IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18463 of 2022

M/s Bhimseria Foods Ltd. (formerly Maruti Iron and Steel Limited) a company registered under the companies act, having its office at Room No.-2, Ground Floor, Vasundhra Complex, Saraiyaganj, Muzaffarpur, Bihar, through its Director Shashi Kant (Male) aged about 33 years S/o Shyam Sundar Bhimsarai R/o Purani Gudri Road, P.S.- Musahari, District Muzaffarpur.

... ... Petitioner/s

Versus

1. The Bihar Industrial Area Development Authority (BIADA) Udyog Bhawan, Gandhi Maidan, Patna though its Chaiman Cum Managing Director.
2. The Chairman cum Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
3. The Joint Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
4. The Executive Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
5. The DGM, Industrial Area, Muzaffarpur Cluster, Bihar Industrial Area Development Authority (BIADA),Industrial Area, Muzaffarpur.
6. M/s Brown Belly Products Private Limited (Formerly known as Maruti Ingots Private Limited) having its office at At- 4, Industrial Area, Phase- 2, Bela, Muzaffarpur, Bihar, through its director namely Binod Kumar, (M) Aged about 58 years, S/o Ganesh Thakur, R/o House No. B-5/102, Behind Sanjay Cinema, Brahmpura, Muzaffarpur (Bihar).

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Adv.
For Private Respondent	:	Mr. Amit Shrivastava, Sr. Adv.
	:	Mr. Girish Pandey, Adv.
	:	Mr. Sachin Kumar, Adv.
	:	Mr. Brisketu Sharan Pandey, Adv.
For the Respondent/s	:	Mr. Lalit Kishore, Sr. Adv.
	:	Mr. Piyush Pandey, Adv.
	:	Mr. Kanishka Shankar, Adv.

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

Date : 16-05-2025

Heard the learned counsel for the parties.

The present writ petition has been filed for the following relief(s):-

"A. For issuing a writ in the nature of certiorari or any other appropriate writ quashing the Appellate Order dated 21.11.2022 (Annexure-P/1) by the Respondent No.2 whereby and whereunder the appeal preferred by the petitioner bearing Appeal No. 101/2022 against the Office Order bearing Memo no 1088 dated 29.06.2022 passed by the Respondent No. 4 has been dismissed.

B. For issuing a writ in the nature of certiorari or any other appropriate writ quashing the office order bearing Memo no 1088 dated 29.06.2022 (Annexure P/2) passed by the Respondent No. 4, whereby and whereunder allotment made to the Petitioner, of land admeasuring 1.57 Acres of land in Industrial Area, Muzaffarpur which was allotted to the Petitioner has been cancelled.

C. For issuing a writ of mandamus directing the respondents to produce the letter whereby and whereunder the request of the petitioner for "change in project" was rejected but the copy of the same was never served to the petitioner the petitioner also prays for quashing of the said letter once the same is produced.

D. For issuing a writ of mandamus or any other appropriate writ directing the Respondents to allow the Petitioner to continue to work and run the Food Procession unit on the allotted land.

E. For issuing appropriate order (s) staying all further proceedings and consequential actions pursuant to the Appeal Order dated 21.11.2022 (Annexure-P/1).

F. For passing such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case."

3. It is the case of the petitioner that initially he was allotted an area of 43560 sq. ft. Plot No. A-3 in the year 1986 for the purpose of establishing an iron industry and, thereafter, another area of 0.5 acre was allotted in the year 1995 and further area of 0.07 acres in Plot No. A-3 was allotted subsequently, the total area which was allotted to the petitioner is 1.57 acres. That the petitioner after the allotment of the above lands had established the unit and was doing commercial production from the year 1988 till 2000. That in order to run the unit, the petitioner had taken loans from various Banks and financial institutions and due to the adverse market conditions, the petitioner had to face financial crunch and the loan accounts of the petitioner was declared as Non-Performing Assets (NPA) and the petitioner had to shut down the unit. That the respondent-BIADA on 30.08.2007 cancelled the allotment made to the petitioner and, thereafter, the same was restored on 30.07.2008.

4. Learned counsel appearing on behalf of the petitioner has stated that the petitioner has from his personal money cleared all the loans and tried to revive the unit but was unsuccessful. Thereafter, the petitioner has made various applications to the respondent authority for change of the product. Learned counsel has stated that the authority without passing any orders on the application made by the petitioner for change of product had inspected the premises on 22.01.2021. Based on the inspection report, a show cause notice was issued on 19.02.2021 and the petitioner in his reply to the authorities had sought permission for change of the product and also gave an undertaking that he is willing to revive the unit and start the commercial production within one and half years. However, the authority without considering the same has cancelled the allotment made to the petitioner vide order dated 29.06.2022 (Annexure-P/2). That though the petitioner has preferred a statutory appeal under the provisions of the BIADA Act, the same was dismissed on 21.11.2022 (Annexure-P/1). Learned counsel has stated that due to adverse market conditions, the unit of the petitioner could not be run and, therefore, was shut down. Learned counsel for the petitioner has further stated that duly taking into consideration the market conditions, the petitioner had sought permission from the respondent-BIADA authority for change of product but however, the authority without considering the same has passed the impugned order. Learned counsel has stated that the petitioner is willing to give an undertaking to the effect that he will start commercial production within a period of six months for the changed product.

5. *Per contra*, the learned counsel appearing on behalf of the respondent-BIADA has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner having failed to utilize the subject land for a period of more than twenty four years cannot seek equitable relief from this Hon’ble Court. Learned counsel has stated that the petitioner has kept the quite and kept the unit ideal for almost twenty four years. That the very purpose of allotting the land is getting defeated, that the lands are allotted for the purpose of development of the industrial growth which in turn will generate employment, for the local persons, that due to the non-utilization of the land given by the authorities, the very purpose of allotment is defeated. Further, it is stated that the allotment is cancelled in view of the larger public interest and in case it is allotted to any other investor, an industry would be set up and it would serve the larger public interest. Further, it is stated by the counsel for the respondent-BIADA that the petitioner is due some amounts and has not paid the same till date. That the present writ petition is one of the delay tactics adopted by the petitioner only with a view to see that no development takes place. That the writ petition is devoid of merits and the petitioner does not have the necessary financial capacity or inclination for setting up any industry. Learned counsel has stated that the physical possession of the subject property was taken by the authorities and allotted to third party (i.e., the respondent No. 6 herein). That the respondent No. 6 has already set up the industry and also started commercial production therefore, there are no equities in favour of the petitioner which would entail him to benefit of the discretionary relief under Article 226 of the

Constitution of India. Learned counsel has therefore, prayed for dismissing the CWJC.

6. During the pendency of the present writ petition, the respondent/ BIADA has allotted a portion of the land to a third party who is subsequently added as respondent No. 6.

7. Learned counsel appearing on behalf of the respondent No. 6 has stated that the respondent No. 6 has applied to the respondent-BIADA when they have advertised the subject property as a vacant land. That after the allotment of the land, the respondent No. 6 has invested huge amounts in setting up the unit and as well as paying the necessary amounts to the respondent-BIADA. Learned counsel has stated that the order passed by the authorities are in consonance with the provisions of the Act and there are no equities in favour of the petitioner which would entail him for grant of any discretionary relief by this Hon'ble Court. Counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition. Learned counsel appearing on behalf of the respondent No. 6 has relied on the order passed by this Hon'ble Court in CWJC No. 131 of 2023 dated 31.10.2023 & LPA No. 738 of 2013 dated 24.09.2013 and also the following judgments.

i. ***Hindustan Construction Co. Ltd. V. Governor of Orrisa and Others*** *reported in* **(1995) 3 SCC 8.**

ii. **Kusheshwar Prasad Singh V. State of Bihar and Ors**. *reported in* ***(2007) 11 SCC 447.***

iii. **The Regional Manager and Anr. Vs. Pawan Kumar Dubey** *reported in* ***(1976) 3 SCC 334.***

8. During the course of argument, the counsel for the petitioner has stated that the order passed by the respondent-authority dated 29.06.2022 is without jurisdiction and contrary to the provisions of the BIADA Act. Learned counsel has stated that the impugned order is passed by Joint Managing Director/ Deputy General Manager and the said person was not competent to pass the said order. Further, it is stated that even though the petitioner has preferred an appeal before the competent authority, the same is passed by the Principal Secretary who is none other than the MD of the respondent-BIADA. Learned counsel has stated that even though the order is supposed to be passed by the Principal Secretary to the Government under the provisions of the Act. However, the Principal Secretary is also the MD of the respondent-BIADA, therefore, the very purpose of filing the appeal by the petitioner would be defeated as the order of cancellation is passed at the behest of the MD. Learned counsel has relied on the following judgments.

i. ***Ashiwini Kumar vs. The State of Bihar*** *reported in* ***(2023) 3 BLJ 306.***

ii. ***State of West Bengal vs. Shivananda Pathak*** *reported in* ***AIR 1998 SC 2050.***

iii. ***Ratan Lal Sharma vs. Managing Committee, Hari Ram (Co-education) Higher Secondary School and Ors*** *reported in* ***AIR 1984 SC 1572.***

iv. ***J Mohapatra and Co and vs. State of Orrisa and ors*** *reported in* ***AIR 1984 SC 1572.***

v. ***Manju Devi vs. The State of Bihar*** *reported in* ***1999(2) BLJ472.***

9. Admittedly, in this particular case, the petitioner has not taken any steps for setting the factory even by his own admission. That for the last twenty four years he has not done anything except filing proposals before the authority. Further, it is to be noted that the inspection report done on 22.01.2021 does not reveal that any factory is in existence on the subject property. The petitioner in one of the supplementary counter-affidavit has stated that he had to sell the entire factory, machinery for the purpose of clearing the loans.

10. As rightly pointed out by the learned counsel appearing on behalf of the respondent-BIADA, the whole idea of allotting land is for the purpose of attracting investments and industrial growth takes place thereby generating employment. Further, the respondent-BIADA invests huge amounts in developing the plots and, allotting them to various industrialists only for the purpose of promoting the industrial development in the State. In case the industrialists/ entrepreneurs who have been allotted lands do not set up any industry or keep the plot vacant for decades together, the very purpose of allotting the land would be defeated. In this particular case, as seen from the record and also as culled out from the pleadings, the petitioner has kept the subject property vacant for the last more than twenty four years without setting up any industry. Therefore, this Court is not inclined to grant the prayers sought for by the petitioner in the present writ petition. That insofar as the contention of the petitioner that the authority who has passed the order of cancellation does not have the power to do so and the same is contrary to the provisions of the Act is concerned, it is to be noted that the issue is no longer res integra and the same has been settled by a Division Bench of this Hon'ble Court Civil Review No. 37 of 2024 in LPA No. 1418 of 2023 dated 29.04.2025 has held as under;

> *"5. This aforenoted decision in Deepak Paints (supra) was based on a plain reading of Section 6 of the BIADA Act, 1974 (the 'Act of 1974' in short) as it then stood wherein, sub-Section (2) of Section 6 clearly provided that the Authority shall be responsible for planning, development and maintenance of the industrial area and amenities thereto and allotment of the land or factory shed or building or parts of buildings, execution of lease, modification and cancellation of such allotment of lease, realization of fees, rent charges and matters connected thereto. (emphasis supplied)*
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> *6. It has been submitted on behalf of the BIADA that later, by the Amendment Act of 2017, the Act of 1974 underwent a change and sub-Section (4a) was added to Section 3 of Chapter 2 which provided that the Authority may, by general or special order in writing, delegate to any officer of the Authority subject to such condition, if any, as may be specified in the order, such of its powers and functions under the Act as it may be deem necessary.*
>
> *7. The question whether the provisions of subSection (4a) inserted by the Amendment Act of*

2017, controls the provisions contained in Section 6 of the Act of 1974.

8. Section 6 of the Act of 1974 falls in Chapter 3 of the Act of 1974, providing for the general duties and powers of the Authority. The intendment of the provisions contained in Section 6 of the Act of 1974 is clear that any order with respect to the cancellation of allotment of lease amongst other functions and duties of the Authority shall be passed by the Authority only.

9. The amendment by insertion of such Section (4a) in Section 3 also refers to the powers of the Authority to delegate, by a general or special order, its power to any officer of the Authority subject to the terms and conditions which the Authority deems appropriate, to carry out or pass orders concerning such of the powers and functions of the Authority under the Act.

10. Mr. Kishore, therefore, has submitted that sub-Section (4a), in such circumstances, cannot be read ejusdem generis with Section 3(4) which specifies the functions which can be carried out or discharged by the Managing Director alone, who is the Chief Executive Officer of the Authority. Those functions and duties include (a) receiving all money on behalf of the Authority, issuing receipt and maintaining proper account for the same; (b) drawing money from the fund of the Authority for disbursement of salaries, allowances and meeting of the expenses of the Authority; (c) to authenticate any order of the Authority and; (d) to perform any order only that may be assigned to him by the Authority or the State Government from time to time. Sub-clause (d) of Section 3(4) clearly specifies that a Managing Director could also perform any other duty which is assigned to him by the Authority or the State Government.

11. Such delegation by the authority could be on Managing Director or any other officer of the authority but subject the terms and conditions which the authority may fix.

12. The controlling provision in Section 3 (4), namely, that the Managing Director shall perform, amongst others duties specified under (a), (b), (c) and (d) are only illustrative and the power would include *beyond such duties specified which will include the cancellation of the lease. There is no caveat in the section to limit the operation of the section only to the powers and duties enumerated under (a), (b), (c) and (d).*

13. On this logic and reason, Mr. Kishore has argued that sub-Section 4(a) of Section 3 inserted by the Amendment Act of 2017 permits the authority to delegate its duties, powers and functions to Managing Director or any other officer including Joint Managing Director and such delegation would not be limited to the duties listed under (a), (b), (c) and (d) but the duties and powers provided in Section 6 of the Act of 1974 falling in Chapter -3. This would include the power to cancel the lease.

14. We find force in the submission of Mr. Kishore.

15. The judgment, therefore, stands modified to the extent that the Managing Director/Joint Managing Director could pass an order as the delegatee of the Authority, pertaining to cancellation of lease deed, provided he is authorized by the Authority by a general or special order and that there would be no application of the ratio of the judgment in Deepak Paints (P) Ltd. (supra) as at that time, the Act of 1974 had not been amended [when the judgment in Deepak Paints (P) Ltd. (supra) was delivered].”

11. Further, it is to be noted that the Board of the respondent-BIADA in its the 75th Board meeting dated 21.05.2022 vide Memo No. 2072/D dated 24.05.2022 has given the power to the Joint Managing Director to cancel the allotment.

12. Even though the counsel for the petitioner has relied on the above cited judgments, the same are distinguishable on the facts of this case and not applicable and, therefore, of no avail to the petitioner.

13. Having regard to the above, this Court does not find any merit in the present writ petition which warrants any interference by this Hon’ble Court. The orders passed by both the appellate authority dated 21.11.2022 as well as the order of cancellation dated 29.06.2022 passed by the primary authority are well reasoned orders, which do not require any modification or interference by this Court.

14. The present writ is accordingly, dismissed however, without any costs.

(A. Abhishek Reddy, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2025.
Transmission Date	NA