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Government of Bihar
Office of the Principal Secretary, Department of Industries

Dated 23.10.2018

Appeal Case No – 33/2014
District – Muzaffarpur

PRESENT :- K.K. Pathak, I.A.S.,
Principal Secretary

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M/s Indo Gulf Fertilisers, Muzaffarpur - Appellant
Vs.
MD, BIADA - Respondent

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Appearance:

For the Appellant
For the Respondent

: LA Ranjan Kumar Singh
: LA Pankaj Kumar Singh

23.10.2018

This was an appeal filed by the appellant on 25th August 2014 against the order of the MD, BIADA on 17th July 2014 vide which the shade allotted to the appellant measuring 223463 sq ft. was cancelled and the money deposited was forfeited. The forfeited money was Rs. 81.37 lakhs.

In light of the appeal petition, the appeal was admitted and notices were issued after the appellant deposited the requisite fee of Rs. 1000. The first date was fixed on 16th October 2014, however, the order could not be passed. Since then, numerous dates were given but the matter could not be heard.

The case was finally posted for hearing on 22nd October 2018. On that date, the Learned Advocate for the

Appellant was heard on great detail. The Learned Advocate, BIADA was also heard.

As per the arguments made by the Learned Advocate of the Appellant, he mentioned that, as soon as it was clear to him that the project was not proving viable and the market situation was not favourable, he informed the BIADA that he wishes to surrender the plot. He wrote this letter on 2nd May 2014, which he has enclosed as Annexure C in his appeal.

He further argued that the BIADA did not respond to this letter and proceeded to forfeit Rs. 81.37 lakhs which, as per him, was the first instalment for the land.

The Learned Advocate of BIADA was also heard in great detail. He mentioned that the BIADA had earlier announced an Exit Policy (1st May 2013-31st October 2013). However, the Appellant did not avail of the Exit Policy. He further mentioned that numerous notices were issued to the Appellant but he did not respond.

Thus, concluding the hearing, this order is being passed today. I have perused the Appeal petition as well as two written statements filed by the BIADA.

After having heard both the parties and having perused the documents available on records, my own findings on the matter are as under:-

- i. That the land was allotted the Appellant on 26th November 2012 for Rs. 2.47 crores.
- ii. The unit was also asked to pay Rs. 4.18 lakhs on account of the buildings and machines etc. standing on the plot.
- iii. Together with 30% of the plot amount, along with the above Rs. 4.18 lakhs, the Appellant was asked to

deposit Rs. 81.37 lakhs which the Appellant paid on 21st March 2013.

- iv. Notices were issued by BIADA to the Appellant that since he has paid the required money, he should submit the bond paper so that physical possession may be handed over to him. However, BIADA kept issuing notices to him but for more than 2 years of the allotment of land, the Appellant did not take any action to take the physical possession of the land.
- v. It is also a fact that an Exit Policy was floated by BIADA from 1st May 2013-31st October 2013 but the Appellant filed his surrender application only on 2nd May 2014, six months after the policy was over.
- vi. Prima facie, it appears that the Appellant was not eligible for the Exit Policy even if this policy was extended to him. From para 14 of the reply filed by BIADA, it appears that the Appellant was not fulfilling the conditions of the Exit Policy.

Conclusion:-

From the above findings it is clear that the Appellant initially was interested in setting up the project, however, as the time passed, he realized that the market condition and the response of Indian farmers are not positive and therefore, the Appellant decided to surrender the plot. However, he did so, much after the Exit Policy was over.

Notwithstanding the above fact, it is clear that the Appellant would not have been eligible for the Exit Policy in any case.

From the averments made by the Appellant, it appears that he would have preferred to avail an Exit Policy. It is not in dispute that an Industrial unit must have an option to exit. Considering the fluid situation with regard to the sector the Appellant was working in, it is logical that the Appellant should exit without suffering any huge financial loss.

Having said that, it is not a case in favour of the Appellant because he sat on the industrial plot for more than two years as it took him two years to find out that the business is not viable. It is expected that the Appellant would have carried necessary economic/feasibility studies before making a commitment to purchase a plot worth Rs. 2.5 crores and then make investments running into tens of crores.

Therefore, his argument that the economic situation and the response of Indian farmers is the reason behind is failure, is not tenable. He should have accounted for these factors before committing to invest crores of rupees.

It may be noted that land is a very scarce resource. Lot of industrialists keep coming to the Industry Department or to BIADA asking for land so that they can establish their ventures. Therefore, it is only natural for the BIADA to cancel the plot where no industrial activity has begun even after the passage of significant time. Although the Appellant did not take the possession but he kept the plot occupied. Had he surrendered the allotment earlier (say within six months), then BIADA would have allotted the said plot to some other industrialist. Therefore, it is only natural for BIADA to have forfeited the instalment he paid. Thus, a

fiscal penalty is essential so that the Allottees do not speculate on the land allotted by BIADA.

I also note that this forfeiture was in terms of Para 26 (b) of the Allotment Letter issued to the Appellant and therefore, the Appellant was aware of the consequences of cancellation.

In that view of the matter, I find that the order of cancellation of allotment of land by the MD, BIADA dated 17th July 2014 is proper and the same need not be interfered with. Moreover, the Appellant also has lost the utility of the plot since he has already giving in writing is intention to surrender the land.

Appeal dismissed.

Dictated & Corrected

(K.K. Pathak)

Principal Secretary,
Department of Industries,
Bihar

(K.K. Pathak)

Principal Secretary,
Department of Industries,
Bihar