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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 235 of 2015

1. N. Sharad Babu S/o Late Nethi Rajulu, aged about 55 years.
2. N. Sambrajyam W/o Late Nethi Rajulu, aged about 81 years.

   Both R/o HIG-4 Hudco, Bhilai, Tahsil and District Durg Chhattisgarh.

---- Petitioners

Versus

1. Life Insurance Corporation of India, Central Office, "Yogakshema" Jeevan Bima Marg, Nariman Point, Mumbai 400 021, through its Chairman.
2. Life Insurance Corporation of India, through the Senior Divisional Manager, Division Office, Jeevan Prakash Pandri, Raipur 492010 Chhattisgarh.
3. Mohd. Hasim Khan, MIG 1/25, Hudco Bhilai, District Durg, Chhattisgarh.

---- Respondents

For Petitioners	: Shri H.B. Agrawal, Senior Advocate with Smt. Preeti Yadav, Advocate.
For Respondents 1 and 2	: Shri Mukesh Sharma, Advocate.
For Respondent 3	: Shri Shashi Bhushan, Advocate.

Hon'ble The Acting Chief Justice,
Hon'ble Shri Justice P. Sam Koshy.

Order On Board

Per Navin Sinha, Acting Chief Justice

08/04/2015

1. The Petitioners challenge the decision of the Respondent-Corporation to accept the bid offered by Respondent No. 3 for their office premises. The Respondent-Corporation was in tenancy occupation of the Petitioners, which expired on 28.02.2015.

2. Learned Senior Counsel for the Petitioners submits that the Respondents in the Notice Inviting Tender (hereinafter referred to as "NIT") specified that the premises were required for commercial purposes. It was thus an essential condition of the NIT. The bid submitted by Respondent No. 3 did not meet the requirement. His premises were residential in nature apparent from the sanction of building plan granted by the Bhilai Municipal Corporation, dated 10.12.2004. The building completion certificate dated 2.2.2006 also stated the premises to be residential. The property tax receipt mentioning the name of the building as Priyadarshini Complex (East) also mentioned the nature of the user as residential and so did the building completion certificate dated 23.2.2013. The technical bid of Respondent No. 3 was therefore either not opened or was accepted despite the fact that it did not meet an essential condition of the NIT. Referring to the letter dated 3.9.2014 issued by the Municipal Corporation addressed to the Respondent-Corporation, it was submitted that the allotment being for residential purpose, payment and acceptance of property tax at the commercial rate could not alter the terms of the allotment. In any event, the property tax return is based on self-assessment. Priyadarshini Nagar (East) was a residential area apparent from the prescribed format for payment of self-assessed tax.

3. Learned Counsel for the Corporation and Respondent No. 3 have submitted that the Municipal Corporation has certified that commercial use of the premises was permissible and that property tax at the commercial rate was being paid. Referring to the prescribed format for payment of self-assessment tax, it was submitted that Zone-1 mentioned "Priyadarshini Parisar (East)" as a commercial area.

4. We have considered the submissions on behalf of the parties. The Petitioners primarily appear aggrieved by the Corporation desiring to leave their premises which may entail financial loss for them by loss of rent. Respondent No. 3 desires to lease out his premises to the Corporation for financial gain. Unless the Corporation vacates the premises of the Petitioners, gain cannot accrue to Respondent No. 3. If the Corporation vacates the premises of the Petitioners, financial loss accrues to them. The present writ application is therefore a private dispute principally between the Petitioners and Respondent No. 3.

5. The Court is not concerned with the private dispute between the Petitioners and Respondent No. 3, but finds a larger issue of public importance involved with regard to permissible nature of the user permitted of the building owned by Respondent No. 3. If commercial user is permitted according to law, the Court is not inclined to interfere. But, if commercial user of the premises is not permitted under the Municipal Regulations, it is the duty of the Municipality to enforce the law.

6. The premises owned by Respondent No. 3 are situated in Priyadarshini Parisar (East) residential scheme, Ward No. 3, Sector No. 3, Block No. 4, Plot No. 11 measuring 15 meters X 22 meters. The plot has been registered in the name of Respondent No. 3 for residential use vide Serial No. 1942A dated 28.01.2000 under the Town Planning Scheme.

7. Section 291 of the Chhattisgarh Municipal Corporation Act, provides for Town Planning Scheme which also includes the nature of the user permissible for specified areas and the need for compliance with them. If a plot of land in a residential area has been allotted to a person, it can be used only in terms of the allotment unless the terms of the allotment are itself varied or modified in accordance with law. Another possibility is if the entire area is subsequently declared a commercial area, by operation of law the residential allotment would stand transformed into commercial use.

8. Mere payment of property tax at the commercial rate whether by self-assessment or demand raised by the Corporation cannot tantamount to change of permissible user in accordance with law.

9. The prescribed format for self-assessment tax in Zone-1 declares Priyadarshini Nagar (East) Ward No. 54 and other areas as mentioned in it to be residential in nature while Zone-1 also as a commercial area mentioning only Ganesh Market, Priyadarshini Parisar (East) and the commercial building in that premises.

10. Reverting back to the prescribed format for self-assessment of property tax, the residential areas in Zone-1 includes Ward No. 3, Priyadarshini Nagar (East) where the properties of Respondent No. 3 are situated. These are *prima facie* matters which require further enquiry.

11. We therefore require the Municipal Commissioner, Bhilai Municipal Corporation, to decide by a reasoned and speaking order after hearing the parties, whether the premises in question belonging to Respondent No. 3 proposed to be leased to the Corporation, as approved under the Town Planning Scheme are residential or commercial in nature after which the Corporation shall be at liberty to act in accordance with the NIT depending on the conclusions that the Municipal Commissioner may arrive at.

12. The Municipal Commissioner shall pass such reasoned order within a maximum period of four weeks from the date of receipt and/or production of a copy of this order before him by any one of the parties.

13. Except for the aforesaid, we are not inclined to interfere on any other issue.

14. The petition stands disposed.

(Navin Sinha)
ACTING CHIEF JUSTICE

(P. Sam Koshy)
JUDGE

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