# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.4598 of 2023**

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M/s. Shiv Shanti Enterprises 201, 2nd Floor, Capital Tower, Block- A, Frazer Road, Patna, through its Proprietor Sri Vikash Kumar Goenka, Aged about 41 years, Male, Son of Sri Vijay Kumar Goenka, Resident of 402, Shree Apartment, S.P. Verma Road, P.S. Gandhi Maidan, Town and District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. The District Magistrate, Patna.
3. The Sub Divisional Officer, Patna.
4. The Bihar Industrial Area Development Authority, having its office at 1st Floor, Udyog Bhawan, East Gandhi Maidan, P.S. Gandhi Maidan, District Patna- 800004 through its Managing Director.
5. The Managing Director, Bihar Industrial Area Development Authority, 1st Floor, Udyog Bhawan, East Gandhi Maidan, P.S. Gandhi Maidan, District Patna- 800004.
6. The Executive Director, Bihar Industrial Area Development Authority, 1st Floor, Udyog Bhawan, East Gandhi Maidan, P.S. Gandhi Maidan, District Patna- 800004.
7. The Deputy General Manager (Law), Bihar Industrial Area Development Authority, 1st Floor, Udyog Bhawan, East Gandhi Maidan, P.S. Gandhi Maidan, District Patna- 800004.
8. The Chief Administrative Officer, Bihar Industrial Area Development Authority, 1st Floor, Udyog Bhawan, East Gandhi Maidan, P.S. Gandhi Maidan, District Patna- 800004.

... ... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Amit Shrivastava, Sr. Advocate
Mr. Mohit Aggarwal, Advocate
Mr. Girish Pandey, Advocate
Mr. Akash Ambuj, Advocate
Mr. Siddharth Shankar Singh, Advocate

For the Respondent/s(Biada) : Mr.Bindhyachal Singh, Sr. Advocate
Mr. Parth Gaurav, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY**
**ORAL JUDGMENT**

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**Date : 20-08-2026**

Heard Mr. Amit Shrivastava, learned Senior Counsel for the petitioner duly assisted by Mr. Mohit Aggarwal as also Mr. Girish Pandey and Mr.Bindhyachal Singh, learned Senior Counsel for Bihar Industrial Area Development Authority (henceforth for short 'the BIADA') duly assisted by Parth Gaurav.

2. The present petition has been preferred for the following relief/s:

> *"(i) for quashing of the Notice vide letter No. 2244/L dated 13.03.2023 issued under the signature of Respondent Deputy General Manager (Law) in purported exercise of power under the provisions of Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the "Land Encroachment Act") by which he has required the Petitioner to show cause as to why the Petitioner who has allegedly encroached upon the Ground Floor of Udyog Bhavan in the area of 2644 sq. ft. (entered in tenancy) be not removed as being wholly illegal and without any*

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*authority of law;*

*(ii) for a declaration that the provisions of Bihar Public Land Encroachment Act has got no application with respect to any premises in a building and as such the impugned notice is not sustainable in the eyes of law, being wholly illegal and without jurisdiction;*

*(iii) For a declaration that even under the provisions of Land Encroachment Act the Authority to initiate a proceeding is vested in the Collector under the Act, as defined in Section 2(1) and the Deputy General Manager (Law) is not covered by the definition of Collector under the Land Encroachment Act to issue such notice for initiating such proceeding;*

*(iv) for a declaration that the Managing Director, BIADA who is also the Secretary, Department of Industry, Government of Bihar is not a Collector to initiate or decide a proceeding under section 3 of the Bihar*

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*Public Land Encroachment Act, 1956;*

*(v) for a declaration that in a relationship of Landlord and Tenant in a premises the question of applicability of Land Encroachment Act does not arise;*

*(vi) for a declaration that in the facts of the circumstances of the present case the occupation of the Petitioner as a Tenant since 2012 on the basis of Rent Agreement from time to time signed by both the parties could not have been termed as encroachment within the meaning of the Bihar Public Land Encroachment Act, 1956;*

*(vii) for restraining the Respondents from seeking police force from the Respondent No. 6 & 7 for illegally evicting the Petitioner from the premises without a decree of eviction from the court of competent jurisdiction in Patna in terms of Clause 10 of the Rent Agreement dated 11.03.2021 and 20.01.2022;*

*(viii) for a direction to the Respondents to*

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*remove the temporary wall erected in front of the shop of the Petitioner and to open the gate which has been malafidely closed to compel the Petitioner to vacate the shop; and/or for any other relief(s) for which the Petitioner may be found entitled to in the facts and circumstances of the present case."*

3. The matter relates to a building situated at the **East Gandhi Maidan** presently known as **'Udyog Bhawan'** and popularly known as **'Apna Bazar'**.

4. In the year 2008 (**01.03.2008**), the petitioner entered into an agreement with **'the BIADA'** for letting out shops in the ground floor of the said **'Udyog Bhawan'**. The records show that it came to be renewed thereafter and the last agreement was signed between the parties which resulted into the issuance of a letter dated **21.01.2022** by which the tenancy was extended for a period of three years from **04.10.2021** to **03.10.2024**.

5. However, later, **'the BIADA'** issued **letter no. 2139 dated 27.05.2022** directing the petitioner to clear the premises within three months in line with the clause-05 of the agreement. **Clause-05** of the agreement read as under:

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***5.*** *This Rent Agreement may be terminated by either party by giving* ***three months'*** *prior notice in writing. The Tenant may pay three months' rent and charges in lieu of notice.*

6. On receipt of the said letter, the petitioner preferred **Title Suit Nos. 302/ 2022** and **T.S. No. 398 / 2022** on **12.08.2022**. Simultaneously, an injunction petition was also filed for restraining the respondents from taking possession of the land. It was rejected on **02.03.2023**. This followed office **letter no.2244 dated 13.03.2023** issued by **'the BIADA'** under the signature of **General Manager (Legal)**, directing the petitioner to remove the encroachment by **27.03.2023** or face the music (Annexure-1 to the petition).

7. The petitioner thereafter moved before this Court in the present writ petition which was heard on **28.03.20223** and while directing the respondent **'the BIADA'** to file counter affidavit, interim protection was granted to the petitioner and the record shows that it continues till date.

8. Further, aggrieved by the rejection of the injunction petition in the **T.S. no. 302 of 2022** and **T.S. no. 398 of 2022**, the petitioner moved before this Court in

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**Miscellaneous Appeal No.63 of 2023**. It was withdrawn on **27.03.2023** and this followed the filing of the **Miscellaneous Civil Appeal No.09 of 2023** before the competent Civil Court which is pending.

9. So far this case is concerned, the **'the BIADA'** appeared and filed its counter affidavit disputing the facts and further recorded that once **Clause- 5** of the agreement has been invoked which was challenged by filing Title Suit and injunction petition refused; naturally, the relationships between the parties came to an end. In that background, the respondents rightly issued the letter in question.

10. Mr. Amit Shrivastava, learned Senior Counsel for the petitioner has taken this Court to a judgment dated **23.12.2022** passed in **C.W.J.C. No.8441 of 2022** (**Ashwani Kumar & Ors. vs. The State of Bihar & Ors.)** more particularly **paragraphs no.9 and 10** which reads as under:-

> *9. Having heard the learned counsel for the parties and having perused the materials on record, this Court finds that as far as the order dated 24.05.2022, passed by the Additional District Magistrate, Law & Order, Patna, by which a Magistrate, police officer and police force has been*

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*deputed, for evicting the encroachers from the ground floor of Udyog Bhawan, Patna, is concerned, the same is illegal inasmuch as admittedly neither any encroachment proceedings have ever been initiated against the petitioners nor any final orders have been passed by the competent authority of the State Government, arriving at a finding that the petitioners are encroachers, hence the Additional District Magistrate, Law & Order, Patna had no authority under the law to depute police force at the mere request of the Chief Administrative Officer, BIADA, Patna for removal of alleged encroachment, hence the said order dated 24.05.2022 is held to be illegal, consequently the same stands annulled.*

10. *This Court further finds that mere issuance of legal notices by the respondent-BIADA, as aforesaid, would not suffice for forcefully evicting the petitioners from the premises in question*

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*inasmuch as the respondent-BIADA also admits existence of tenant-landlord relationship in between the petitioners and the respondent-BIADA, hence resumption of possession of the premises in question can only be done by taking recourse to the due process of law i.e. necessitating an eviction decree and execution thereof, however, there can be no forcible dispossession, contrary to law, by assuming powers that the law does not vest in BIADA, in a relationship of lessor or lessee/tenant or landlord. This aspect of the matter is squarely covered by the judgment rendered by this Court in the case of* ***Smt. Manju Devi & Others (supra)*** *as also the one rendered in the case of* ***Sanjay Singh (supra)****. Consequently, the impugned notices dated 31.05.2022, issued by the respondent no. 8 stands vitiated in the eyes of law. As far as the judgment referred to by the learned counsel for BIADA, rendered by the Hon'ble Apex*

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*Court in the case of* ***Ashoka Marketing Limited & Another (supra)****, is concerned, the same is only relevant for the purposes of carving out a distinction between the Rent Control Act and the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, which is not in dispute. In fact, the learned counsel for the BIADA has himself referred to the Bihar Government Premises (Rent, Recovery & Eviction) Act, 1956, which has been enacted for evicting certain persons/unauthorized occupants from government premises, however, the same also provides that such eviction can only be made by the competent authority, which in the present case has been notified to be the concerned Sub-Divisional Officer of the area in question in which the premises is situated and that too after initiating appropriate proceedings, issuing notices to be served by registered post or in such other manner as may be prescribed and*

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*passing appropriate eviction orders.*

11. Learned Senior Counsel submits that the aforesaid writ petition also relates to tenants of 'the BIADA' and as such the order passed in Ashwani Kumar (supra) case is applicable in the present case also.

12. It has further been submitted by the learned Senior Counsel that in the aforesaid circumstances, the encroachment proceeding could not have been initiated by the respondents and thus an interference is required.

13. Mr. Bindhyachal Singh, learned Senior Counsel for **'the BIADA'** on the other hand submits that they invoked clause 5 of the agreement and asked the petitioner to vacate the premises in three months. The parties signed the agreement and thus are committed to it.

14. However, aggrieved by the said notice, the petitioner preferred Title Suits and the injunction petition filed in the matter came to be rejected. It was in the aforesaid circumstances that the order in question was issued.

15. He submits that when M.(C) Appeal No. 09 of 2023 is pending before the Court, the continuance of parallel proceeding is nothing but abuse of process by the petitioner. Learned Senior Counsel further submits that the petitioner failed to show to this Court para-02 of the same judgment of

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Ashwani Kumar (supra) wherein this Court excluded the case of those from others on the ground that a Title Suit has been filed.

16. Paragraph 02 of the order of **Ashwani Kumar** (supra) read as follows:

> *"2. At the outset, it may be pointed out that the present writ petition qua the petitioner no. 1 has stood disposed off as not pressed inasmuch as he has filed a title suit bearing Title Suit No. 69 of 2021, which is pending before the Ld. Court of Munsif-1, Patna, however, with liberty to him to pursue the said suit.*

17. Learned Senior Counsel sums up by submitting that this paragraph 02 is fully applicable in the case of the petitioner where Title Suit is pending before the competent Civil Court.

18. He thus prays for the dismissal of the writ petition.

19. Having heard the parties, this Court has taken note of two facts:

*(i) Clause 5 of the agreement talks about three months notice by either by the parties so far as vacating*

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*the premises is concerned;*

*(ii) the order passed in Ashwani Kumar (supra) case in paragraph excluded such litigant whose Title Suit is pending before a competent Court.*

20. This Court is of the firm view that parallel proceeding cannot be allowed in such matters. On the one hand, the Title Suit as also appeal (against the refusal to grant of injunctions) are pending, on the other hand, the petitioner is pursuing the writ petition. It is not the case of the petitioner that during the pendency of the writ petition, he withdrew the aforesaid suit/appeal.

21. At this stage, learned Senior Counsel for the petitioner, on instructions, made submission that it will suffice if he is allowed 90 days period for getting an appropriate order in the suit/Miscellaneous (Civil) Appeal No. 09 of 2023.

22. Learned Senior Counsel for 'the BIADA' on instruction submits that Clause- 5 of the agreement between the parties allows three months period to leave the premises.

23. The parties have continued their Landlord-tenant relationship since the year 2008. Prayer is to allow 90 days period as a last chance either to get an order from the Court or vacate the premises. This Court has further noted that 'the

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BIADA' wants entire building to be renovated and as such, has not singled out the petitioner rather all the tenants have been given the notice of eviction.

24. In that background, with the consent of the parties, this writ petition is disposed of with observation that the petitioner is granted 90 days period as a last chance to get an appropriate order from the appropriate Court where his Suit/Appeal is pending. The period starts from today, 20.08.2026 itself as the order has been passed in the presence of the parties. It is further made clear that if the petitioner fails to get any relief in the next 90 days from the competent civil court; he is duty bound to vacate the premises immediately.

25. This Court further observes that the pendency of the petition will not be a hindrance between the parties to come to an amicable settlement inasmuch as once **'the BIADA'** is able to renovate the entire building after the petitioner vacates it and decides to advertise again for letting out of the shops in the 'Udyog Bhawan; if the petitioner participates and otherwise fulfills all the criteria, this Court expects that he will be given weightage.

26. With the aforesaid observations/directions, the writ petition is disposed of.

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27. Pending Interlocutory Application, if any, also stands disposed of.

**(Rajiv Roy, J)**

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