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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2961/2016 & CM APPLs. 12374/2016 , 12398-12400/2016

IREO PRIVATE LIMITED AND ANR Petitioners
Through: Mr. Gagan Gupta, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Mr. Raghav Kapoor and Mr. Manu
Sharma, Advocates for Ms. Suparna
Srivastava, Advocate for respondents
No.1 and 2.

% Date of Decision : 4th April, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed seeking quashing of notices dated 15th January, 2016 issued by respondent No.3 to the petitioners No.1 and 2.
2. Learned counsel for petitioners states that respondents No.1 and 2 have not mentioned any provision of law under which they have issued the impugned notices. He also states that respondents No.1 to 3 have no jurisdiction, power or authority to adjudicate any dispute of a company with its customers in its day-to-day business and commercial activities. In support

of his submission, he relies upon a judgment of the Apex Court in ***M/s. New Samundri Transport Co. (P) Ltd. vs. The State of Punjab and Ors., AIR 1976 SC 57*** wherein it has been held as under:-

“6. What we find in this case is a kind of bald notice making no reference to any particular permit for cancellation or suspension of which action has been taken. It is as if all the 33 permits were going to be suspended or cancelled. It is clear that after receipt of the various reports the Commissioner did not apply his mind to scrutinise the same for the purpose of taking appropriate legal action against any specific permit under Section 60 of the Act.....”

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8. In the result the appeal is allowed....”

3. Learned counsel for petitioners also refers to a Division Bench judgment of this Court in ***J.M.A Industries Ltd. & Anr. vs. Union of India & Anr., AIR 1980 Delhi 200*** wherein it has been held as under:-

“7. It is a common frailty on the part of the administrative authorities to take recourse to generalities and evade facing the actual issues in a case. They, therefore, merely repeat the statutory language in the hope that nobody will be able to catch them on the wrong foot because of the shield afforded by the statutory language.”

8. It is easy to see, therefore, that when on 3rd January, 1976 the Government of India proposed to refuse the application of the petitioners on the grounds of “ interest of the general public and the development of indigenous industry in India”, the petitioners could not have a true idea as to what facts or circumstances or reasons arising out of their application could be described as coming under the headings – interest of the general public and the development of indigenous industry in India. These general phrases could not indicate the facts which had to be explained or rebutted by the petitioners or what additional facts had to be pleaded by the petitioners to surmount the objections raised by

the Government. If the petitioners are merely asked as to why the recordal of registered user in its favour would not be against public interest how could the petitioners answer such a question? The petitioners cannot be expected to imagine all the possible circumstances and facts which should make the registration of their user contrary to public interest.....”

4. In the present instance, the show cause notices dated 15th January, 2016 are accompanied by a complaint letter dated 22nd December, 2015.

5. Though the learned counsel for petitioners has tried to read the complaint in a compartmentalised manner, yet this Court is of the view that it has to be read in a holistic manner. Read in such a manner, this Court is of the opinion that it contains very serious allegations that the public has been cheated by the petitioners as the petitioners do not have clearances for construction of the project “IREO Gurgaon Hills” at Gwal Pahari, Gurgaon which is stated to be located in an Eco Sensitive Zone of Asola Bhatti Wildlife Sanctuary and where the construction activity is prohibited and is being carried out without clearance from any statutory authority. Even receipts issued by the petitioners are stated to be not bearing the registered office address and CIN number.

6. Keeping in view the aforesaid, this Court is of the opinion that the allegations against the petitioners are specific. It is open to the petitioners to show to the respondents that the petitioner’s company is not being used as a facade to perpetrate any fraud and/or dupe the consumers. If the petitioners have all the requisite permissions from all authorities, they must show the same to the Registrar of Companies.

7. This Court takes judicial notice of the fact that in various other cases where real estate companies have sold land which did not belong to them or

where they constructed without any permission, the Company Court has directed investigation by the Serious Fraud Investigation Office.

8. In fact, this Court in ***Shree Cement Limited & Anr. vs. Competition Commission of India & Anr., W.P.(C) 3008/2014*** has held as under:-

*“15. In the opinion of this Court, the issue of maintainability of the writ petition is no longer res integra. In **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1**, the Supreme Court has held, "But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged....." Consequently, a writ petition challenging an order of COMPAT is maintainable on limited grounds.*

16. However, this Court is of the opinion that the petitioner's argument of lack of jurisdiction is misplaced as neither CCI nor COMPAT lack inherent jurisdiction to decide the petitioner's first submission as to whether Act, 2002 applies to the proceedings or not. This Court is of the view that issues of applicability of Act, 2002 or Monopolies and Restrictive Trade Practices Act, 1969 and levy of penalty are not equivalent to lack of inherent jurisdiction to decide the case. Consequently, in the opinion of this Court, it is only the CCI and COMPAT which have the jurisdiction to decide the issue of applicability of Act, 2002 as well as the issue of levy of penalty thereunder.

(emphasis supplied)

9. Consequently, this Court is of the view that the pleas and defences raised by the petitioners in the present writ petition can be raised before the Respondent No.2-Registrar of Companies.

10. Accordingly, the present writ petition and applications are dismissed with liberty to the petitioners to file a detailed response with the respondents No.2 and 3 within a period of two weeks. The said respondents are directed to decide the matter in accordance with law.

Order dasti.

MANMOHAN, J

APRIL 04, 2016

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