
(2020) 10 PAT CK 0101

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7336 Of 2020

M/S Shri Ram Enterprises

APPELLANT

Vs

Bihar Industrial Area Development Authority (Biada) Udyog
Bhawan And Ors

RESPONDENT

Date of Decision : 21-10-2020

Acts Referred:

Bihar Industrial Area Development Authority, Act 1974 — Section 6(2)(a), 6(2)(b)

Citation : (2020) 10 PAT CK 0101

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Sanjay Singh, Prashant Pratap

Final Decision : Disposed Of

Judgement

1. Heard Mr. Sanjay Singh, learned Advocate for the petitioner and Mr. Prashant Pratap, learned Advocate for the respondents/Bihar Industrial Area Development Authority (BIADA).

2. The petitioner has prayed for quashing of the appellate order dated 01.07.2020 passed in Appeal Case No. 01 of 2014 by the Secretary of the Department of Industries (respondent no. 2) whereby the order of resumption of industrial plot dated 06.11.2019 passed by the Managing Director, BIADA (respondent no. 3) has been upheld and ratified. The petitioner has further prayed for quashing of the order dated 02.03.2020 and 17.06.2020 issued under the signature of the Executive Director on the instructions of the Managing Director (BIADA) whereby, exercising powers under Sections 6(2)(a) and 6(2)(b) of the BIADA Act, 1974 and under the provisions of the amended Act, the earlier order of conditional restoration of the land in question has been revoked and a direction has been issued for encashing the bank guarantee and resumption of the possession of industrial plot of land. Additionally, it has been prayed that a direction be issued to the respondents to address themselves on the application of the petitioner seeking change in the nature of the industrial activity as the

business for which the allotment had initially been made has now become unviable and till such time, has prayed for stay of the impugned orders as also for restraining the respondents/ BIADA from taking possession of the plot in question from the petitioner.

3. The facts as narrated by the petitioner need be recounted for a proper adjudication of this case.

4. The petitioner was allotted a land measuring 19,000 Sq.Ft. in the Industrial Area, Pandaul, Madhubani for setting up an industry of PVC Pipe and Plastic Sheet Unit under the name and style of Shri Ram Enterprises for a period of 90 years on 20.02.2009 and the possession was handed over on 06.07.2009.

5. According to the allotment letter, the petitioner was required to get the map of the factory approved by BIADA and the Factory Inspector before any construction on the land could be made. However, much belatedly, the map was submitted by the petitioner on 04.02.2011. Instead of approving the same, the BIADA cancelled the allotment of the land to the petitioner vide order dated 11.01.2014 on the premise that there was no industrial activity on the allotted premises, requiring cancellation of allotment and resumption of land.

6. From a perusal of the order dated 11.01.2014 contained in Memo No. 029 issued under the signature of the Executive Director, BIADA, it would appear that during inspection of the plot, no industrial activity was witnessed and the plot in question appeared to be abandoned/deserted. Several notices were given to the petitioner and the petitioner was also made known the Exit Policy. But none of those notices were answered. When these facts were made known to the BIADA administration, the Managing Director directed for cancellation of the allotment. As such the land allotted to the petitioner was cancelled and the amount deposited by the petitioner was forfeited.

7. The aforesaid order of cancellation of allotment and forfeiture of the amount was challenged by the petitioner before the appellate authority in Appeal Case No. 01 of 2014. The appeal was decided on 24.10.2018. The Principal Secretary, Department of Industries vide his order dated 24.10.2018 indicated his findings viz. that the possession of land was taken on 7th of July, 2009 but the map of the factory was submitted only on 4th of February, 2011 i.e. after 18 months. However, it was also found by the Principal Secretary that to a large extent, BIADA also was slack in approving the map, which in fact had not been approved till the date of passing of the order in the aforesaid appeal case or till the time of cancellation of the allotment on 11th of January, 2014. It was favourably noted by the Principal Secretary that the petitioner had deposited Rs. 99,500/- and that the petitioner was keen to resume the business if the allotment was restored.

8. On such findings, the Principal Secretary was of the considered view that allotment of the plot of land be restored to the appellant but with the caveat that firstly the BIADA should approve the map so submitted by the petitioner within two weeks from the date of passing of the appellate order, whereafter the

petitioner would clear the pending dues with interest and would also submit bank guarantee of Rs. 1 lakh for a period of two years along with an affidavit that the commercial production in the unit shall commence within six months from the date of approval of the map and the unit would remain in continuous production. If any of these conditions were violated, the bank guarantee was directed to be encashed by the BIADA. On such conditions, the allotment of the land was restored to the petitioner.

9. It is the case of the petitioner that she deposited the requisite dues along with interest and the bank guarantee for a period of two years i.e. up till 20.11.2020. However, till the date of filing of the petition, Mr. Sanjay Singh, learned Advocate for the petitioner submits that there was no approval of the map and there was no communication in that regard either to the petitioner.

10. Thus nine years in this process had already elapsed, making the project of PVC Pipes and Plastic Sheets of the petitioner completely unviable according to the prevailing market conditions. In a meeting which was held by the petitioner and respondent no. 2, she was made to understand that the unit could be diversified, if desired. There was but, according to the petitioner, no written approval. Believing such statement to be the genuine statement of BIADA administration, the petitioner, after exploring the market, found that production of electronic goods like stabilizers, fans and consumer electronics would be a more commercially viable proposition.

11. The petitioner has tried to show her bonafides by stating that the construction work was started on the land even though it was a low lying area and lot of expenses had to be incurred in earth filling. Boundary wall was also erected. However, since there was no approval of the map, which was a necessary precondition for starting any construction, the petitioner had to be content with carrying on basic construction activity and in that process, a shade was constructed to start the manufacturing of electronic goods. The full fledged construction, according to the petitioner, could have been made only after the approval of the map by BIADA. In this process, the petitioner claims to have spent more than Rs. 20 lakhs. The petitioner also claims ignorance about the process and procedure of changing the product/diversifying the scheme. But when the petitioner approached the office of the respondents to inquire about the delay in the execution of lease deed, she was informed that a hearing is to take place regarding cancellation of the allotment. The petitioner also made an application before the respondents for changing the nature of the product and the scheme.

12. On 06.11.2019, the Managing Director BIADA, after taking note of the fact that there was conditional restoration of the land in question, found that despite the approval of the map on 08.11.2018, only earth filling and construction of a boundary wall was done by the petitioner. The petitioner was to start production by 18.06.2019. The inspection on the plot also, the Managing Director writes, indicated that non-scheduled work of assembling electrical products was being

carried out over the allotted plot of land. After looking at the entire set of facts, the Managing Director passed an order that the petitioner would be well advised to seek further extension from the Appellate Court within a month or else the allotment of the land by BIADA would be taken back and bank guarantee shall be encashed.

13. This order of the Managing Director dated 06.11.2019 was challenged before the Secretary of Department of Industries, Government of Bihar vide Appeal Case No. 01 of 2014.

14. The appellate authority taking note of the fact that BIADA had approved the map but the petitioner had been negligent and a non-starter, rejected the request of the petitioner for any modification in the order dated 24.10.2018 passed in Appeal Case No. 01 of 2014 and directed the Managing Director, BIADA to implement the order viz. of cancellation of the allotment of land as also of encashing of bank guarantee and forfeiture of amount deposited.

15. Mr. Sanjay Singh, learned Advocate for the petitioner has contested the aforesaid order on the ground that in the allotment letter contained in Annexure-4 to the writ petition, Clause-9 clearly stipulated that the unit will have to get the map of the factory approved by BIADA and Factory Inspector within one month after taking possession of the land. Any construction on the land without prior approval will be unlawful. He submits that in the order dated 06.11.2019, the Managing Director did not state correctly that the map was sanctioned by the BIADA on 08.11.2018 as from the document brought on record by the BIADA in its counter affidavit, contained in Annexure-10, which is the relevant excerpts from the notings of ED (DBG) on 08.11.2018, indicates that necessity was felt for issuing direction to the technical section to approve the map in compliance of the order of the appellate authority and in that regard, the technical file of the unit of the petitioner was enclosed. This clearly demonstrates that till 08.11.2018, it was only in the contemplation of the BIADA that the map submitted by the petitioner was required to be approved. Thus, it was asserted by the petitioner that even though the petitioner initially was a non-starter and had submitted the map after eighteen months of the allotment of the land to her but she evinced keenness to commence the industrial production and full fledged commercial production could not be commenced because of the map not having been approved by the BIADA or at least the fact of its approval not being communicated to the petitioner.

16. Apart from this, it has been urged on behalf of the petitioner that in a batch of cases, the lead case being Bihar Industrial Area Development Authority and Ors. Vs. Deepak Paints Pvt. Ltd. and Ors. A Division Bench of this Court vide its judgment dated 18.03.2015 has held as follows:

We are conscious of the fact that the purpose of leasing the land was only to permit industries to come up and thereby to generate employment as well as to earn income to the State. The credentials of allottees were examined before the

allotments were made. In the recent past, certain developments have taken place which have their own effect upon the establishment of industries or viability of those which are already in existence. It is a matter of record that several State and Central Public Sector Undertakings have also been closed. When such is the fluidity of the situation, taking a stringent view that non-establishment of industries must result in cancellation of lease cannot be countenanced. Instead, time ought to have been granted either to establish industries or to revive those which have become sick. In case the existing industries have become unviable, the lessee can be permitted to go for diversification. Sudden or abrupt cancellation of leases would not only put the lessees, but also various agencies, as well as the employees to serious hardship.

17. As opposed to the aforesaid contentions urged on behalf of the petitioner, Mr. Prashant Pratap, learned Advocate for the BIADA has submitted that according to the allotment letter, the petitioner was obligated to start full commercial production within 360 days of the allotment and start the construction on the demised premises within 180 days from the date of allotment. The land was taken over by the petitioner on 07.07.2009, but nothing was done over the said land. The land was found to be illegally used for growing rice. Several times, on notice, the petitioner sought extension of time for commencing the work but such promises were never kept.

18. It has further been argued that after about a year of the commitment made by the petitioner to start the work, a letter was shot on 10.02.2011 by the petitioner seeking diversification of the project and changing it to oil mills. The allotted land remained deserted for all this while and no activity was carried out by allottee. It was only thereafter that a letter dated 10.02.2012 was written by the petitioner promising that the construction work shall be initiated and completed within 180 days. Taking this promise to be a serious one this time, the BIADA vide order dated 22.05.2012 clarified that the construction may be started on the basis of the map approved by the Factory Inspector. But, only boundary wall was constructed by the petitioner. Thereafter, several show cause notices were issued to the petitioner intimating and asking her as to why the allotment be not cancelled and money deposited by her be not forfeited in terms of Sections 6(2)(a) and 6(2)(b) of the BIADA (Amendment Act, 1991).

19. The petitioner was also made to understand that she should either surrender the plot by taking recourse to the EXIT Policy Scheme or start the construction forthwith, but such requests went unheeded.

20. The very fact that the petitioner had deposited the bank guarantee and had made good the dues with interest reflects that the issue of approval of the map by the BIADA was only a pretext/subterfuge for the petitioner to keep the land allotted to her unutilized. The conditional order of the appellate court of provisional restoration of the land was never complied with. The inspection reports as well as the photographs of the area clearly demonstrated that the land was deserted, giving a clear impression that the petitioner is not keen to

continue with any industrial production over a huge chunk of land given by BIADA, which could be commercially utilized by any other contender.

21. After having heard the counsel for the parties and after perusal of the records, it appears that every now and then, the stand of the petitioner kept on changing. The delay in submission of the map, would in the first instance, have been taken in an adverse way by the BIADA but considering the gender of the petitioner and on her showing interest in carrying on the industrial work, extension was granted to her.

22. It is difficult to accept the argument of the petitioner that without any approval of the diversification of the unit and only on oral assurance, the petitioner would start assembling electrical consumer goods.

23. The petitioner being an entrepreneur is required to know that the purpose for which the land was allotted could not be unilaterally changed.

24. Apart from this, the reports and the photographs indicate that only an infinitesimal part of the land allotted to her has been utilized and that also for an unscheduled and unauthorized activity.

25. There is nothing on record to indicate that the proposal of diversification was agreed upon by the BIADA and that 19000 Sq.Ft. area in a prime industrial belt was properly utilized.

26. The fact that the dues and the bank guarantee were paid by the petitioner is clear evidence of the fact that the petitioner was to start the construction work as promised by her. Only when it was not done and the petitioner suspected/apprehended punitive action, the plea of non-approval of map was taken.

27. I do not find any reminder having been sent by the petitioner regarding approval of map.

28. Any entrepreneur, in anticipation of the approval of the map submitted by him/her would not wait and allow the time to be squandered.

29. The dice appears to be loaded completely against the petitioner so far as her intentions to commence the industrial work is concerned.

30. This Court takes note of the fact that BIADA, which is constituted under the Bihar Industrial Area Development Authority, Act 1974 has an object to perform viz. to provide the plan and development of industrial areas and promotion of industries and matters appurtenant thereto. BIADA has more than 50 industrial areas in the entire State of Bihar which is divided into different plots and given to intending entrepreneurs for industrial purposes in terms of the Act, rules and regulations etc. The plots are allotted to the intending entrepreneurs on stipulated terms and conditions on a very minor cost. The same cannot be allowed to be used for any other purpose or to be left deserted.

31. The petitioner must move on if it is not possible for her to use the industrial

plot.

32. This Court does not find any malafides or vindictive action on the part of the respondent BIADA in invoking the provisions contained under Sections 6(2)(a) and 6(2)(b) of the BIADA Act, 1974 in canceling the allotment and resumption of the possession of land and forfeiture of deposits as there has been a clear breach of terms of allotment by the petitioner. The petitioner has been shown indulgence a number of times and this Court finds that any undue sympathy for the petitioner now would be highly misplaced.

33. For the aforesaid reasons, the prayer made on behalf of the petitioner cannot be acceded to and the writ petition, therefore, is dismissed. The interim order also stands vacated.

34. However, it would be open for the petitioner to approach the BIADA authorities within a period of 15 days and make a fervent request with a specific timeline for starting the construction work/commencing the industrial activity. If such a request is made, it is expected that the concerned authorities of BIADA would look into the matter, if feasible and desirable, which would be in the realms of complete discretion of the authorities concerned.

35. The petition stands disposed of accordingly.