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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 708 of 2020**

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

---- Petitioner**Versus**

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

---- Respondents

For Petitioner	:	Mr. P. K. Bhaduri, Advocate
For State	:	Mr. Ayaz Naved, Govt. Advocate
For Respondents 3 & 4	:	Sr. Advocate Mr. H. B. Agrawal with Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****02.03.2020**

1. The present writ petition has been filed challenging the order Annexure P-1 dated 18.11.2019 passed by the respondent no.1 on an application moved by the petitioner seeking change of use of land.
2. A perusal of the record would show that the application of the petitioner has been primarily rejected on the ground that in the property which was leased to the petitioner there is an existing canal and this fact was not taken note of at the time of granting of lease neither it was reflected in the layout and therefore the change of use of land at this juncture cannot be permitted and the same stood rejected.
3. Counsel for the petitioner submits that in fact the authorities concerned have not taken note of the fact that in the year 1988 itself the State Govt. had handed over the said property to the Raipur Development Authority (RDA) and at that point of time itself, the canal was not in operation. Further, the petitioner referred to a document dated 07.02.2020 which the petitioner has received under the Right to Information Act from the Water Resources Department of the State Govt. wherein it has been specifically mentioned that the canal which earlier existed was no longer operational in the light of the construction of new bus stand and textile market at Pandri Bazar, Raipur and since 1996-97 the canal was in-operational the water tax was also terminated from 1996-97. Further contention of the petitioner is that even as on date, the bus stand and the entire textile market are still functional and operational without there being any sign of any canal existing in that area and for this reason also, the ground of rejection of the application of the petitioner is not justified. The petitioner further pointed out the demarcation report wherein also the existence of the

canal has not been reflected which according to the petitioner further substantiates the ground that there is no canal as on date existing in that entire area and the rejection of the application of the petitioner on that ground would not be justified.

4. State counsel, on the other hand, opposing the petition submits that under the provisions of law, the petitioner could have moved a review petition before the same authority raising all those grounds and the review petition could have been considered afresh. According to the State counsel, the documents which have been relied by the petitioner seems to be all those documents which are obtained subsequent to the order passed by the State authorities Annexure P-1 dated 18.11.2019.
5. Given the fact that the petitioner has a right to seek a review before the same authority and also taking note of the fact that the grounds which the petitioner has raised in the present writ petition and the documents in support of its contentions have been obtained subsequent to the impugned order dated 18.11.2019, this Court is of the opinion that it would be more appropriate if the petitioner is permitted to approach the respondent no.1 by way of a review petition.
6. If the petitioner files a review petition along with all relevant documents in respect of the aforesaid contentions, the respondent no.1 in turn shall reconsider the same afresh without being influenced by the observations made in the order dated 18.11.2019. The respondent no.1 shall also keep in mind the present geographical condition of the entire area property leased out to the petitioner as on date.
7. Subject to the petitioner filing a review petition before the respondent no.1 within a period of 30 days from today, respondent no.1 shall

decide the same at the earliest preferably within a period of 90 days from the date of receipt of the review petition of the petitioner.

8. With the aforesaid observation, the writ petition stands disposed of.

Sd/-
P. Sam Koshy
Judge