

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12186 of 2022

M/S Kaveri Liquors (P) Ltd. a company incorporated under the Companies Act, 1956, having its registered office at 1st Floor, Maha Laxmi Complex, Rajendra Path, Patna through its Director, Shri Rohit Shankar Male, aged about 52 years, son of Late Dayashankar resident of Mohalla- Kazipur Nayatola, P.S. Kadamkuan District- Patna.- 800004

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Industries Department, Government of Bihar, Patna.
2. The Bihar Industrial Area Development Authority, having its office at Udyog Bhawan, Patna through its Managing Director.
3. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, Patna.
4. The General Manager, Bihar Industrial Area Development Authority, Udyog Bhawan, Patna.
5. M/s Industrial Development Bank of India (Now IDBI Bank), Uma Complex, Fraser Road, P.O.- G.P.O., P.S.- Kotwali, District- Patna, Bihar- 800001.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate Mrs. Sushmita Sharma, Advocate Mr. Abhishek Anand, Advocate
For the State	:	Mr. Subhash Pd. Singh, GA-3 Mr. Shiv Kumar, AC to GA-3
For the BIADA	:	Mr. Lalit Kishore, Sr. Advocate Ms. Binita Singh, Advocate
For IDBI Bank	:	Mr. Shivendra Kr. Roy, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 17-04-2023

Heard learned counsel for the parties.

2. This writ petition has been filed by the petitioner, being the auction purchaser of an industrial land, which was originally allotted by BIADA to one M/s Bombay Safe and Steel



Works, who changed its name to M/s Jupiter Electrical Lamps. The land was originally allotted on 16.04.1971. The lease hold right was auctioned by the BIADA in RP Case No.53/2002 and the petitioner purchased the property, which was handed over to him on 11.12.2009. The BIADA, vide Memo No. 6815, dated 03.12.2014, allowed the land to be transferred in favour of the petitioner with certain conditions. In terms of the said conditions, the petitioner was required to start production within six months from the date of transfer of the land. The property in question fell into litigation, upon which certificate debtors filed an appeal, being Appeal No. 11 of 2009, before the Debts Recovery Tribunal, Patna and vide order dated 31.05.2010, the said appeal was allowed in his favour. The petitioner, against the said order, preferred an appeal, being Appeal No. 55 of 2010/Appeal (T) No. 47 of 2013, before the Debts Recovery Appellate Tribunal, Allahabad, which was allowed on 11.09.2013, against which a writ petition, being CWJC No. 21919 of 2013 (Jupiter Electricals and Lamps India Pvt. Ltd. Vs. The Union of India and Ors.) was preferred by the certificate debtor and the same was dismissed by this Court, vide order dated 11.01.2023.

3. It is the case of the petitioner that the lease papers



of the land were not handed over to him by the bank on account of the aforesaid litigation and, ultimately, in terms of the order passed by this Court, on 16th of February, 2023, the lease papers of the land were handed over to the petitioner.

4. In the meanwhile, on account of non-performance and non-production, a show cause notice was issued to the petitioner by the BIADA on 22.05.2015 as to why the land allotted to him should not be cancelled and subsequently, on 23rd of July, 2022, the BIADA proceeded to cancel the allotment of land. The said cancellation order was challenged by the petitioner in CWJC No. 11911 of 2022 (M/s Kaveri Liquors (P) Ltd., Vs. the State of Bihar & Ors.) and this Court, vide judgment dated 24.01.2023, after hearing the respective counsel, quashed the order of cancellation of allotment of land dated 23rd of July, 2022, leaving it open for the respondent BIADA to proceed in accordance with law, after providing opportunity of hearing to the petitioner.

5. It is the further case of the petitioner that no show cause notice with regard to cancellation of allotment of land was thereafter ever issued to him, while it is the stand of the respondent that in terms of the order passed by this Court (supra), BIADA has again proceeded to give an opportunity of



hearing to the petitioner and for the said purpose, he has been directed to present himself before the Director (D.I.), Industries Department to place his defence.

6. Learned Senior Counsel for the BIADA submits that the present writ petition, preferred by the petitioner for allowing him to change the nature of his industry to a hotel industry, ought not be examined at this stage, as the very question of allotment is under consideration before the Director (D.I.), Industries, Department. He prays for deferring the matter for another one month till the decision is taken with regard to the question of cancellation of allotment.

7. Learned Senior Counsel further submits that the question of allowing the petitioner to set up a hotel industry is beyond the provisions of Bihar Industrial Investment Promotion Policy, 2016 (hereinafter referred to as “the Policy, 2016), which only allows allotment of land for the purpose of setting up manufacturing units. A hotel industry does not come within the said framework.

8. This Court has considered the submissions. The petitioner is an auction purchaser. The original allotment of land by BIADA was in the year 1971. An auction purchaser, purchasing a land allotted by BIADA, is not bound to set up the



same industry, what the original allottee was allowed to set up. In terms of the policy, the allottee has a right to change user of the land for another industrial purpose. In the present case, since the original lease papers of the land were not made available to the petitioner and the litigation continued till 2023, there was no occasion for him to set up any industry. The question now arises whether he can be said to have flouted the conditions of allotment.

9. In the opinion of this Court, a new allottee by transfer can only set up an industry after the original papers are made available to him. As per the Policy, 2016 and Bihar Industrial Area Development Authority Act, 1974, (hereinafter to referred to as “the Act, 1974”) the word “industry” would have the same meaning as has been assigned to it under The (Bihar State) Aid to Industries, Act, 1956, which defines an industry, which may be related to any kind of industrial work including agriculture, which may be set up by an individual, or by a cooperative, or by any limited, or by a public company, or by partners etc. The nature of an industry has not been limited to a particular field under the Act. Of course, the Policy, 2016 mentions of encouraging the industries, which are engaged in manufacturing, however, the Policy, 2016 essentially is for the



purpose of encouraging the investment in State of Bihar. If the investments in a particular field are being allowed, it does not mean that the other industries are barred from being established.

10. In view thereof, this Court finds that the policy only is a manner of upliftment of a particular part of industries, however, it does not, in any manner, restrain any individual entrepreneur or any company to set up any other kind of industry, which may be institutional or otherwise.

11. In view thereof, the stand taken by the respondents of disallowing the petitioner to set up an industry relating to hospitality or the hotel in particular cannot be said to be beyond the provisions of the Act, 1974. The requisite licenses from the various stake holders, of course, will have to be taken into consideration before setting up any such industry, which would include, forest, pollution etc.

12. Be that as it may, this Court would not have to wait for the respondents to take a decision relating to the allotment issue, as the allotment of land to the previous allottee would have no binding effect on an auction purchaser, who would be entitled to set up a new industry upon having purchased industrial land in auction.

13. Keeping in view the above, this Court does not



accept the prayer of learned Senior Counsel appearing for the BIADA for adjourning the matter and keeping it pending, and in view of the aforesaid findings, the present writ petition is allowed as above.

(Sanjeev Prakash Sharma, J)

Amrendra/-
Item No. 32

AFR/NAFR	
CAV DATE	
Uploading Date	19.04.2023
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