

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1418 of 2023

In
Civil Writ Jurisdiction Case No.8521 of 2023

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1. The Bihar Industrial Area Development Authority Udyogh Bhawan, East Gandhi Maidan, Patna through its Managing Director.
 2. The Managing Director, Bihar Industrial Area Development Authority, Udyogh Bhawan, East Gandhi Maidan, Patna.
 3. The Joint Managing Director, Bihar Industrial Area Development Authority, Udyogh Bhawan, East Gandhi Maidan, Patna.
 4. General Manager, Bihar Industrial Area Development Authority, Udyogh Bhawan, East Gandhi Maidan, Patna.
 5. The Deputy General Manager, Darbhanga Cluster.

... .. Appellant/s

Versus

1. I.G. Foods and Beverage Pvt. Ltd. through its Director Amresh Kumar Mishra, male, aged about 44 years, S/o Late Kulanand Mishra, R/o Sohray, Lakshmipur, P.S. Sakri, P.O.-Pandaul, District Madhubani (Plot No. 13 Pandaul Industrial Area, P.S. Pandaul, District Madhubani).
2. The State of Bihar through the Secretary, Department of Industries, Government of Bihar, New Secretariat, Bailey Road, Patna.
3. The Secretary, Department of Industries, Government of Bihar, New Secretariat, Bailey Road, Patna.
4. The Additional Chief Secretary, Department of Industries, Government of Bihar, New Secretariat, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pankaj Kumar Sinha, Advocate
For the Respondent/s : Mr. P.K. Shahi, AG
Mr. Alok Ranjan, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT



(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 8-01-2025

Heard learned counsel for the appellants and learned counsel for the respondents.

2. The appellant Bihar Industrial Area Development Authority ('BIADA' in short) has preferred the instant appeal against the judgment dated 2.11.2023 whereby the learned Single Judge was pleased to allow CWJC no. 8521 of 2023.

3. The case of the writ petitioner, in brief, was that having been allotted plot no. 13 in the Pandaul Industrial Area, PO-Pandaul in the district of Madhubani on lease by the BIADA and its authorities, the petitioner could not start commercial production due to unavoidable circumstances including the COVID-19 pandemic etc. It was the case of the writ petitioner that the reasons for not starting commercial production were not deliberate and as such an opportunity be given to him to start production.

4. The application was opposed by the respondent BIADA.

5. The learned Single Judge taking note of the Division Bench judgment dated 2.12.2022 of this Court in CWJC no.15567 of 2022 (M/S Maa Kali Food Products Industrial



Growth Centre, Maranga versus the State of Bihar and Ors.) as also the undertaking furnished by the writ petitioner allowed the writ application by order dated 2.11.2023 against which the instant appeal has been preferred.

6. Learned counsel appearing for the appellants submitted that the allotment of 0.60 acres of land was made by BIADA to the writ petitioner in the year 2012 for establishment of Drinking Water Industry. The area incharge submitted the inspection report in the year 2019 that the unit is closed and had been sealed by the Punjab National Bank in a proceeding under the SARFAESI Act. In spite of opportunity having been given by BIADA in form of amnesty, no interest was shown. As such an inspection was conducted on 28.10.2022 and the allotment to the writ petitioner cancelled. It was further submitted that the writ petitioner challenged the cancellation in CWJC no. 1365 of 2023 which was disposed of vide order dated 21.3.2023 directing the writ petitioner to exhaust the remedy of statutory appeal. The Appeal Case no. 90 of 2023 filed by the writ petitioner was dismissed by the Additional Chief Secretary, Department of Industries, Government of Bihar on 31.5.2023 against which the writ petitioner filed CWJC no. 8521 of 2023 which has been allowed by the order impugned.



7. Learned counsel for the BIADA submitted that pursuant to section 3(4)(a) of the Bihar Industrial Area Development Authority Act, 1974, in the meeting held on 21.5.2022, the Joint Managing Director was given the powers to pass necessary orders. Thus the order passed is in accordance with law. Further, the writ petitioner was not concerned with starting production and as such took no steps inspite of amnesty scheme having been given. On a site inspection having been conducted and the fact having transpired that there was no industrial activity being carried out by the writ petitioner, the order of cancellation was passed. It is submitted that all these points were considered by the appellate authority and the Appeal no. 90 of 2023 was dismissed on 31.5.2023. Learned counsel submits that the learned Single Judge committed an error in allowing the writ application and setting aside the order of the Joint Managing Director, BIADA cancelling the allotment, as also that of the Appellate Authority.

8. In response, learned counsel appearing for the writ petitioner submitted that similar matters came up for consideration before this Court in the case of **Deepak Paints (P) Ltd. & others versus State of Bihar & others [2008 (2) PLJR 293]** wherein the learned Single Judge relying on the



judgment of the Hon'ble Supreme Court in **State of U.P versus Dharmander Prasad Singh [AIR 1989 SC 997]** disposed of the batch of writ applications holding the order of cancellation by the Managing Director to be null and void and observing that in all matters where lease agreement stands executed and the parties have thereafter enjoyed the leasehold property the only way BIADA Authorities can dispose them would be by moving a Civil Court of competent jurisdiction. It is further submitted that the said order was appealed against by the BIADA vide LPA no. 353 of 2008 [BIADA & Ors. versus Deepak Paints (P) Ltd.]. By judgment dated 18.3.2015, the batch of cases in appeal was disposed of by modifying the order of the learned Single Judge. It is submitted that the writ petitioner also filed an undertaking in the writ application and the learned Single Judge having exercised his discretion in terms of the order of the Division Bench in LPA no. 353 of 2008 there is no illegality in the same and thus the appeal be dismissed.

9. Having heard learned counsel for the parties and having perused the material on record, the Court finds that the plot in question was allotted by BIADA to the writ petitioner in the year 2012 for establishment of Drinking Water Industry. An inspection having been conducted and as per BIADA's case,



there being no industrial activity and in fact the premises having been sealed by the Punjab National Bank on steps having been taken under the SARFAESI Act, the order cancelling the allotment was passed by BIADA. CWJC no. 1365 of 2023 having been preferred by the writ petitioner, the same was disposed of vide order dated 21.3.2023 directing the writ petitioner to exhaust the statutory remedy of appeal available to him. As such Appeal no. 90 of 2023 was filed by the writ petitioner which was dismissed by the Appellate Authority on 31.5.2023. It is this order which was challenged by the writ petitioner by filing CWJC no. 8521 of 2023.

10. As stated above, this Court considering a batch of cases with respect to cancellation of allotment of by BIADA, the learned Single Judge disposed of the same vide judgment in Deepak Paints (supra) against which BIADA and its authorities preferred LPA no. 353 of 2008 besides other appeals. The batch of appeals were disposed of by a Division Bench of this Court vide judgment dated 18.3.2015 in LPA no. 353 of 2008 and analogous cases in the following terms:

“ Under these circumstances, we dispose of the appeals by modifying the order passed by the learned single Judge to the following effect:

(A). The orders of cancellation of leases or



allotment of the land to the respondents herein shall stand set aside, but they are given six months time from today either to establish the industries, wherever they are not established, or to revive the industries, if they were already established, but have become sick.

(B) If any of the respondents, i.e. the writ petitioners, intend to go for diversification, any application in that behalf shall be made within two months from today. The concerned authority shall take decision in one month thereafter. If permission for diversification is granted, reasonable time shall be granted by the concerned authority, for establishment or modification.

(C) In default, i.e. if industry is not established or the closed one is not revived within the stipulated time, it shall be open to the authorities, to resume the land for further allotment by inviting applications from the intending entrepreneurs, but not through individual allotments.

Such of the respondents who have either established the industries or have restarted the closed ones during the pendency of these appeals need not take any steps.

If any factors intervene for delayed commencement of production, it shall be open for the entrepreneurs to seek extension of time from the concerned authority.



Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.”

11. So far as the facts of the instant case is concerned, it is the case of the writ petitioner that it was for reasons beyond their control including the COVID-19 pandemic etc. that they could not start the commercial production. In the writ application, by way of a supplementary affidavit sworn by Mr Amaresh Kumar Mishra, Director of IG Foods and Beverages Private Limited, an undertaking was furnished which is reproduced herein below for ready reference:

“A. The petitioner shall commence/resume commercial production in the industrial unit at the industrial of an industrial plot number 13 of area 0.60 Acre in Pandaul Industrial Area, P.O. Pandaul, District - Madhubani within a period of 6 months from the date of restoration of physical possession of the unit by the respondent Bihar Industrial Area Development Authority as during pendency of present writ application possession was taken over by the respondent authorities.

B. The petitioner shall clear outstanding dues if any of the respondent Bihar Industrial Area Development Authority within four weeks from the date of handing over possession and recall of



the order of cancellation of allotment of the plot.

C. The petitioner shall make the unit fully functional within a period of 6 months from the date of handing over possession and recall of the order of cancellation of allotment of the plot.

D. That the petitioner shall comply with all the statutory obligations as are relevant and applicable to the industrial activity of the petitioner including fiscal statutes, labour laws, electricity laws, industrial laws etc.

E. That on default the petitioner shall be liable for proceedings of contempt before this honourable court.

F. That in case the petitioner defaults in making the aforesaid unit fully operational within a period of 6 months, the petitioner shall voluntarily hand over the physical possession of the plot in question to the respondent authority.”

12. Learned Single Judge taking note of the contention of the parties, the judgments of this Court and specially the undertaking filed by the petitioner in the form of an affidavit which is reproduced above, allowed the writ application by order dated 2.11.2023. We cannot but notice that the initial allotment was in the year 2012 and for more than a decade, till the impugned order was passed on 24.12.2023, there was no industry established. It is too late in the day to press for similar



orders as issued in LPA no.353 of 2008 on 18.3.2015.

13. Be that as it may, in the present case also it was the Managing Director who issued the order of cancellation. In Deepak Paints (P) Limited (supra) the learned Single Judge held so in the operative portion:

“23(2). The power of cancellation under Section 6(2) of the Act is vested in the “Authority” i.e. the Board of Directors of which the Managing Director is a part. In view of the same any unilateral exercise of power of cancellation under Section 6(2) of the Act by the Managing Director or his subordinates is an illegal exercise of authority de hors the law and the same are liable to be struck down. The power of cancellation under Section 6(2) has to be exercised by the “Authority” and none else. Therefore, in all such matters the power of cancellation exercised by the Managing Director is declared null and ‘void.’”

The Division Bench in the LPA no. 353 of 2008 only modified the judgment of the learned Single Judge to issue directions, facilitating establishment, and in some cases, revival of industrial units within a specified time. The declaration as to the Managing Director not having the power to cancel an allotment made by BIADA stood affirmed.

14. The learned Standing Counsel for the BIADA then



argued that the Act of 1974 stood amended in 2017 as per the Bihar Industrial Area Development Authority (Amendment) Act, 2017. We have perused the amended Act as produced before us which indicates no change having been brought about in Section 6. Sub section (2)(a) of Section 6, as it originally stood confers power of cancellation on the authority, with a mandate to give the allottee, a months time to put up his case. Hence the order impugned, passed by the Managing Director is null and void and it is set aside. So is the order in appeal set aside.

15. The authority would be entitled to consider the issue of cancellation after affording an opportunity to the appellant. The appellant shall file an objection within 7.2.2025 and the issue shall be considered on the basis of the inspection reports and also the objection. We make it clear that the setting aside of the order of cancellation is only on the lack of power found on the Managing Director and the Authority would be entitled to take an independent decision. We also hasten to add that the Authority, at its discretion may conduct a further inspection, if necessary and also consider the prayer for a further time of six months to permit the appellant to establish the industry. There shall be a speaking order passed by the Authority.



16. One other question is urged as to whether the BIADA will have to approach the Civil Court for obtaining vacant possession of the land; as held by the learned Single Judge in Deepak Paints Private Limited (supra). Here we notice that the Act of 1974 itself provided so by Section 6(2)(b): “The authority shall, after cancellation of allotment of the Plot/shed take possession of the said Plot”, which unfortunately was not noticed by the learned Single Judge. We also notice that the Division Bench considering the LPA modified the order of the learned Single Judge and specifically declared the power of BIADA to resume the property, on cancellation. The declaration in the judgment of the learned Single Judge to the effect that resumption of allotted land can only be through the Civil Court, hence cannot be sustained.

17. With the above directions, reservations and observations the appeal stands disposed of.

(Partha Sarthy, J)

K. Vinod Chandran, CJ: I agree.

(K. Vinod Chandran, CJ)

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AFR/NAFR	AFR
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