IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8123 of 2021

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M/S Chhatra Industries through its partner namely Sanjay Kumar Mishra, aged about 50, (M), son of Hridya Nand Mishra, resident of Kali Sthan, Rajputan Muhalla Dehri - on- Sone, P.S. - Dehri, District- Rohtas, Bihar.

... ... Petitioner/s

Versus

1. State of Bihar through the Department of Industry, Govt. of Bihar, Patna.
2. Bihar Industrial Area Development Authority, Patna through its Managing Director, Udyog Bhawan, Gandhi Maidan, Patna.
3. The Managing Director, BIADA, Udyog Bhawan, Gandhi Maidan, Patna.
4. The Executive Director (HQ), BIADA, Udyog Bhawan, Gandhi Maidan, Patna.
5. The Development Officer, BIADA, Patna.
6. The Area In Charge, Industrial Area, Dehri On Sone.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prakash Chandra
For the State	:	Mr. Abbas Haider (SC-6)
For the Private Respondent:		Mr. Devesh Shankaran with Mr. Pankaj Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 22-03-2022

Shorn of unnecessary details, challenge in the instant proceeding is to the communication dated 28.09.2020 issued by the Development Officer of the Bihar Industrial Area Development Authority (‘BIADA’ for short), communicating decision of the Authority in purported exercise of powers under Section 12 of the Bihar Industrial Area Development Authority Act, 1974 (‘Act’ for

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short). By the said communication, BIADA has inflicted a penalty of Rs. 5 lakhs upon the petitioner for continuing to illegally encroach upon the lands for 13 years, even after the allotments were cancelled.

At the very outset, this court had expressed its view to the learned counsel for the petitioner that we may not be inclined to exercise our equitable writ jurisdiction in favour of the petitioner since he has been found to be an illegal occupant on the lands in question.

Learned petitioner's counsel, however, made a submission that in the instant proceeding, he is assailing the impugned communication dated 28.09.2020, as the same is without jurisdiction. The penal provision contained in Section 12 of the Act does not empower the BIADA to impose the punishment/penalty for any offence committed under the Act.

This Court had thus allowed the respondent-Authority to file its counter-affidavit dealing with this issue. The specific stand of the Authority, in respect of the submission advanced by the petitioner's counsel regarding the communication dated 28.09.2020 being without jurisdiction, is to be found in paragraph 26 of the counter-affidavit.

Based thereupon, learned counsel for the BIADA has submitted that for violation of any order of BIADA in respect of

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removal of structure/encroachment, BIADA is well within its jurisdiction to impose a fine of Rs. 5 lakhs as per the first part of Section 12. Punishment of simple imprisonment for a term which may extend to six months, also prescribed under Section 12 of the Act, is a punishment for which jurisdiction is vested in a Magistrate of the First Class. The petitioner, being a squatter for the last about 15 years, has obstructed growth of industrial business by continuing to hold on to the land allotted by BIADA, without even starting any industry/unit on the same. Other entrepreneurs who are desirous of setting up their industry/unit, have thus been deprived of a land in the industrial area which has adverse socio-economic effect on the State. The fine imposed on the petitioner is, therefore, not only due but also well within jurisdiction of BIADA.

We have given our thoughtful consideration to the submission advanced by the parties. Having done so, we consider it useful to reproduce Section 12 of the Act which reads as follows:

> *(1) Any person who violates any order of the Authority in respect of removal of any structure, encroachment, uses any land or building in contravention of any regulation framed by the Authority in this behalf shall be punishable with fine of rupees five lakhs or 300% of all costs incurred by*

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*the Authority whichever is higher or simple imprisonment for a term which may extend to six months or both and in case of a continuing offence with further fine which may extend to Rupees five thousand per day after conviction.. **(emphasis ours)***

(2) All fines realized in connection with prosecution under this Act shall be paid to the Authority.

(3) No Court below the rank of a Magistrate of the First Class shall try any offence under this Act.
(emphasis ours)

Sub-section 3 of Section 12, in unambiguous terms, provides that no court below the rank of Magistrate of First Class shall try '**any offence**' under this Act.

The offence alleged against the petitioner, as per the impugned communication, is that even after cancellation of the allotment in respect of the lands, the petitioner has continued to illegally encroach the same for the last 13 years till issuance of the impugned communication dated 28.09.2020.

It is the petitioner's case that cancellation of the allotment of lands/additional lands is without any justification and unsustainable, based on various factual denials and assertions. The petitioner may deny/dispute or assert the same in appropriate

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proceedings. This Court consciously refrains from expressing any opinion on the conclusion of the Authority regarding the petitioner being an encroacher on the BIADA land, or not.

While considering the limited submission as to whether imposition of the penalty is without jurisdiction, or not, this Court would observe that Section 12(1) of the Act provides that the offences specified therein shall be punishable with:

(i) Fine of Rs. 5 lakhs, or 300% of all costs incurred by the Authority whichever is higher, or

(ii) simple imprisonment for a term which may extend to six months, or both and

(iii) in case of continuing offence with further fine which may extend to Rs. 5,000/- per day.

It is noteworthy that Section 12(1) prescribes the above three punishments, but only **'after conviction'** for **'any offence'**. The conviction can only be after a trial, by a court which is not below the rank of a Magistrate of the First Class as per section 12(3) of the Act.

The submission of the learned counsel for the BIADA that the Authority has the jurisdiction to impose the punishment of fine, does not find any foundation in the penal provision. Since the Authority does not have any jurisdiction to impose any of the punishments specified in Section 12, all of which are to be

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imposed/inflicted only **'after conviction'.** The impugned communication insofar as it purports to inflict the punishment of fine of Rs. 5 lakhs on the petitioner is clearly without jurisdiction and thus unsustainable in law and is accordingly set-aside. This, however, does not mean that this Court has absolved the petitioner of the allegations, or has interfered with the factual findings of the Authority, based on disputed factual assertions, which may not be appropriately considered and are left to be agitated/considered in appropriate proceedings in accordance with law.

Writ petition is allowed.

(Madhuresh Prasad, J)

I agree
Chakradhari Sharan Singh, J :

(Chakradhari Sharan Singh, J)

SUMIT/-

AFR/NAFR	AFR
CAV DATE	03.03.2022
Uploading Date	22.03.2022
Transmission Date	NA

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