

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6387 of 2024

Sarvshree Adhira Housing through its Representative Deepak Kumar Mishra,
Gender- Male, aged about 45 years, S/o. Late Vindhyanchal Mishra, R/o-
Harsh Traders, Bus Stand Pandaul, P.O.- Pandaul, P.S.- Pandaul, District-
Madhubani, Bihar- 847234.

... .. Petitioner/s

Versus

1. The Bihar Industrial Area Development Authority (BIADA) Udyog Bhawan, Gandhi Maidan, Patna through its Managing Director.
2. The Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
3. The Joint Managing Director, Bihar Industrial Area Development Authority (BIADA).
4. The Executive Director, North, Bihar Industrial Area Development Authority (BIADA), Regional Office.
5. The Deputy General Manager, Cluster Office, Darbhanga, Bihar Industrial Area Development Authority (BIADA).
6. The Area Incharge, Bihar Industrial Area Development Authority (BIADA), Industrial Area- Pandaul.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Aman Raj
For the Respondent/s : Mr. Lalit Kishore

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

Date : 24-03-2025

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

relief(s):-

“i. For quashing and setting aside the Order contained in Letter 245 dated 12.03.2024 whereby and where under illegally, arbitrarily and whimsically, on the pretext of the rejection of One Time Opportunity Transfer Policy, 2023 without any jurisdiction, de hors the provisions BIADA Act, 1974, the possession is being resumed with Plant, machinery etc., without even adherence to the principles of



natural justice, i.e., Audi Altrem Partem i.e., No Body Can Be Condemned Unheard as well as without any competence by the Respondent DGM, BIADA as he is not having jurisdiction to take back the physical possession which is completely malafite, arbitrariy and whimsical.

ii. For quashing the Order contained in Letter No. 96 dated 02.02.2024 whereby and whereunder the request Letter for availing the One Time Opportunity Transfer Policy, 2023 in terms of contained in Memo Nos. 5128 and 5129 dated 10.08.2023 and has been yet not allowed on non-est, arbitrary, illegal grounds that the respondent authority asked the petitioner to submit the application for other product than fly ash bricks vide its letter bearing Memo No. 96 dated 02.02.2024 which is against the spirit of One Time Opportunity Transfer Policy, 2023 as there was no any condition precedent in the said policy.

iii. For directing the respondent authority to adhere & complied the conditions of one time opportunity transfer policy 2023 and to allow the request letter of the Petitioner for availing the One Time Opportunity Transfer Policy 2023 in terms of contained in Memo Nos. 5128 and 5129 dated 10.08.2023 which has been yet not allowed on non-est, illegal and unfounded grounds.

iv. For quashing the order dated 07.09.2023 passed in Appeal Case No. 229/2023 passed by the Respondent No. 2 whereby and where under the appeal filed by the petitioner has been dismissed in a mechanical, arbitrary, whimsical, pick and choose manner, whereas the similarly situated aliottees have been given the benefits as are being given by the Hon'ble Court in C.W.J.C. No. 6883/2020, M/s. Umesh Service Station vs. The State of Bihar and Others and in terms of Appeal No. 76/2022.

v. For declaration and to hold that the aforesaid impugned order dated 07.09.2023 passed in Appeal Case No. 229/2023 is illegal and in contravention to the settled principles of



law i.e. Nemo Judex in Causa Sua (No one should be made a judge on his own cause) as the impugned order vide Memo No. 668 dated 27.06.2023 has been passed by Respondent No. 7 The Deputy General Manager, Darbhanga Cluster, Bihar Industrial Area Development Authority (BIADA), Darbhanga and the order dated 07.09.2023 passed in Appeal Case No. 229/2023 passed by respondent no. 2 Additional Chief Secretary, Department of Industries who is colorably holding the same post at same time and as such liable to be quashed on this ground itself.

vi. For directing the Respondents forthwith not to take any coercive steps against the allotment of petitioner till disposal of this Writ Application.

vii. For any other relief or reliefs for which the Petitioner be found entitled in the eye of law.”

3. The brief facts necessary for the disposal of the present writ petition are that the petitioner was allotted an area of 21780 Sq. Ft. in Plot No. 12 for the purpose of establishment of an Industry under the name of M/s Shree Vindhayachal Enterprises on 11.06.2020. Thereafter, the petitioner has paid the requisite amounts due to the respondent-BIADA and commenced its production. Subsequently, the petitioner has applied for change of product from electrical pipe fitting, irrigation & garden pipe manufacturing to fly ash bricks and the name of the unit was also permitted to be changed from M/s Shree Vindhaychal Enterprises to M/s Sarveshree Adhira Housing. Though the unit was in production, the authorities on inspection found that the petitioner was not conducting any business and, therefore, cancellation order



was passed vide Memo No. 668 dated 27.06.2023 and the allotment made in favour of the petitioner was cancelled. Thereafter, the petitioner has preferred an appeal before the appellate authority who vide order dated 07.09.2023 has dismissed the appeal. Aggrieved by the order passed by the appellate authority, the petitioner has preferred a writ petition before this Hon'ble Court and the same was numbered as CWJC No. 13854 of 2023. The said CWJC was withdrawn by the petitioner on the ground that the authority had issued One Time Opportunity Transfer Policy, 2023 vide Memo No. 5128 and 5129 dated 10.08.2023 and the petitioner wanted to avail the same. However, the authority rejected the said application made by the petitioner under the One Time Opportunity Transfer Policy, 2023 and took possession of the subject property.

4. Learned counsel appearing on behalf of the petitioner has assailed the order impugned in the present writ petition whereby the application made under the One Time Opportunity Transfer Policy, 2023 has been rejected. Learned counsel has stated that the authority without application of mind has in a mechanical manner rejected the application made by the petitioner under the One Time Opportunity Transfer Policy, 2023 solely on the ground that the manufacturing of fly ash bricks were not



permitted. Learned counsel has stated that the said manufacturing of fly ash bricks cannot be prohibited issuing a memo and basing on the memo the authority cannot take a unilateral decision to reject the application made without providing an opportunity to the petitioner. That the subsequent taking over the possession of the subject property is also without any legal basis and the authority cannot be judge of its own cause. Learned counsel has therefore, prayed this Hon'ble Court to allow the present writ petition and set aside the impugned order.

5. *Per contra*, the learned counsel appearing on behalf of the respondent-BIADA while reiterating the terms and conditions of the allotment has stated that the petitioner was allotted the land for the purpose of production of the electrical pipe fitting, irrigation garden pipe etc. but he did not carry any industrial activities. That on the application made by the petitioner the product was changed to fly ash bricks even then the petitioner failed to carry out any production. That the petitioner has been using the premises for the purpose of storing and selling the unregistered products like iron rods, cement, sand etc. Though the petitioner was provided ample opportunity to start his production, the petitioner has failed to do so. Further, it is stated that as manufacturing of fly ash bricks was put under prohibited item, the



petitioner was given an opportunity to change the product but he did not avail the same. That the authorities left with no other option had to reject the application made by the petitioner and had taken physical possession of the subject property. Learned counsel has further stated that the petitioner having failed to carry out any industrial activity in respect of the registered products cannot now contend that the cancellation order is bad. That the petitioner miserably failed to show any industrial activity thereby defeating the very purpose of allotting the land. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. Admittedly, as seen from the record, the petitioner was initially allotted land for the purpose of manufacturing products electrical pipe fitting, irrigation garden pipe etc. however, the same was later changed with the permission of the authority to fly ash bricks. The authorities on inspection having found that the petitioner was carrying out storage and sale of unregistered products had cancelled the allotment made to the petitioner and the same was affirmed by the appellate authority. Thereafter, the writ petition filed by the petitioner challenging the cancellation orders was withdrawn with a view to avail the One Time Opportunity Transfer Policy, 2023. It is to be noted that the application made by



the petitioner under One Time Opportunity Transfer Policy, 2023 was rejected on the ground that the fly ash bricks is a prohibited item and the application made by the petitioner cannot be accepted. As seen from the record, more particularly, the order of the appellate authority wherein authority had duly taken note of the inspection done on 26.04.2023 and found that the fly ash bricks were present on the site along with the huge quantity of building material like stone, sand, cement etc. Though the authority had found fly ash bricks on the premises and the photos filed by the petitioner also reveal that the fly ash bricks were being manufactured. The authority came to the conclusion that the cement, sand, iron rod were being used for the purpose of sale and not for the purpose of manufacturing of fly ash bricks have cancelled the allotment made in favour of the petitioner. It is not understood that when the authority themselves have given permission for change of the product to fly ash bricks as to how the same can be rejected. This Court is of the view that the rejection of the application made by the petitioner One Time Opportunity Transfer Policy, 2023 is bad as the authorities themselves have given permission for change of product from electrical pipe fitting, irrigation & garden pipe manufacturing to fly ash bricks and in the inspection report it was also found that the



fly ash bricks were being manufactured by the petitioner. The authority cannot reject the application made by the petitioner solely on the ground that subsequently the BIADA authorities have issued a memo No. 1591 dated 22.04.2022 stating that the fly ash bricks cannot be manufactured. However, it is to be noticed that the authorities themselves have given a permission for manufacturing of the fly ash bricks cannot subsequently state that the same is prohibited and reject the application made by the petitioner. The authorities ought to had taken a pragmatic view of the issue and considered the application.

6. Having regard to the above facts and circumstances of the case, this Court is of the opinion that the cancellation order passed by the authority dated 27.06.2023 & Letter 245 dated 12.03.2024 are liable to be set aside and the matter remanded back to the authority concerned for considering the application made by the petitioner under the One Time Opportunity Transfer Policy, 2023 afresh duly taking into consideration the observations made by this Court. In case the authorities are of the view that the manufacturing of the fly ash bricks cannot be continued, the petitioner shall be given an opportunity of changing the product by giving him reasonable time and, thereafter, pass necessary orders. As it is stated that the physical possession of the subject property



has been taken by the authorities, the authorities shall put the petitioner back in possession of the subject property for the purpose of change of product.

7. With the above direction, the present writ petition stands disposed of.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.03.2025.
Transmission Date	NA

