

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1775 of 2019**

- M/s Jain & Brothers, A Duly Constituted Partnership Firm, Through Its Authorised Partner, Shri Inderchand Dhariwal, Son Of Shri Uttam Chandji Dhariwal, Aged About 75 Years, R/o Sadar Bazar, Raipur Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Department Of Housing And Environment, Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh
2. Directorate Of Town And Country Planning, Through Its Director, Indravati Bhawan, Block 4, 3rd Floor, Naya Raipur, Chhattisgarh
3. Raipur Development Authority, Through Its Chief Executive Officer, 2nd Floor, Bhakt Mata Karma Vyasvasaik Parisar, New Rajendra Nagar, Raipur Chhattisgarh
4. Municipal Corporation Raipur, Through Its Commissioner, New Administrative Building, Chota Para, Gandhi Chowk, Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Shri Amrito Das, Advocate
For Respondents/State	:	Shri Sudeep Verma, Dy. GA
For Respondents No.3 & 4	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****28/06/2019**

1. Heard.
2. The present petition is filed claiming following reliefs:-

“10.1 This Hon'ble Court may kindly be pleased to call for the entire record pertaining to issuance of the order dated 21.12.2018 (ANNEXURE P-1) from the respondents for its

kind perusal.

10.2 This Hon'ble Court may kindly be pleased to issue an appropriate writ quashing and setting the order dated 21.12.2018 (ANNEXURE P-1) passed by respondent No.1.

10.3 This Hon'ble Court may kindly be pleased to issue an appropriate writ directing respondent No.2 to take a final decision on the proposal sent to it by respondent No.3 for change of use of plot No.2 allotted to the petitioner from 'cinema' to 'commercial building'.

10.4 This Hon'ble Court may kindly be pleased to issue an appropriate writ directing the respondent authorities to grant building permission to the petitioner for raising a commercial building on Plot No.2 allotted to the petitioner at village Pandritarai, Khasra No.117/2 & 136/1, Raipur, Chhattisgarh.

10.5 Any other relief which this Hon'ble Court may deem fit and proper in the facts of the case.

10.6 Cost of the petition may also be awarded.”

3. It is contended that the petitioner was the allottee of a piece of land by the respondent/Raipur Development Authority by way of lease with a renewal clause of 30 years and the land was reserved for commercial uses under the development plan and was earmarked as cinema. However, it is contended that with the change of time and development of the city, various multiplexes came into existence as shopping malls and therefore, the cinema hall at the said locality shall not be of much commercial viability. Consequently, the permission was sought for construction of a commercial complex. Further submitted that since the land use was reserved by the State Government, as such it is contended that he was informed that he has to get permission from the State Government. So, a letter was given to the State Government on 02.04.2017.
4. Learned counsel for the petitioner submits that no progress was being taken place, as such the petitioner initially filed a writ petition, wherein this Court has

directed to decide the application of the petitioner within a stipulated time. It is further contended that thereafter the State Government has kept the said application in abeyance on the ground that a criminal case bearing CRMP No.2764/2008 is pending before this Court. He would further submit that no case of the nature and number exist at present. He referred to CRMP No.695/2010 and would submit that one case for grant of leave to appeal under Section 378 (3) CRPC was filed before this Court and this Court vide order dated 30.10.2018 has refused to allow leave to appeal, thereby the leave to appeal sought by the State against acquittal of Inderchand Dhadiwal and others was dismissed, consequently, the acquittal order was affirmed. Learned counsel for the petitioner would further submit that under the circumstances, instead of keeping the issue in abeyance, the State Government may be directed to reconsider the application on the ground that at present no criminal case is pending against the petitioner partner.

5. On the earlier occasion the State counsel was directed to seek instructions but till date it appears that no instructions have been sought.
6. Perusal of the documents of the decision of the State Government dated 21.12.2018 would show that the application to change the use of the land was kept in abeyance for the reason that certain criminal case bearing No.2764/2018 was pending against the petitioner. The petitioner has referred to CRMP No.695/2010 wherein the order was passed on 30.10.2018. The reading of the same would reflect that Inderchand Dhadiwal was one of the accused who is claimed to be the partner of M/s Jain & Brothers. The leave to appeal by the State against the judgment dated 12.04.2007 passed by the Special Judge/First Additional Sessions Judge, Raipur (CG) in special criminal

case No.7/97 was preferred under Section 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988 read with Section 120 B IPC. In the said criminal trial Inderchand Dhadiwal though was an accused was acquitted. Perusal of such order would show that leave to appeal was disallowed to the State. Consequently, it would result into that no criminal case at present is pending since the same was filed against the acquittal. In the facts of this case, since as the date no criminal case as under reference of the State is pending, the State is directed to reconsider the application of the petitioner afresh. The said observation is made keeping into the fact that CRMP No.695/2010 for leave to appeal was dismissed on 30.10.2018 which has a reference to the special criminal case No.7/97 which finds place in the Annexure P-1 of the State. The State, therefore, would be obliged to take a decision in respect of the application filed by the petitioner afresh within a further period of 60 days from the date of receipt of copy of this order.

7. It is made clear that this Court has not expressed any opinion on the merits of the application so filed.
8. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri

Judge