

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.76 of 2024

In

Civil Writ Jurisdiction Case No.4556 of 2023

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1. The Managing Director, Bihar Industrial Area Development Authority Udyog Bhawan, Gandhi Maidan, Patna.
 2. The Joint Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, Patna.
 3. The Deputy General Manager, Bihar Industrial Area Development Authority, Patna Cluster, Udyog Bhawan, Gandhi Maidan, Patna.

... .. Appellants

Versus

1. M/s Ashoka Foundry a partnership firm having its office at Plot No. -6(P) and C-7, Patliputra Industrial Area, Patna through its Partner Viishal Sahay, aged about 47 years, Male, son of Late Shyam Sunder Sahay, resident of 10, Lord Sinha Road, 15A Ankur Building, Middleton Row, P.S.-Shakespeare Sarani, District-Kolkata, West Bengal.
2. The State of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Patna.

... .. Respondents

Appearance :

For the Appellants	:	Mr. Sanchay Shrivastava, Advocate Mr. Sushant Shrivastava, Advocate
For the Respondents	:	Mr.Yogendra Pd. Sinha, AAG-7

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RANJAN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 06-07-2026

Heard learned counsel for the parties.

2. The present *intra court* appeal has been preferred against the order dated 11.08.2023 passed by the learned Single Judge in C.W.J.C. No. 4556 of 2023, whereby the writ petition preferred by the writ petitioner (respondent No. 1 herein) came to be allowed.



3. The facts, in brief, are that Plot No. 6(P) and C-7 admeasuring 6,000 sq. ft. was transferred by the appellant-authority in favour of M/s Vikas Industries vide Memo No. 122 dated 23.01.1996 for establishment of a hand pump manufacturing unit. Subsequently, the constitution of the firm was changed from proprietorship to partnership and the name of the unit was changed to M/s Ashoka Foundry, which was approved by the appellant-authority vide Letter No. 998 dated 25.07.1996. The firm was thereafter reconstituted in the year 1999.

4. It is the case of the appellants that despite the allotment having remained in force for several years, the industrial unit failed to commence and sustain industrial production. Upon inspections conducted by the authority, the unit was repeatedly found non-functional, whereafter notices were issued to the respondent, including notices dated 08.02.2020 and 01.12.2021, calling upon it to explain the continued non-utilisation of the allotted land.

5. The respondent was thereafter extended the benefit of the One-Time Amnesty Scheme vide communication dated 20.04.2022. In response, the respondent furnished an affidavit undertaking to commence trial production within six months and commercial production within twelve months, with at least 75% production capacity. However, subsequent inspections conducted



on 05.08.2022, 02.11.2022 and 14.12.2022 revealed that although a shed had been constructed and certain machinery installed, no manufacturing or industrial activity had commenced.

6. In view of the respondent's failure to comply with the conditions of allotment as well as the undertaking furnished under the Amnesty Scheme, the appellant-authority cancelled the allotment of the plot vide Memo No. 825 dated 29.12.2022. The appeal preferred by the respondent against the said cancellation, being Appeal No. 85 of 2023, was dismissed by the Appellate Authority vide order dated 07.03.2023, holding that no industrial activity had been carried on the allotted plot for a considerable period.

7. Aggrieved thereby, the respondent instituted C.W.J.C. No. 4556 of 2023. The learned Single Judge, by judgment dated 11.08.2023, has observed as follows:

“8. Having regard to the above said undertakings which is reproduced above and also the judgement of the Division Bench of this Hon'ble Court passed in C.W.J.C. No. 15567 of 2022 dated 02.12.2022, wherein this Hon'ble Court duly taking into account the undertaking given by the petitioner therein has set aside the order of the appellate court as well as the order passed by the BIADA and granted an opportunity to the petitioner to start commercial production.



9. Having regard to the same and also the submissions made by the learned counsel for 'the BIADA', who stated that the present writ petition can be disposed off in terms of the undertaking so furnished. The undertaking is accepted and taken on record.

10. If the possession has been taken by 'the BIADA', the same shall be handed-over to the petitioner and the petitioner shall start the commercial production within sixty days and start manufacturing plan as approved by the Bihar Industries Commercial Policy, 2016.

11. Consequence of breach thereof, including initiation of proceedings for contempt having violated the undertaking furnished before this Court stands explained to the petitioner through the learned counsel.

12. As such, the present petition is allowed in the following terms:-

(a) Undertaking of the petitioner dated 05.08.2023 is accepted and taken on record.

(b) Petitioner has been made aware of the consequences of breach thereof, including initiation of proceedings for contempt;

(c) In the event of default of the undertaking, petitioner shall hand-over vacant and peaceful possession of the allotted property to 'the BIADA' within a period of two weeks;

(d) It is made clear that, in case, the petitioner fails to start the commercial production within the stipulated time and also fails to hand over



the vacant and peaceful possession of the allotted property to the BIADA within a period of two weeks thereof. The authorities of the BIADA are free to take possession of the premises in question.

(e) Order dated 07.03.2023 passed by the Principal Secretary, Department of Industries, Government of Bihar, Patna in Appeal Case No. 85 of 2023 and order dated 23.12.2022 passed by Joint Managing Director, BIADA communicated vide order contained in Memo No. 825 dated 29.12.2022 (Annexure-4) are accordingly quashed and set aside.”

8. Learned counsel for the appellants submits that the learned Single Judge errs in setting aside the cancellation order solely on the basis of the undertaking furnished by the writ-petitioner (respondent no. 1 herein), despite the admitted fact that no industrial activity is commenced on the allotted plot since its allotment in 1996.

9. It is further submitted that repeated inspections conducted by the appellant-authority find the unit to be non-functional and, despite several notices and the benefit of the One-Time Amnesty Scheme, the respondent fails to commence production even in terms of its own affidavit. Consequently, the cancellation of the allotment and dismissal of the statutory appeal are legal, justified and in accordance with law.



10. Learned counsel further submits that the industrial plot is a scarce public resource meant to promote industrialisation and cannot be permitted to remain idle indefinitely. It is, therefore, prayed that the impugned judgment be set aside.

11. Per contra, learned counsel for the respondents submits that the learned Single Judge rightly exercised writ jurisdiction after considering the facts and circumstances of the case. It is contended that no ground for interference is made out in the present intra-court appeal.

12. The limited issue which arises for consideration before this Court is as to whether the impugned judgment and order of the learned Single Judge, whereby the cancellation order and the appellate order are set aside on the basis of the undertaking furnished by the writ petitioner, suffers from any legal infirmity warranting interference by this Court in exercise of its intra-court appellate jurisdiction.

13. The scope of interference in an intra-court appeal is well settled. Though the appellate jurisdiction is co-extensive, interference with an order passed by the learned Single Judge in exercise of writ jurisdiction is not warranted merely because another view is possible. Unless the exercise of discretion is shown to be arbitrary, perverse, contrary to law, or based on an



erroneous appreciation of material facts, the appellate court ordinarily refrains from substituting its own view.

14. In this regard, the Hon'ble Supreme Court in ***Wander Ltd. v. Antox India (P) Ltd., reported in 1990 SCC OnLine SC 490*** has held that an appellate court would not interfere with the exercise of discretion merely because it is possible to take a different view. Interference is justified only when the discretion is shown to have been exercised arbitrarily, capriciously, perversely or in disregard of settled principles of law.

The relevant part of the said order reads as follows:

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the



material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph..."

15. Examining the impugned judgment on the touchstone of the aforesaid principles, this Court finds that the learned Single Judge did not mechanically accept the undertaking furnished by the respondent. Rather, after considering the undertaking and the stand taken by the appellant-BIADA, the learned Single Judge granted the relief by imposing reasonable conditions. The respondent herein was directed to commence commercial production within the stipulated period of 60/90 days, and was also made aware of the consequences of breach of the undertaking. Further, in the event of default BIADA was left free to resume possession. Thus, in our view the relief granted is neither unconditional nor absolute.



16. The contention of the appellants that the undertaking does not inspire confidence in view of the respondent's past conduct also does not persuade this Court to take a different view. An undertaking furnished before a constitutional court is not an empty formality but carries with it binding legal consequences. The Hon'ble Supreme Court in ***Babu Ram Gupta v. Sudhir Bhasin***, reported in (1980) 3 SCC 47 explains the sanctity attached to an undertaking given to a court and the consequences flowing from its breach. Therefore, the apprehension expressed by the appellants already stands adequately addressed by the safeguards incorporated by the learned Single Judge in the operative part of the judgment itself. The relevant part of the said order reads as follows:

“7.. It is manifest that any person appearing before the Court can give an undertaking in two ways: (1) that he files an application or an affidavit clearly setting out the undertaking given by him to Court, or (2) by a clear and express oral undertaking given by the contemner and incorporated by the Court in its order. If any of these conditions are satisfied then a wilful breach of the undertaking would doubtless amount to an offence under the Act.... There is a clear-cut distinction between a compromise arrived at between the parties or a consent order passed by the



court at the instance of the parties and a clear and categorical undertaking given by any of the parties. In the former, if there is violation of the compromise or the order no question of contempt of court arises, but the party has a right to enforce the order or the compromise by either executing the order or getting an injunction from the court.”

17. The present case is not a case where the learned Single Judge by virtue of impugned order has created any absolute or vested right in favour of the writ petitioner, rather considering his undertaking the learned Single judge has granted an opportunity for a limited period, enabling the writ petitioner to start production. At the same time the consequences in case of breach of undertaking is also indicated in the impugned order. Such exercise of discretion cannot be characterised as arbitrary, irrational or perverse merely because the appellants seek immediate cancellation.

18. The appellants are also unable to demonstrate that the impugned judgment violates any mandatory statutory provision under the BIADA Act, the Regulations or the terms and conditions governing allotment. The learned Single Judge merely moulds the relief in exercise of equitable jurisdiction while sufficiently safeguarding the rights of BIADA. This Court does not find the



exercise of such discretion to be contrary to law or so unreasonable as to warrant appellate interference.

19. The issue, therefore, is answered against the appellants.

20. In view of the aforesaid discussions, this Court is satisfied that the impugned judgment represents a plausible, equitable and legally sustainable exercise of writ jurisdiction. No patent illegality, perversity or jurisdictional error is shown so as to justify interference in the present intra-court appeal.

21. Accordingly, the appeal is devoid of merit and is dismissed.

22. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J.)

(Ranjan Kumar Jha, J.)

sujit/-

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