

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 799 of 2017**

Manohar Jethani S/o Late Dr. Varialdas Jethani, Aged About 45 Years
 Permanent R/o Beside Kohinoor Hotel, Amardeep Talkies Road, Bans Tal
 Raipur Present Address : Ward No. 36, Shikshak Colony, New Kursipar Bhilai
 (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Commerce Tax And Excise Department, Mantralaya, Naya Raipur Capital Complex, Head Office Raipur, Tahsil/ Civil & Revenue District Raipur, Chhattisgarh.
2. The Excise Commissioner, Office Of The Excise Commissioner, G. E. Road, Labhandi, Raipur, Tahsil/ Civil & Revenue District : Raipur, Chhattisgarh.
3. The Collector, Office Of The Collector (Excise), Collectorate Raipur, Ghadi Chowk, Raipur, Tahsil / Civil & Revenue District Raipur Chhattisgarh.
4. The Deputy Commissioner Excise, Room No. 22, Office Of The Collector (Excise), Collectorate Raipur, Ghadi Chowk, Raipur, Tahsil/ Civil & Revenue District : Raipur, Chhattisgarh.
5. The Commissioner, Municipal Corporation, Raipur, Office of the Commissioner, Municipal Corporation, Raipur (The White House) Gandhi Maidan, Raipur, Tahsil/Civil and Revenue District Raipur, Chhattisgarh.
6. Rajendra Tamboli S/o Late Chintaram Tamboli, Aged About 50 Years Navbharat Chowk, Kankalipara, Goal Bazar, Raipur, Tahsil/ Civil & Revenue District : Raipur (Chhattisgarh)

---- Respondents

For Petitioner : Shri Raj Kamal Singh, Advocate.
 For Respondent/State : Shri A.S.Kachhwaha, Additional Advocate General.
 For Respondent No. 5 : Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P Sam Koshy, J.

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

04/04/2017

1. This writ petition is filed criticizing the exclusion of the Petitioner's offer from Annexure P/4 list though, according to the Petitioner, his offer per square feet lease rate is much lesser than what was offered by the 6th Respondent. The issue relates to offers made for leasing out premises to IMFL outlets.
2. Learned counsel for the Petitioner submits that the ground on which the Petitioner's offer has been rejected is that there is a Sai Mandir within a distance of 20 meters from the Petitioner's shop and therefore, it is not found to be an appropriate place where a shop could be sanctioned.
3. The learned Additional Advocate General submits that the 6th Respondent's premises has already been put to use to house the shop. Whatever that be, the fact of the matter remains that the Petitioner's premises is within the objectionable distance in terms of a place of worship. The plea of the Petitioner is that the Sai Mandir is an unauthorised structure and the question whether it is an unauthorised structure or not should also be considered for the purpose of deciding whether the Petitioner's bid ought to have been rejected.
4. We are shown the judgment of the Hon'ble Supreme Court of India in Special Leave to Appeal (C) No. 8519 of 2006 dated 29.09.2009 which among other things issues directions to all the District Collectors, District Magistrates and Deputy Commissioners etc. to decide as to whether a particular construction is unauthorised or not. We see that the said order is

dated 29.09.2009 and the direction is to ensure that no further constructions are made. There is also a procedure stated therein to audit any structure which is shown to be objectionable. In cases of construction made before the order dated 29.09.2009 was issued by the Apex Court, the government officials were directed to consider the entire matter and find appropriate ways and means to deal with each situation. We are of the view that the said judgment cannot be applied to the case of the Petitioner in the first go. This is because we cannot merely accept the submission of the Petitioner that the Sai Mandir is an unauthorised structure. If the Petitioner has to raise such an issue, that cannot be done before the Excise authorities since it is the Revenue and the Municipal Authorities which deal with such issues.

5. Hence, without prejudice to the Petitioner seeking appropriate relief from the concerned authorities, in accordance with law, the writ petition is dismissed.
6. At the request of learned counsel for the Petitioner, it is clarified that this writ petition does not bar any other remedies in relation to any other cause of action which may be available to the Petitioner in accordance with law in appropriate jurisdiction, including for removal of the allegedly unauthorised structure and encroachment.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE