

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1312 of 2020

Smt. Rajkumari Bahal W/o Shri Omprakash Bahal Aged About 82 Years
R/o Shop No. B - 20, Bombay Market, Raipur, District Raipur Chhattisgarh.,
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., District : Raipur, Chhattisgarh
2. Raipur Development Authority Through Its Chief Executive Officer, Raipur Development Authority, Bhakta Mata Karma Commercial Complex, New Rajendra Nagar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Chief Executive Officer Raipur Development Authority, Bhakta Mata Karma Commercial Complex, New Rajendra Nagar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Anurag Singh, Advocate.
For Respondent no. 2	:	Shri Aman Saxena, on behalf of Shri Ashish Shrivastava, Advocate.
For State	:	Shri V.R. Tiwari, Addl. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30.06.2020

1. The challenge in this writ petition is a 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 these properties by way of auction.
2. The facts of the case are that the petitioner was the occupier of the

shops which were situated at Bombay Market, Raipur, this 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 these properties 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 petitioner did not get any favourable order. Thereafter all 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 petitioners have 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 petitioners 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 properties 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 these properties with preferential treatment to the petitioners but in the format which the respondents have published in respect of auction shows that the properties are going to be leased again to the highest bidder. Thereby a situation would arise, where the petitioner who themselves are lease holders 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 petitioners 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 properties would in fact be sold as per the notice Annexure P/1. That the sale of the properties 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 petitioners 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 these properties 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 petitioners being in possession of the said shops 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 petitioners are 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 petitioners 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

petitioners can also participate and they 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 petitioners over the said shops, if we look into the factual background, it is undoubtedly clear that the owner of the said shops are the RDA which had initially given these properties on lease by charging rent. The said authority now takes a policy decision of sale of these shops 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 petitioners would be given any preferential right on account of they occupying the said premises for decades. Plain reading of Annexure P/2 dated 17.03.2020 so also the document which has been brought on record by the petitioners today i.e. the form in respect of the auction would reveal that the respondent authorities have in fact taken care of the petitioners considering that they are in possession of the said shops for long and have taken certain preferential right. If the petitioners intend to purchase the shops, they will have to participate in the auction proceedings as per conditions stipulated therein, these properties can be allotted to them provided they agree with the conditions so stipulated. This fact that the petitioners have been provided preferential treatments and further there being a decision of the respondents in deciding to sell these shops by auction is one, which can safely be construed to be a policy decision of the respondents

taking into consideration the interest of the petitioners 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 petitioners so also the right of the petitioners in carrying on with their business from the said premises. 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 petitions this Court is of the opinion that no strong case has been made out by the petitioners 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 petitioners further submits that because of the Lock Down situation on account of Corona Pandemic, the petitioners were not in a position to participate in the earlier round of auction conducted by the respondent authorities and counsel for the petitioners prays for some reasonable time be given to the petitioners once again for participating in the auction proceedings.

15. This prayer made by the Counsel for the petitioners seems to be fair and reasonable, the Counsel for the Respondent-RDA Shri Ashish Shrivastava submits that the petitioners would again be given a fair and reasonable period of time to participate in the next auction proceedings to be conducted in respect of these shops.

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 these writ petitions accordingly stand disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit