

(2011) 07 PAT CK 0223

Patna High Court

Case No: C.W.J.C. No. 9692 of 2010

M/s. Bihar Jute Mills (India) Pvt.
Ltd.

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: July 7, 2011

Judgement

@JUDGMENTTAG-ORDER

S.N. Hussain, J.

This writ petition has been filed by the petitioner challenging order dated 4-5-2010 by which the Board of Directors of the Bihar Industrial Area Development Authority (hereinafter referred to as "BIADA" for the sake of brevity) (respondent No. 3) cancelled allotment of Industrial Plot Nos. 7, 85 and 86 measuring 5 acres in Forbesganj Industrial Area to the petitioner-company for establishment of jute yarn and jute twine. This decision of the Board of Directors was intimated to the petitioner vide letter dated 25-5-2010 (Annexure-13) issued by the Managing Director of BIADA (respondent No. 4). A declaration has also been sought by the petitioner that BIADA cannot cancel the land of allottee in such case, and the same cannot be done in a mechanical manner and to direct the authorities to ensure removal of over-head high tension wires and poles from the aforesaid industrial plot to enable for industrial activity of the petitioner-company to continue and also for restraining BIADA and its authorities from creating any third party right over the property in question.

2. The petitioner is a company incorporated under the provisions of the Companies Act, 1956 having registered head office at Patna and after due procedure of law the aforesaid five acres of land was allotted to the petitioner by BIADA on 90 years leave vide its letter dated 5-4-2007 (Annexure-1) for the purpose of establishing an industry for manufacture of jute yarn and jute twine and thereafter the aforesaid 5 acre was physically handed over to the petitioner on 5-7-2007.

3. Learned counsel for the petitioner submitted that petitioner filed an application on 17-7-2007 before the authorities of BIADA stating that Plot Nos. 7, 85 and 86 were approach road of N.H. 57 and hence it was difficult to erect boundary on the plot allotted by BIADA. On this representation, inspection was made and ultimately vide order dated 21-9-2007 (Annexure-2), the Managing Director of BIADA changed the aforesaid land to 5 acre of plot Nos. 4, 5 and 6, whereafter possession of the said new plots were handed over to the petitioner on 28-9-2007 in lieu of plot Nos. 4, 5 and 86.

4. Learned counsel for the petitioner further submitted that on the freshly allotted land 11 KVA high tension wire was crossing almost in the middle of the land and hence on 10-12-2007 (Annexure-7), petitioner requested the Managing Director of BIADA to get electric poles and electric wires passing through the land allowed to the petitioner removed. The Executive Director on the same date, i.e. 10-12-2007 (Annexure-4) sent letter to the Executive Engineer, Bihar State Electricity Board, Forbesganj for removal of high tension wire and poles from the aforesaid plot so that the construction for establishment of the said industry could be started. In response to the said letter, the Electrical Executive Engineer wrote letter dated 8-2-2008 (Annexure-5) to the Managing Director of BIADA asking him to deposit Rs. 1,35,274.00 as cost of removal before the Bihar State Electricity Board (Rural Electrification Deposit Works), Patna.

5. Learned counsel for the petitioner has stated that the authorities of BIADA neither deposited the said amount or any part thereof in the Bihar State Electricity Board nor informed the petitioner with respect to the demand of Electrical Executive Engineer and all of a sudden the Managing Director of BIADA sent letter dated 28-6-2008 (Annexure-6) demanding an alleged outstanding amount of Rs. 1,55,550.00 alleging that in spite of lapse of about one year from the date of handing over of physical possession of the land the petitioner had / failed to commence production activity which was construed as a violation of the terms and conditions of allotment. The petitioner sent his reply to the said authority stating that construction activity could not be carried out only because of the existence of high tension wire and poles passing through the middle of the plot allotted to the petitioner for which the petitioner had been informing the authorities time and again. The said letter of the petitioner remained unheeded and unanswered.

6. Learned counsel for the petitioner also stated that after about six months a letter dated 11-6-2009 (Annexure-8) was sent by the Development Officer of BIADA (respondent No. 7) to the petitioner by way of last show cause notice asking the petitioner to show cause as to why even after lapse of two years, no production activity was being carried out and balance payment was not being made. The petitioner immediately sent his reply dated 20-6-2009 (Annexure-9) again bringing to the notice of the respondents-authorities his repeated request for removal of overhead high tension wires and poles from the land in question without which

construction activity was not possible. It was further stated that although the said letter was acknowledged by the respondents, but without any reference to it or to the removal of overhead high tension wire and poles a notice was issued by the Development-Officer of BIADA dated 3-8-2009 (Annexure-10) for payment of balance amount of Rs. 3,18,030.00 within fifteen days.

7. Learned counsel for the petitioner further claimed that thereafter the petitioner kept on representing the respondents-authorities bringing the factual aspect of the matter to the notice including his letter dated 15-2-2010 (Annexure-11). In the said letters it was stated that approximately Rs. 40.00 lakhs had already been invested by the petitioner. In the factory building and an advance of Rs. 35.00 lakhs had been made to the suppliers of machinery. It was also stated that bankers had also finalised the project and a request was made that six months period be granted to the petitioner to commence production. Thereafter also several representations (An-nexure-12 series) were filed by the petitioner for the same purpose before different authorities of BIADA. Learned counsel for the petitioner claimed that in spite of the aforesaid facts, the impugned decision was taken by the Board of Directors of BIADA on 4-5-2010 which was communicated to the petitioner by Managing Director of BIADA vide letter dated 25-5-2010 (Annexure-13) which is also under challenge.

8. Learned counsel for the petitioner argued that he has throughout acted as per the provisions of the lease deed dated 6-3-2008 (Annexure-15) as well as according to the terms and conditions of the bond which was executed by the petitioner on 30-4-2007 and was accepted by the authorities of BIADA on 4-5-2007 (Annexure-14). He further argued that all necessary steps had been taken by the petitioner, but nothing had been done by the respondents. Hence, after paying first instalment the petitioner stopped payment of further instalment waiting for removal of the high tension overhead wires and poles from the land in question. He also averred that the impugned action of the respondents was also premature as the lease is for a much longer period and the authorities were bound to wait for at least seven years after removal of the high tension overhead wires and poles.

9. On the other hand, learned counsel for the Bihar Industrial Area Development Authority and its authorities (respondent Nos. 3 to 7) vehemently opposed the contentions of learned counsel for the petitioner and submitted that the case of the petitioner can rise or fall on the materials produced by him alone and he cannot take help of absence of any material or action of the respondents. He further stated that high tension overhead wire and poles were passing through the land in question from before and the petitioner had full knowledge of the same but even then he chose the said plots himself as is clear from the communication between the parties (An-nexure-A series) and BIADA acceded to the request of the petitioner made in his petition dated 21-5-2007 (Annexure-2).

10. Learned counsel for respondent Nos. 3 to 7 also claimed that high tension wire was not passing through the middle of the plots, rather there was a larger portion of 3.40 acres on one side which was sufficient for establishing small scale industry, whereas remaining smaller portion on the other side of the wire could be used for small structures and hence the plea of the petitioner was absolutely frivolous and was being used merely as an excuse for the delay in the establishment of the industry and the payment of the amount dues, violating the terms of allotment.

11. Learned counsel for respondent Nos. 3 to 7 submitted that clauses 6 and 8 of Bond dated 30-4-2007 (Annexure-14) executed by the petitioner specifically mentioned payment of seven equal monthly instalments without any condition or reservation and on that basis allotment was made in petitioner's favour on 5-4-2007 (Annexure-I). Hence, the petitioner cannot legally rake up such frivolous issue merely for the purpose of non-payment of the dues as he was bound by his own unconditional undertaking as well as the terms of allotment.

12. Learned counsel for respondent Nos. 3 to 7 also argued that the deed of lease was executed between the parties on 6-3-2008 (Annexure-15) and in the very beginning thereof the mode of payment was given and in clause 4(b) of Part-II thereof it had been clearly stipulated that if effective steps were not taken within the fixed period to establish the industry, the authority shall cancel the allotted plot/shed and also forfeit the amount deposited in this connection, whereas in Clause 7 thereof it was provided that in case of breach by the lessee of any of the terms and conditions, the lessor shall have the right to terminate the lease and forfeit the consideration money, resume take possession and enter upon the whole of the said land without payment of any compensation to the lessee. Hence, he avers that in the light of the aforesaid provision in the lease the impugned action of the authorities of BIADA is legal and justified.

13. Learned counsel for respondent Nos. 3 to 7 also claimed that show causes were sent to the petitioner, i.e. one dated 26-8-2008 (Annexure-B) and the other dated 11-6-2009 (Annexure-8) to which the petitioner replied on 20-6-2009, but neither any amount was paid by the petitioner till date, nor the industry had been established by him as was clear from the information obtained from the Ministry of Corporate Affairs (Annexure-F) although vide letter dated 15-2-2010 the petitioner had himself requested for six months time for commencing the production in the industry.

14. Learned counsel for respondent Nos. 3 to 7 further stated that letter dated 8-2-2008 (Annexure-5) sent by the Electrical Executive Engineer of Bihar Electricity Board for depositing any sum for removal of high tension overhead wire and poles from the land in question was never received in the office of the Managing Director of BIADA and only recently he got it on 14-6-2010. He further submitted that the petitioner also never approached the authorities of BIADA for the same nor deposited the estimated money for shifting the wires and the poles. He also argued that order dated 25-6-2010 had been passed by this Court in the instant case on the

claim of the petitioner that he was willing to deposit the entire amount for shifting of the overhead high tension wire and the dues of BIADA which shows that he had never paid the said amount earlier hence impugned step taken by the authorities are justified.

15. Learned counsel for respondent Nos. 1 and 2 supported the claim of respondent Nos. 3 to 7 and adopted the arguments raised by learned counsel for respondent Nos. 3 to 7.

16. Learned counsel for respondent No. 8 also supported the arguments raised by learned counsel for respondent Nos. 3 to 7, but in furtherance thereof he stated that respondent No. 8 Moti Babu Institute of Technology is an Engineering College in the process of being established by Innotech Educational Society which is a society registered under the Society Registration Act, 1860 on 22-3-2010 and for that purpose respondent No. 8 filed an application on 8-2-2010 for allotment of 15 acres of land. He further stated that State Investment Promotion Board also granted approval for establishing the Engineering College (respondent No. 8) on private investment by the respondent-society to which no objection was given by Science and Technology Department, Govt. of Bihar on 11-6-2010, whereafter BIADA vide letter dated 15-5-2010 allotted 8.73 acres of land at the Industrial Area Forbesganj to respondent No. 8 for setting up an Engineering College on lease of 90 years on the terms and conditions contained in the said allotment letter and subsequently possession of the said land was also handed over to respondent No. 8 and certificate of possession was granted by the authorities of BIADA on 12-6-2010-Annexure-I).

17. Learned counsel for respondent No- 8 also argued that vide letter dated 7-6-2010 (Annexure-J) the authorities of BIADA allotted further 5 acres of land of Plot Nos. 4, 5 and 6 at the Industrial Area, Forbesganj which was adjacent to its earlier allotted land on similar terms and conditions and in compliance of its terms respondent No. 8 deposited 30% of the amount fixed to the BIADA on 9-6-2010 for which money receipt (An-nexure-K) was also issued and the said allotment was also affirmed by office order dated 18-6-2010 (Annexure-L) but actual possession could not be given to respondent No. 8 and only possession on paper was given to respondent No. 8 on 19-6-2010 (Annexure-M). Learned counsel for respondent No. 8 also averred that he had no problem in taking possession and starting work in 8.73 acres of land allotted to it, but when on 20-6-2010 it tried to, take actual possession of further 5 acres of Plot Nos. 4, 5 and 6 which was earlier allotted to the petitioner, they were forcibly stopped by the representative of the petitioner, hence respondent No. 8 filed representation dated 20-6-2010 to the District Magistrate. Araria, a copy of which was also sent to the Managing Director of BIADA who forwarded the same to the District Magistrate. Araria on 25-6-2010 for necessary steps.

18. Learned counsel for respondent No. 8 claimed that in the aforesaid facts and circumstances when this writ petition was filed by the petitioner on 24-6-2010, respondent No. 8 was not impleaded although it was a necessary party for the litigation as a right had already accrued in it, hence, respondent No. 8 filed an interlocutory application for intervention and only thereafter he was impleaded as respondent No. 8 on the orders of this Court.

19. Learned counsel for respondent No. 8 also claimed that last paragraph of allotment letter of petitioner dated 5-4-2007 (Annexure-I) specifically provided that if the amount was not deposited within thirty days and the construction work of the unit was not started within six months and production work did not commence within two years from the date of issue of allotment letter, the allotment order would automatically be cancelled in both the case without prior notice and the amount so deposited will be forfeited. He relied upon letter dated 26-8-2008 (Annexure-B of C.A. of R/3 to 7) by which the said terms and conditions were reiterated and the petitioner was directed to deposit the due amount" within fifteen days to start the production work without any delay failing which allotment was to be cancelled, but even then the petitioners did not comply the said terms and conditions due to which BIADA had to send show cause notice to the petitioner on 11-6-2009 (An-nexure-8). He also stated that in response to the said show cause the petitioner sent letter dated 20-6-2009 (Annexure-9) to the Development Officer of BIADA undertaking that the entire due amount shall be paid within three-months, but even that undertaking was not fulfilled.

20. Learned counsel for respondent No. 8 averred that in paragraph 19 of the writ petition the petitioner had stated that he had paid advance money to the suppliers of machines and had also spent huge amount for development of the plot, construction of boundary wall and part construction of building, but the said statement is absolutely false and the payment receipts as well as certificate of Chartered Accountant contained in Annexure-16 are forged and fabricated. In support of the said contention, learned counsel for respondent No. 8 relied upon a letter dated 9-10-2010 (Annexure-P) issued by the supplier-company stating that the money receipts produced by him were false and it had decided to initiate an appropriate criminal legal action against the petitioner. Hence, he prayed that strictest legal action against the petitioner be initiated for misleading the Court and betraying the due process of law.

21. Learned counsel for respondent No. 8 further averred that there is no collusion between the claim of BIADA (respondent Nos. 3 to 7) and the claim of respondent No. 8 as the action taken against the petitioner was much prior to respondent No. 8 coming into picture and hence once an appropriate action has been taken against the petitioner in accordance with law, he had no manner of claim left as his allotment had already been cancelled much before the plot in question was allotted to respondent No. 8. Hence, he submitted that claim of the petitioner is fit to be

dismissed.

22. From the pleading and materials of the respective parties, it is not in dispute that plot Nos. 7, 85 and 86 measuring 5 acres in Forbesganj Industrial Area were allotted to the petitioner-company on 5-4-2007 by BIADA on 90 years of lease for the purpose of establishing an industry for manufacturing jute yarn and jute twine, but subsequently vide order dated 21-9-2007 plots were changed by the BIADA itself and in place of plot Nos. 7, 85 and 86, other plots in the same Industrial Area, namely plot Nos. 4, 5 and 6 were allotted to the petitioner and possession thereof was given to the petitioner on 28-9-2007 and accordingly lease deed dated 28-9-2007 were executed by the parties with respect to the said plot Nos. 4, 5 and 6.

23. It is also not in dispute that high tension overhead wires are passing through the said land allotted to the petitioner which is apparent from letter of the Development Officer sent to the Managing Director of BIADA dated 30-6-2010 (Annexure-E) and the map attached thereto. It further shows that on the south of the said wire 1.91 acres of land of the said plot is situated, whereas on the north of the wire, the remaining 3 and odd acres of land is situated. Hence, it is quite apparent that due to the existence of the said high tension overhead wires of 11,000 voltage complete construction of an industry was not feasible. The plea of the respondents that on one side of the wire main industry building can be constructed and on the other side of the wire small constructions can be made appears to be absolutely frivolous especially when it was the duty of the respondents-authorities to give vacant land to the petitioner free from all such problems so that an industry could be established in a proper manner.

24. So far the question of earlier knowledge of the petitioner with regard to aforesaid high tension overhead wires is concerned, since the land was suitable for the purposes of the petitioner he had accepted the same and from the letters and representations repeatedly sent by the petitioner to the authorities of BIADA it is quite apparent that the petitioner had legitimate and bona fide expectation that the authorities will get the high tension overhead wires removed from there. It is also admitted that immediately after allotment of the aforesaid plots, the petitioner filed a representation dated 10-12-2007 to the Managing Director of BIADA who immediately sent letter on the same date bearing memo No. 1205/D to the Executive Engineer, Bihar State Electricity Board, Forbesganj. Hence it was the duty of the authority of BIADA to continue with their efforts for removal of the said high tension overhead wires from the land allotted to the petitioner until they were actually removed especially when the petitioner had been repeatedly requesting the authorities of BIADA for the same. It will be quite relevant to mention here that no one, except the people of the Electricity Board or the Electricity Department, were legally entitled to even touch the said high-tension electric wires and hence it could have been removed only by the authorities of the Electricity Board/Department on the direction/request of BIADA which was the owner of the plot in question.

25. The petitioner has produced a letter dated 8-2-2008 written by the Electrical Executive Engineer to the Managing Director of BIADA in which request for payment of Rs. 1,35,274.00 was made for removal of the said High Tension overhead wires and poles but learned counsel for the BIADA has claimed that the said letter was never received in its office, rather it was much subsequently handed over by the petitioner. This plea of the respondents are clearly not sustainable as it was the duty of the authorities of BIADA to pursue their requests for removal of the said wires and poles before the authorities of the Electricity Board and had they done so they would have known about the said requirement. In the said circumstances, it is quite apparent that the authorities of BIADA failed to perform their duties with respect to removal of the high-tension wires and the poles from the land in question and they did not even inform the petitioner for making any such payment. Hence, they did not act fairly and reasonably in fulfilling the legitimate and bona fide expectation of the petitioner. In this regard, reference may be made to a decision of the Apex Court in case of [Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala and Others](#),

26. So far the question of payment is concerned, much reliance had been placed by learned counsel for the respondents upon the bond executed by the petitioner on 30-4-2007 but the said bond was executed much before 21-9-2007 when plot Nos. 4, 5 and 6 measuring 5 acres were allotted to the petitioner in place of earlier plot Nos. 7, 85 and 86. Immediately after the said allotment of the lands, the petitioner has raised his objection with regard to high tension overhead wires and poles which have been detailed above. Even in his show cause dated 20-6-2009, the petitioner had undertaken that after receiving the amount of loan and immediately after the end of the rainy season construction of the building of the industry could be completed and the dues of BIADA would be paid within three months, but it was specifically mentioned therein that it would be possible only when high tension electric wires and poles were removed from the land in question. Hence the petitioner was clearly not raising the issue of high tension overhead wires and poles merely as an excuse for delay in the establishment of industry and payment of dues, rather he was genuinely concerned about the same and had been writing to the authorities of BIADA time and again, but it was the said authorities who were not performing their duties much to the chagrin of the petitioner; hence the petitioner cannot be legally assumed to be violating either any term of the allotment or his own undertakings.

27. So far the lease deed dated 6-3-2008 is concerned, no doubt it had been mentioned therein that if effective steps were not taken by the petitioner within the fixed period to establish the industry, the authorities shall be entitled to cancel the allotted plot/shed and also forfeit the deposited amount and in case of breach of terms of lease by the lessee, the lessor can terminate the lease, forfeit the consideration money, take possession and enter upon the allotted land. But when the steps which are to be taken by the petitioner and the terms and conditions which are to be fulfilled by the lessee are dependent upon the removal of

hindrances from the leased land by the lessor, namely the authorities of BIADA, the first day is of the lessor, namely the authorities of BIADA to get the said hindrances, which were serious in nature, removed and only then they can expect the lessee to perform their part of the terms and conditions. In the instant case, the petitioner who is lessee was stopped from taking effective steps for establishment of an industry and for payment of the money as required due to inaction of the authorities of BIADA (lessor) themselves and hence they cannot be allowed to put the burden of performing the terms and conditions upon the petitioner.

28. BIADA has been formed for its prime duty to see that all hindrances are removed for speedy acquisition of the area allotted for that purpose. In this regard, reference may be made to Section 6(2) of the Bihar Industrial Area Development Authority Act, 1974 in which it has been specifically stated that apart from allotment of land execution of lease, cancellation of allotment, realisation of fees/rent/charges etc. the Authority shall be responsible for planning, development and maintenance of the industrial areas and the matters connected thereto. Thus, duty cast by the statute clearly covers the removal of all such hindrances, including high tension overhead wires and poles from its lands.

29. So far the provision of appeal given in Section 6(2)(a) of the Act is concerned, 30 days time had been provided in the same, but by the impugned order dated 25-5-2010 only 15 days time was given to the petitioner for removal of possession etc. and no time was given for filing an appeal. Furthermore, the pleadings of the parties as well as the material produced by them are complete and arguments have been led by the parties at length. Hence, this Court does not find it just and proper to ask the petitioner to file any such appeal and then come to this Court, if aggrieved by the appellate order. Furthermore the authorities of BIADA have belied the legitimate and genuine expectation of the petitioner and had failed to perform their duties and by the impugned action they sought to punish the petitioner for the fault and wrong committed by the authorities themselves.

30. From the aforesaid facts, it is quite apparent that the action of the Authority is not bona fide for the purpose of the Act and it has been taken only to frustrate the settlement and lease made in favour of the petitioner. Hence, the impugned act of the Authority is clearly with an oblique and indirect object of removing the petitioner from the land in question and placing it in possession of respondent No. 8 which action is not sustainable as discussed above. Hence, the impugned action of the Authority comes within the purview of legal malice. In this connection, reference may be made to decision of the Apex Court in case of [State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti](#),

31. So far the question of allotment of the land in question in favour of respondent No. 8 is concerned, it is quite apparent that show cause notice was issued to the petitioner by the authorities of BIADA on 11-6-2009, in response to which the petitioner submitted his show cause on 20-6-2009 and the matter remained

unheard without giving any opportunity to the petitioner to place document etc. relied by him. It was only when some adjacent lands were allotted to respondent No. 8 on 15-5-2010, the respondents cancelled petitioner's allotment of the lands in question vide impugned letter dated 25-5-2010 and immediately thereafter the lands of the petitioner were sought to be allotted to respondent No. 8 on 7-6-2010. Hence, within a period of three weeks all the favours were showered upon respondent No. 8 for which there is no explanation why all this happened in such haste-post-haste manner without any obvious rhyme and reasons. Thus, it is quite apparent that the cancellation of petitioner's allotment had been made without application of mind and without even appreciating the fact that repeated requests of the petitioner for removal of high tension overhead wires and poles, were not at all a ploy of the petitioner to delay the matter rather it was the extreme exigency and requirement for establishing an industrial unit for which the authorities of BIADA were duty bound to support in all legal and proper manner in which they have miserably failed.

32. Admittedly, the petitioner is still in possession of the land in question on the basis of his earlier allotment, cancellation of which has forced the petitioner to file this writ petition in which interim order dated 25-6-2010 was passed by a bench of this Court restraining the respondents from dispossessing the petitioner.

33. Considering the pleadings and the materials produced on behalf of the parties and the aforesaid findings, this court has no option but to allow this writ petition. Accordingly, this writ petition is allowed, order of the Board of Directors of BIADA dated 4-5-2010 communicated through letter dated 25-5-2010 issued by its Managing Director is hereby quashed. The deed of lease between the parties dated 6-3-2008 as well as allotment of land in question by BIADA in favour of the petitioner vide letter dated 21-9-2007 shall continue without being affected by the impugned order. The authorities of BIADA shall see to it that overhead high tension wires and poles running through the land in question are removed by the Electricity Board / Department within two months from the date of receipt/production of a copy of this order. However, they may charge the expenses incurred on their removal from the petitioner, who shall immediately pay the same without any delay. After removal of the said hindrances, the terms of the lease and allotment shall start and both the parties shall stick to the terms and conditions already settled.