activity on the plot and as such, steps be taken for cancellation of the allotment.

39. It was only thereafter that the order vide memo no. 4360/D dated 15.12.2021 issued by the Executive Director of 'the BIADA' the allotment of the land (B-16P, 17 and 18P) was cancelled and the amount that was deposited was forfeited (Annexure- R/I to the counter affidavit).

40. The petitioner preferred Appeal No. 15 of 2022 in which a long rope was given to him by the Principal Secretary of the Department of Industries, Bihar, Patna vide order dated 08.04.2022 which read as follows:-

“Heard the learned Advocate for appellant and BIADA. The appellant states that he is willing to start the unit. The appellant agrees that he will start the trial production in 3 months



and commercial production in 6 months and he will also clear dues of BIADA within 1 month from today. The learned Advocate for the appellant also agreed that he will not pursue any further legal remedies in case conditions are violated. The appeal is allowed, subject to above conditions.”

41. However, despite the said extension of time, the petitioner failed to act. Left with no remedy, the memo no. 77/D dated 27.08.2022 was issued by the Deputy General Manager of ‘the BIADA’, Hajipur once again cancelling the allotment and forfeiting the deposited amount.

42. Aggrieved, Appeal No. 226 of 2022 preferred and which was taken up on 01.11.2022 and taking note of the undertaking given by the petitioner which finds incorporated in the earlier Appeal No. 15 of 2022 (disposed of on 08.04.2022) that in case he violates the condition, he will not pursue any further legal remedy, as he failed to act, there is no error in the record and the appeal was dismissed.

43. So far as the claim of the petitioner regarding deposit of Rs. 6,54,621/- (Annexure-2) is concerned, in view of the categorical statement made by the respondents in paragraph 14 of the counter affidavit not rebutted by the petitioner that the amount was not deposited, we took a look at Annexure-2. We can observe that these are created documents as



there is no receipt of any competent authority on the forwarding letter.

44. The entire facts have been recorded herein to show that a land which was allotted in the year 1992, no commercial/industrial activity took place for decades. All the inspection reports are pointer to the aforesaid facts. Further, as would reflect from the different annexures and the order, the petitioner never intended to act/initiate commercial activities.

45. The bills that has been attached with the writ petition showing that he made so-called heavy investment, it merely shows that purchase worth Rs. 11,473/- was made and some other odd amounts that too in the year 2019. On the contrary, upon physical inspection of the plot, it was found that the petitioner has let out part of the land, and the said person was running the show.

46. We must also take note of the fact that the petitioner defaulted the undertaking given earlier which has been incorporated in the order dated 08.04.2022 by the respondent Principal Secretary.

47. The petitioner not only failed to commence commercial production, despite an opportunity to do so granted after a long time; but also allowed third parties



to use the land allotted to the petitioner for industrial purposes. The above facts were detected on physical inspection, which are not controverted by the petitioner. The petitioner having acted against the specific terms of allotment and violated the undertaking made by him to belatedly comply with the terms disentitle him from continuing with the allotment. It is also pertinent that, even third party rights have been created on the property.

48. We do not find any error in the order passed by the Respondent Authorities. The writ petition is dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Neha/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.02.2024
Transmission Date	

