

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12869 of 2024

M/S Sana Flour Mills through its proprietor Javed Akhtar, Male, Aged about 33 years, Son of Rustam Ansari, Resident of Uhami compund, Ramnagar, Ward no. 5, West Champaran, Bihar.

... .. Petitioner/s

Versus

1. The Additional Chief Secretary Department of Industries, Government of Bihar, Patna.
2. The Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
3. The Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
4. The Joint Managing Director, Bihar Industrial Area Development (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
5. The Deputy General Manager, Motipur Cluster, Bihar Industrial Area Authority.
6. The Area in-charge, Industrial Area- Motipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Arun Bharti, Adv. Mr. Akash Raj, Adv. Ms. Nikita Mittal, Adv.
For the Respondent/s	:	Mr.Standing Counsel (5) Mr. Madan Mohan, AC to SC 5
For the BIADA		Mr. Ravi Kumar, Adv.

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

5 29-01-2025 Heard learned counsel for the parties.

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

“i) For issuance of a writ/s, order/s, direction in the nature of Certiorari for quashing the office order dated 20/03/2024 contained in memo no 311,



passed under the signature of Deputy General Manager, Motipur Cluster (respondent no 5), wherein the allotment of Plot no. NS-5P1 bearing 4000 Sq. ft. of area has been cancelled in a very arbitrary and illegal manner.

*A Copy of the order dated 20.3.2024 passed under the signature of Deputy General Manager, Motipur Cluster (respondent no. 5) is annexed herewith as **Annexure- P/1**.*

ii) For issuance of a writ/s, order/s, direction in the nature of Certiorari for quashing the order dated 29.5.2024 passed in Appeal No 64/2024 under the signature of Additional Chief Secretary, Department of Industries, Government of Bihar, Patna (respondent no 1) whereby and whereunder the appeal preferred by the petitioner has been rejected in a very mechanical and whimsical manner.

*A copy of the order dated 29.5.2024 passed in Appeal No 64/2024 under the signature of Additional Chief Secretary, Department of Industries, Government of Bihar, Patna (respondent no1) is annexed herewith as **Annexure- P/2**.*

(iii) For issuance of a writ/s,



order/s, direction in the nature of Mandamus directing and commanding the respondent authorities to reinstate/ reallocate the said piece of land so that the petitioner may continue his business.

(iv) For issuance of a writ/s, order/s, direction in the nature of Prohibition to restrain the respondent authorities to create any third party right during the pendency of the present writ application.

v) For direction upon the respondents to hold and declare the cancellation of allotment as contained in memo no. 311 dated 20/03/2024 as well as order 29/05/2024 dated passed in Appeal No 64/2024, passed by the Respondent BIADA is non-Est, illegal, arbitrary, sans jurisdiction and de-horse the provision of BIADA Act, 1974.

(vi) For any other relief/s which the petitioner is found entitled to.

3. It is the case of the petitioner that he was allotted 4000 square feet of land by the respondents-BIADA for the purpose of establishing of wheat flour unit on 26.04.2023. Thereafter the lease deed was executed in favour of the petitioner on 04.11.2023. That the authorities have issued a



show cause notice to the petitioner seeking to cancel the allotment made on 05.01.2024 to which the petitioner has given a suitable explanation. However the authorities have gone ahead and cancelled the allotment made to the petitioner vide order dated 20.03.2024 (Annexure- P/1) without considering the explanation. Though the petitioner has filed an appeal before the appellate authority, the same was not considered in proper perspective by the appellate authority and dismissed the appeal on 29.05.2024 (Annexure- P/2). Learned counsel has stated that the authorities having executed a lease deed only on 04.11.2023 cannot rely on the inspection report dated 27.09.2023 and issue the show cause notice dated 05.01.2024. Further counsel has stated that though the physical possession of the subject property was given to the petitioner only on 27.05.2023, the lease deed was executed on 04.11.2023, that without the lease deed the petitioner could not take further steps for setting up the unit. Learned counsel has further stated that the Nagar Parishad, Ramnagar has issued the “No Objection Certificate” on 29.01.2024, however till date the BIADA authorities have not issued “No Dues Certificate” which is very essential for getting the necessary permission and loan from the Bank. That the petitioner was handicapped in approaching the Bank for



approval of the necessary loans for starting his business. Learned counsel has stated that if some time is given to the petitioner, the petitioner will start the construction of the unit and also commence commercial production. Learned counsel has therefore prayed this Hon'ble Court to allow the present writ petition by setting aside the impugned order.

4. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the petitioner has violated the terms and conditions of the allotment and the petitioner having failed to establish any unit even after the stipulated time, the authorities had to cancel the allotment made. Learned counsel has stated that the petitioner was obligated to start the construction of the unit unit immediately after he was put in physical possession. That the possession of the subject property was given to the petitioner in the month of May 2023 but till date the petitioner has not taken any steps for construction of the unit. Learned counsel has stated that as per the terms and conditions of the allotment the petitioner was obligated to start the unit and commercial production within a period of nine months from the date of allotment. Though the petitioner was obligated to start the



construction of the unit immediately after he was put in possession but the petitioner has not taken any steps for setting up the unit. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

5. Admittedly as seen from the record, though the petitioner was allotted the subject land in the month of April, 2023 and put in possession on 30.05.2023 and the actual lease deed was executed only on 04.11.2023. The authorities have issued show cause notice dated 05.01.2024 to the petitioner based on the inspection report which had taken place on 27.09.2023 and passed the order of cancellation dated 20.03.2024 (Annexure P/1). It is to be noted that as per the terms and conditions of the BIADA Land Allotment Policy, 2022, more particularly Clause VII, which reads as under:

“vii. Allottee will have to get approval of map of the building from concerned authority and for industrial premises, as per the prevailing building laws, within two months after taking possession of the land. The approval shall be communicated to BIADA, within 15 days, after obtaining approval. Any construction should not be undertaken on the land without such approval and its non-communication to BIADA will invite appropriate action.”



6. Once it is established that the lease deed was executed in favour of the petitioner on 04.11.2023, any action sought to be taken by the authorities for non-establishment of the unit on the ground that the petitioner has failed to establish the unit cannot be countenanced. The time granted to the petitioner for starting the unit has to be calculated only from November, 2023 but in this particular case, the authorities have calculated the time period from 27.05.2023, i.e, even before the expiry of nine months. Even the inspection has taken place on 27.09.2023 which has become the basis for the issuance of the show cause notice dated 05.01.2024 before the expiry of the period. The statement made by the counsel for the petitioner that till date “No Dues Certificate” has not been issued by the BIADA- authorities has not been controverted by the respondents either in the counter affidavit or in their oral submissions. The action of the respondents in cancelling the allotment made to the petitioner appears to be totally misplaced and bad in law. The authorities ought to had given sufficient time to the petitioner for establishment of the unit and taken action if he had not commenced the work, but in this case as seen from the record, they have taken action even before the expiry of the period. Though the counsel appearing on behalf of



the respondents-BIADA has vehemently argued that the petitioner ought to have made construction immediately after taking physical possession of the subject property, it is to be noted that until and unless necessary permissions from the concerned Gram Panchayat/Municipality/ Municipal Corporation is sanctioned, any construction made will have to be construed as illegal and contrary to the provisions of Municipal Laws.

7. Having regard to the above made submissions and duly taking into consideration the totality of the circumstances, this court is of the opinion that the ends of Justice would be met if the impugned orders are set aside. Accordingly, the impugned order dated 20.03.2024 passed by the Deputy General Manager (Respondent No. 5) and the order dated 29.05.2024 passed by the Additional Chief Secretary (Respondent No. 1) are both set aside. The petitioner is directed to complete the construction within a period of six months from today and take necessary steps for starting commercial production within a period of nine months from today. The petitioner shall give an undertaking to the respondents-BIADA to the effect that he will abide by the conditions imposed by this Court in this CWJC along with Bank guarantee of Rs.2,00,000/- (Rupees Two lakh)



within a period of four weeks from today. In case the petitioner does not start the construction or the commercial production within the time stipulated by this Court, the respondents-BIADA are free to take necessary steps for cancellation of the unit. It is made clear that the respondents-authorities before taking any action shall put the petitioner on notice. As it is stated that the physical possession has been taken by the BIADA, the authorities shall put the petitioner back in possession immediately after receipt of the copy of this order.

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

(A. Abhishek Reddy , J)

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