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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2303 of 2015**

1. M/s B. S. Bhatia & Company Petrol Pump Old Bus Stand, Raipur, A Partnership Firm Duly Registered Under The Relevant Provisions Of The Partnership Act, 1956 Through Its Partner Shri Paramjeet Singh Bhatia, Son Of Late B. S. Bhatia, Aged About 62 Years, R/o 49- A, Vivekanand Nagar, Raipur (Chhattisgarh)
2. Paramjeet Singh Bhatia, S/o Late B. S. Bhatia, Aged About 62 Years R/o 49- A, Vivekanand Nagar, Raipur (Chhattisgarh) Civil & Revenue District Raipur (Chhattisgarh)

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Ministry Of Town & Country Development, Mantralaya, Mahanadi Bhawan, Naya Raipur/ Collector, District Raipur (Chhattisgarh)
2. The Municipal Corporation, Raipur Through Its Commissioner, Municipal Corporation, Raipur (Chhattisgarh)
3. The Commissioner, Municipal Corporation, Raipur (Chhattisgarh)

---- **Respondent****And****WPC No. 2333 Of 2015**

- Hindustan Petroleum Corporation Limited Through Its Senior Regional Manager, Madina Manzil, Medical College Road, Modhapara, P.S. Modhapara, Raipur, (Chhattisgarh)

---- **Petitioner****Vs**

1. State Of Chhattisgarh Through Secretary, Department Of Urban Administration & Development, Mahanadi Bhawan, Naya Raipur, (Chhattisgarh)
2. Municipal Corporation, Raipur, Through Its Commissioner, Municipal Corporation, Raipur, (Chhattisgarh)

3. M/s B.S. Bhatia & Company, A Partnership Firm, Through Its Partner Shri Paramjeet Singh Bhatia, S/o Late Shri B.S. Bhatia, Aged About 62 Years, G.E. Road, P.S. Gol Bazar, Raipur, (Chhattisgarh)

---- Respondent

For Petitioners : Shri B.P. Sharma with Shri Sameer Uraon and Shri Ali Asgar, Advocates.

For Respondent/State : Shri Shashank Thakur, Govt. Advocate.

For Respondent Corporation : Shri H.B. Agrawal Sr. Advocate with Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on : 15/03/2016

1. These two writ petitions were heard separately, however, in both the Writ Petitions, action of the respondent/Municipal Corporation in seeking vacation of the premises on which M/s Hindustan Petroleum Corporation Limited has opened a retail outlet through its dealer M/s B.S. Bhatia & Company, has been challenged, therefore, both the Writ Petitions are being decided by this common order.
2. The subject petrol pump is situated at G.E. Road, Old Bus Stand, Raipur. The petitioners would state that the petrol pump is in operation since last many decades, therefore, notice issued by the Corporation vide Annexure-P/1 on 17.12.2015 directing the petitioner M/s B.S. Bhatia & Company to vacate the premises within 24 hours is illegal and arbitrary. The petitioner would refer to the judgment rendered by the

Supreme Court in the matter of **State of Jammu and Kashmir and Others Vs. Haji Wali Mohammed and Others** {(1972) 2 SCC 402}.

It is also argued that the petitioner's representation for providing alternative land has not been properly considered, therefore, the entire action is bad in law.

3. The respondent/Corporation would argue that M/s B.S. Bhatia had filed a civil suit bearing civil Suit No.42-A/2011 which has already been dismissed by the 9th ADJ, Raipur on 17.12.2015. Therefore, after dismissal of the suit, the petitioner has no right to remain in occupation of the premises and a writ contrary to the decree passed by the civil Court may not be issued.
4. A reading of the judgment rendered in Civil Suit No.42-A/2011 would reveal that the plaintiff M/s B.S. Bhatia & Company has preferred a suit for declaration, mandatory and prohibitory injunction on the basis of cause of action arising from the notice/order issued by the Municipal Corporation on 7.9.2010 in which the plaintiff was asked to vacate premises by 30.9.2010.
5. In the present case also, M/s Bhatia has prayed for quashing of the similar notice dated 17.12.2015 and to allow the petitioner to run the petrol pump smoothly and not to interfere with the construction made for running the petrol pump. Thus, prayer made in both the proceedings i.e. the civil Court and the present writ petition is exactly similar.

6. Instead of preferring First Appeal immediately after dismissal of the suit, the petitioner preferred this petition seeking relief which was already denied to him by the civil Court. It is settled law that once the civil Suit is dismissed, a writ petition claiming similar relief is not maintainable. The petitioner has tried to make out a fresh cause of action by seeking to challenge the notice dated 17.12.2015. However, it is to be seen that the said notice was issued only after dismissal of the civil Suit. Merely because 24 hours period was given in the notice for vacating the premises, fresh cause of action would not arise for claiming similar relief which has already been rejected by the civil Court. Moreover, notice for vacation of premises was issued against the petitioner on 7.9.2010 also, therefore, it is not for the first time that the petitioner is directed to vacate the premises.
7. In addition to the above, it is important to consider that the land in question is needed by the Corporation for having access or to make use of multi level parking which has been constructed just behind or adjacent to the subject land. It is informed by learned counsel for the respondent/Corporation that the area in question is the busiest and crowdest market place of Raipur, therefore, the respondent Corporation has constructed multi level parking space which is not put to use because of operation of the petrol pump of petitioner M/s Bhatia who is the dealer of other petitioner M/s Hindustan Petroleum. Thus, the action of the respondent Corporation is in furtherance of public interest.

The writ petition seeking discretionary relief which would ultimately frustrate the public purpose need not be issued by this Court.

8. For the above stated reasons, both the Writ Petitions must fail and are hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

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