

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1205 of 2020

1. Hasmukh Khasgiwala, S/o Late S.F. Khasgiwala, Aged About 71 Years,
R/o Shop No. C-41, Bombay Market, Raipur, District : Raipur,
Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Urban Administration And
Development, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal
Nagar, New Raipur, District : Raipur, Chhattisgarh
2. Raipur Development Authority Through Its Chief Executive Officer,
Raipur Development Authority, Bhakta Mata Karma Commercial
Complex, New Rajendra Nagar, Raipur, District : Raipur, Chhattisgarh
3. Chief Executive Officer, Raipur Development Authority, Bhakta Mata
Karma Commercial Complex, New Rajendra Nagar, Raipur, District :
Raipur, Chhattisgarh

-----Respondents

For Petitioner	:	Mr. Manoj Paranjpe, Advocate
For State	:	Mr. Jitendra Pali, Dy. Adv. General
For Resp. No. 2 & 3	:	Mr. Ashish Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12.06.2020

1. The challenge in the writ petition is a common notice of auction and the
decision of the respondent- Raipur Development Authority in not
renewing the lease of the petitioner and also the decision of sale of the
property by way of auction.
2. The facts of the case are that the petitioner was the occupier of the shop
which was situated at Bombay Market, Raipur, the shop was initially
leased to the petitioner in the year 1976 by the Town Improvement Trust.

The lease granted to the petitioner has been renewed time and again periodically, the last renewal of the agreement was up till 31.03.2019, beyond which, it was not extended. In between after the creation of the Raipur Development Authority the property came under this Authority. Few years back there was a decision by the Raipur Development Authority for enhancing rent periodically on renewal of lease every three years. This decision was subjected to challenge in a bunch of writ petitions and also by way of Writ Appeal but the petitioners did not get any favourable order. Thereafter the petitioners entered into agreement with RDA at the agreed rent for their respective shops.

3. Subsequently, on the expiry of the lease i.e. 31.03.2019, petitioner had moved a fresh application for renewal of lease. Now, vide the order Annexure P/2 dated 17.03.2020, the petitioner has been intimated that the authority does not intend to renew the said properties and at the same time, the authority intends to sell the property and the sale shall be made by way of auction. It was also intimated that the petitioner would also be given certain preferential treatment as stipulated in (Annexure P/2). Pursuant to Annexure P/2, the notice of auction Annexure P/1 dated 27.05.2020 has been issued.
4. The contention of the counsel for the petitioner is that firstly, when the petitioner is the lease holder for the last about 40 years. Renewal of the said property could not have been abruptly refused or rejected without any sufficient cause of reason. The second contention is that, though as per Annexure P/2, the respondents intend to sell the properties with preferential treatment to the petitioner but in the format which the respondents have published in respect of auction shows that the property is going to be leased again to the highest bidder. Thereby a

situation would arise, where the petitioner who himself is a lease holder would be substituted by another set of lease holders which otherwise is illegal, arbitrary and bad-in-law.

5. It is also the contention of the counsel for the petitioner that there is no reason whatsoever available for the respondents for not renewing the lease, particularly when there has been no default on the part of the petitioner in paying of the lease rent till now. That the lease rent has been paid to the respondents even after the expiry of the lease period i.e. 31.03.2019. Counsel for the petitioner relied upon the judgment of the Supreme Court in the case of State of U.P. v. Lalji Tandon 2003 AIR SCW 5559 in support of his contentions.
6. Shri Ashish Shrivastava, Learned Counsel appearing for the Respondent-Raipur Development Authority, makes a categorical statement that he has instruction to say on the basis of the documents issued by the RDA that property would in fact be sold as per the notice Annexure P/1. That the sale of the property would be by way of auction and it would not be leased out to any third person/party. The contention of Shri Ashish Shrivastava is that the decision dated 17.03.2020 intimated to the petitioner was on the basis of a decision of the Board of Directors of the Raipur Development Authority that met on 17.10.2019 whereby it was decided by the Board of Directors that the property need not be leased out any further rather it should be sold out by way of auction to the highest bidder.
7. Learned counsel for the respondent further submits that authorities concerned taking note of the ground realities of the petitioner being in possession of the said shop for long have decided to give some preferential treatment as it would be evident from Annexure P/2 and the

conditions stipulated therein. These conditions are also again envisaged in the notice which was issued subsequently in May, 2020 where in clause 3 again, these preferential benefits extended to the petitioner is reiterated.

8. In view of the categorical submission made by the Counsel for the respondent-RDA, on the basis of Annexure P/1 and Annexure P/2, this Court is of the opinion that the apprehension or the contention of the petitioner that the respondents-authorities do not intend to sell off the properties but are trying to create fresh lease deed in favour of the highest bidder is concerned, does not have any force to stand with. It is made clear that the respondents authorities shall ensure that the shops are to be sold in terms of the conditions given in Annexure P/2 which in other word means that, the respondents will not be able to create any further lease right over the said property.
9. Coming to the issue of the decision of the Lalji Tandon (Supra), this Court is of the opinion that the said judgment would not be applicable in a straight jacket formula in the facts of the present case for the reason that in the instant case, the non renewal of the lease was on the ground that the respondents intend to sell the shops wherein the petitioner can also participate and he would be given certain preferential treatment unlike the facts of the case in-respect-of Lalji Tandon (Supra), decided by the Supreme Court.
10. Now, the question of right of the petitioner over the said shop, if we look into the factual background, it is undoubtedly clear that the owner of the said shop is the RDA which had initially given the property on lease by charging rent. The said authority now takes a policy decision of sale of the shop and selling it by way of auction. This being a policy decision of

the respondent-authorities which is well within the domain of the authority to decide which property they intend to keep and which property they want to sell off.

11. The question is whether the petitioner would be given any preferential right on account of his occupying the said premise for decades. Plain reading of Annexure P/2 dated 17.03.2020 so also the document which has been brought on record by the petitioner today i.e. the form in respect of the auction would reveal that the respondent authorities have in fact taken care of the petitioner considering that he is in possession of the said shop for long and has taken certain preferential right. If the petitioner intends to purchase the shop, he will have to participate in the auction proceedings as per conditions stipulated therein, the property can be allotted to him provided he agrees with the conditions so stipulated. This fact that the petitioner has been provided preferential treatments and further there being a decision of the respondents in deciding to sell the shop by auction is one, which can safely be construed to be a policy decision of the respondents taking into consideration the interest of the petitioner as well.
12. Thus, it can not be said to be in any manner violative of any of the constitutional or fundamental right of the petitioner so also the right of the petitioner in carrying on with his business from the said premise. Unless and until the policy decision is with malafides or has been taken ignoring the interest of the occupants in those shops for long it cannot be interfered by the High Court. It is well settled that it is only the decision making process that can be questioned or challenged and not the decision itself.
13. Given the said facts, in the aforesaid writ petition this Court is of the

opinion that no strong case has been made out by the petitioner calling for an interference with the impugned order Annexure P/2 and the auction notice Annexure P/1.

14. At this juncture, Counsel for the petitioner further submits that because of the Lock Down situation on account of Corona Pandemic, the petitioner was not in a position to participate in the earlier round of auction conducted by the respondent authorities and counsel for the petitioner prays for some reasonable time be given to the petitioner once again for participating in the auction proceedings.
15. This prayer made by the Counsel for the petitioner seems to be fair and reasonable, the Counsel for the Respondent-RDA Shri Ashish Shrivastava submits that the petitioner would again be given a fair and reasonable period of time to participate in the next auction proceedings to be conducted in respect of the shop.
16. In the light of the said submission made by the Counsel for the Respondent-RDA, this Court does not intend to make any further observations in this regard. Expecting the respondent-authorities to act fairly and reasonably this writ petition accordingly stands disposed off.

Sd/-
(P. Sam Koshy)
Judge