

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17965 of 2023

=====

M/s Kunal Chemicals, Plot No. 41 (Part) Industrial Area, Barauni, through its Proprietor/Owner, Sri Anand Kumar Jha, Resident of Village and Post-Garhiya, Via Mansi, District-Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Department of Industry, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Industry, 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, North Bihar Industrial Area Development Authority (BIADA), Regional Office, Patna.
7. The Deputy General Manager, Begusarai Cluster, Bihar Industrial Area Development Authority (BIADA), Cluster Office, Begusarai.
8. The Area Incharge, Bihar Industrial Area Development Authority (BIADA) Industrial Area, Barauni, District Begusarai.
9. M/s Worldcraft Industries through its proprietor Mr. Deepak Kumar Sharma, At Ward No. 01, Road Dharampur, Post and PS-Garhpura, State of Bihar, PIN-848204.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Jha, Advocate.
For the Respondent/s	:	Mr. Standing Counsel 24.
For the BIADA	:	Mr. Bindhyachal Singh, Senior Advocate with Ms. Binita Singh, Adv.

=====

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

7 25-07-2024 Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the
following reliefs:-



“(i) To quash the ex-party order dated 16.11.2023 (Annexure- P/1) passed by Additional Chief Secretary Department of Industry, Government of Bihar, Patna being an appellate authority, whereby and whereunder appeal filed by the petitioner against cancellation order contained in Memo no. 439 dated 26.07.2023 (Annexure P/3) has been rejected in a most arbitrary and mechanical manner, without hearing the counsel for the petitioner as well as ignoring the fact that Industry in question was/is functional one, as such the said impugned order is not sustainable in the eye of law and is fit to be set aside by the Hon'ble Court.

(ii) To quash the consequential letter being no. 755 dated 22.11.2023 (Annexure-P/2) issued by Respondent No. 7, whereby and whereunder the petitioner has been informed to hand over peaceful possession of the unit to the authority within 7 days by replacing Machine/Tools etc. failing which legal action will be taken moreover the concerned respondents has forcibly broken the lock of the unit in the absence of the petitioner/his representative and has sealed the unit and said action of the respondents are not only illegal rather same is arbitrary one.

(iii) To quash the office order bearing memo no. 439 dated 26.07.2023, passed by Joint Managing Director, Bihar Industrial Area Development Authority, Patna (hereinafter referred to as BIADA), whereby and whereunder Plot No. 41 (Part) measuring an area 0-



24 area, situated at Begusarai, which was allotted to the petitioner in the year 1976 has been cancelled in a most mechanical manner on the ground that at the time of inspection on 13.07.2023 one worker was present and he did not produce Electric bill and G.S.T. return, which indicates Industrial Apathy/Indifference of the Industrialist. By the said order the amount deposited in connection of plot in question by the petitioner has also been forfeited. Aforesaid order is not only illegal arbitrary rather same is wholly without jurisdictions, in view of the law laid down by the Hon'ble Patna High Court in the case of Deepak Paint (P) Ltd. Vs the State of Bihar and others bearing C.W.J.C. No. 7352 of 2007 decided vide order dated 17.03.2008 which is reported in 2008(2) P.L.J.R.-293, wherein the Hon'ble High Court, Patna has categorically held that "In such matters where lease agreement stand executed and concluded and parties have thereafter, enjoined the lease hold properties, the only way the respondent BIADA authorities can dispossess them would be by moving civil court of competent Jurisdiction by adopting due process of law and only on such declaration in favour by the competent court in this regard".

Aforesaid order is further bad in law because in view of the order dated 17.03.2023 passed by this Hon'ble Court in C.W.J.C. No. 2984 of 2023 (M/S Kala Coke and Chemicals Pvt. Ltd. Vs The State of Bihar and others) petitioner's



Industrial Plot No. 41 (Part) ought not to have been cancelled by the respondents because continuously production is going on and even on last inspection day i.e. 13.07.2023 production of Thinner was going on, and since Electric Bill and G.S.T. return was not demanded by the inspection team as such same was not produced before inspection team, moreover the local officer of the BIADA, Barauni is in hand in glove with some local people, who are interest for said plot, as such on the basis of incorrect report plot in question of the petitioner has been cancelled by impugned office order being Memo no. 439 dated 26.07.2023 which is not sustainable in the eye of law and is fit to be set aside by this Hon'ble Court.

(iv) To direct the respondents to give benefits as are being given to the similarly situated allottee in the light of order passed by this Hon'ble Court.

(v) To direct the respondents, not to take any coercive steps against the allotted plot of the petitioner till disposal of the writ application.”

3. Shorn of all the details, the facts necessary for the disposal of the present writ petition are as follows:-

The petitioner was allotted land to an extent of 0.24 acres, situated at Barauni, Begusarai in the year 1976. Based on the Inspection Report dated 13.07.2023, the allotment made in favour of the petitioner was cancelled on 26.07.2023 vide



Memo No. 439 (Annexure 3). Aggrieved thereof the petitioner has filed an appeal before the statutory authority who vide order dated 16.11.2023 (Annexure P-1) has dismissed the appeal No. 245 of 2023 confirming the order of cancellation dated 26.07.2023.

4. Assailing the said order the present writ petition is filed. At the time of admission this Court vide order dated 19.12.2023 has passed the following order:-

“3. Learned counsel for the petitioner has stated that the authorities have already taken possession of the subject property and that may be allotted to the third party.

4. Having regard to the same, the Respondent-BIADA are directed not to create any third party rights till the next date of hearing.”

5. Pending the adjudication of the present writ petition, the authority have allotted the plot, in question, in favour of the Respondent No. 9 on 05.03.2024 and put him in possession on 10.04.2024.

6. The only question that has to be examined by this Court in the present writ petition is as to whether the order passed by the appellate authority can be sustained or not. The appellate authority while dismissing the appeal has come to the following conclusion which reads as under:-



“After hearing the rival contentions of the parties and perusing the site inspection report dated 11.09.2023 it is found that the appellant has miserably failed to establish the industry over the allotted land as well as no document has been produced on behalf of the appellant which may prove that the appellant has carried out industrial activity over the allotted land. During the site inspection, no industrial activity was found to be carried out over the land in question as well as the photographs enclosed with the site inspection also shows that only scrap of jar, drums, tanks and old chemicals were found lying in the entire premises and the unit was in an abandoned condition which gets demolished the claim of the appellant that he was running his unit. Further, the appellant himself in his memo of appeal has submitted that he has got installed underground tank for storage of terpene oil or other chemicals but the petitioner has neither stated in the entire memo of appeal nor has produced any document to show that any plant or machinery has been installed over the land in question in order to establish the industry of the sanctioned product whereas to the contrary, only few drums/jars filled with chemical was found lying in the unit. The appellant has also failed to show any promising way forward in the direction of establishing the industry over the said land as well as despite having been provided ample opportunity, neither the appellant appeared before this appellate authority



to put up his case nor had any evidence been adduced on behalf of appellant showing the bona fide of his claims. The valuable land in the industrial area has been kept in an abandoned condition in possession of the appellant, which is detrimental for industrial growth as well as violation of terms of allotment under the BIADA Act. Therefore, in the light of the fact that appellant has not established the industry over the allotted land since the date of allotment as well as in absence of any future plan for establishing industry over the allotted land, it would not be judicious to let the appellant retain the land in question as it would defeat the legislative intent of BIADA Act. Therefore, the present appeal is devoid of merit and there is no reason for this Appellate Authority to interfere with the impugned order.”

7. In the counter affidavit filed by the authorities at Paragraph No. 11, it is stated as follows:-

“That with respect to averments made in Paragraph No. 10 of the writ petition under reply, it is stated that the petitioner were issued notices dated 15.11.2022 and 07.12.2022 to which the petitioner had replied on 27.02.2023 i.e., after two months stating that there is less demand of thinner in market due to cold and requested some time to carry on the industrial activity. Further, again on 12.05.2023 a notice was issued to the petitioner after it was found that no industrial activity was



taking place at the unit after inspection dated 05.05.2023 was conducted at the unit and the petitioner was directed to start production. On 22.05.2023, the petitioner replied with the excuse that since there is shortage of demand of thinner in the market therefore requested a couple of months' time for increasing production. Further, again on 13.07.2023, i.e., after two months, inspection was done by the authority where it was found that no production activity was going on at the unit and there was only one worker who was found at the unit. Therefore, the statement of the petitioner that his allotment has been cancelled on non-est ground is totally false and wrong. Petitioner's allotment has been cancelled due to his continuous and long failure to perform industrial activity on the precious land of BIADA."

8. Further in the Inspection Report dated 12.07.2023, it was reported as under:-

"Unit found not working, few raw-material jars were found in store-room, machine found not working, no electricity, no bills."

9. A combined reading of the counter affidavit filed in the present writ petition and the inspection report dated 12.07.2023 clearly establish the fact that the petitioner had set up a unit and the same was in operation since 1976 therefore the



conclusion reached by the appellate authority that the petitioner has failed to establish the Unit while passing the impugned order dated 16.11.2023 is contrary to the record of BIADA and the same has to be held as perverse and passed without any application of mind. The fact that the petitioner has established the unit, has not being denied in the counter affidavit. If in reality, the petitioner had not established the Unit as held by the appellate authority, they have to explain as to why action was not taken against the petitioner for the last more than forty years and why they have decided to take action only in the year 2023. The Inspection Report dated 12.07.2023 belies the findings given by the appellate authority and the same has to be necessarily set aside and is accordingly set aside. The present writ petition is allowed and the matter is remanded back to the appellate authority for passing orders afresh. The appellate authority is directed to put the petitioner on notice and give him an opportunity of filing his documents to substantiate his claim that the Unit is working and in production. The authority shall pass a reasoned order duly taking into consideration the explanation, documents submitted by the petitioner. Needless to state that before passing any order the petitioner shall be given an opportunity of hearing. The entire exercise shall be



completed as expeditiously as possible preferably within a period of twelve weeks from the date of receipt of the copy of this order. Any order passed shall be communicated to the party.

10. Having regard to the fact that the appellate order dated 16.11.2023 is set aside by this Court. The allotment made in favour of the Respondent No. 9 vide letter bearing Memo No.1981/D dated 05.03.2024 is set aside. Respondent-BIADA is directed to take back the physical possession of the subject land from the Respondent No. 9, pending the passing of the final order and further directed not to create any third party interest over the subject land till such time.

11. With the above directions, the present Writ Petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

shakir/-

U			
---	--	--	--

