

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1766 of 2020**

- Ashish Nag S/o Lt. Shri Sounind Kumar Nag, aged about 56 years R/o A/34, Kota Housing Board Colony, Raipur, Tehsil and District - Raipur Chhattisgarh - 492001

---- 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, Chhattisgarh.
3. President, Raipur Development Authority, Bhakta Mata Karma Commercial Complex, New Rajendra Nagar, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	: Shri Akhilesh Mishra, Advocate
For Respondent No.1/State	: Shri Sudeep Agrawal, Dy. Advocate General
For Respondent No.2 & 3	: Shri Ashish Shrivastava, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per, Parth Prateem Sahu, Judge****25.09.2020**

1. The Petitioner, who is stated to be a lessee of a Shop bearing No.D/17 situated at Bhakta Karma Commercial Complex, Raipur. The Petitioner is in possession of the aforementioned Shop as a tenant since last many years. The Petitioner has paid all the dues till 05.05.2017 and thereafter no further agreement has been entered into with the Respondent concerned. The Respondents have issued a Notification on 18.03.2020 for sale of the Shops constructed under the Bombay Market Scheme and further it was re-notified on 12.05.2020 due to the spread of COVID-19 pandemic. The Petitioner has filed this writ petition on 14.07.2020 with following reliefs :

“10.1 That, this Hon'ble Court may kindly be pleased to quashing the tender/auction notice dated 18.03.2020 and subsequent notice dated 12.05.2020 issued by Raipur Development Authority.

10.2 That, this Hon'ble Court may kindly be pleased to writ/writs, order/orders, direction/directions issued by Raipur Development Authority may kindly be set-aside and the respondents may kindly be directed not to dispossess the petitioner and resume possession of the shop by extra-judicially by use of force.

10.3 That, this Hon'ble Court may kindly be pleased to call for the entire records relating to the matter.

10.4 Any other relief/reliefs which may deem fit and proper in the facts and circumstances of the case may also be allowed”

2. Submission of the Petitioner before this Court is that the action on the part of the Respondents is arbitrary in floating the Tender Notification for sale of Shop through auction. He submits that the rate fixed for the Shops and Halls under the Notification is much more higher than the price fixed by the Competent Authority (Collector rate) of the area where the Shop occupied by the Petitioner is situated. He also points out that the rate fixed for the Shops as occupied by the Petitioner is Rs.10,000/- per sq.ft. and the total area is 100 sq.ft. meaning thereby the cost of the Shop or the offset price of the Shop as per the Tender Notification is Rs.10,00,000/-, to which the Petitioner is not in a position to afford. The Petitioner has also raised an argument with regard to 'Arbitration Clause' of the tender conditions mentioning that the Respondent No.2 himself cannot appoint an Arbitrator unilaterally. He lastly submit that similar relief be granted as ordered in WP(C) No.1119/2020 and other connected cases.

3. Per contra, Shri Ashish Shrivastava, learned counsel for the Respondents No.2 and 3, submits that the instant writ petition itself is not maintainable in view of the relief sought for by the Petitioner. He pointed out that the Petitioner in paragraph 10.1 has sought relief for quashing the tender / auction notice dated 18.03.2020 and 12.05.2020, which was already withdrawn by the Respondents in pursuance to the order passed by the learned Single Judge in writ petition bearing WPC No.1119/2020 and fresh Tender Notification has been issued on 07.08.2020 and 11.08.2020 for the auction to be held on 17.08.2020. He also points out that on the scheduled date i.e. 17.08.2020, the auction of first phase has already taken place. Shri Shrivastava submits that the initial Tender Notification was issued on 18.03.2020 followed by 12.05.2020. Some of the occupants / Shopkeepers of Bombay Market have approached this Court by way of filing writ petition bearing WPC No.1119/2020 and connected cases for redressal of their grievance, challenging the notice dated 17.03.2020 issued to the Petitioners therein, wherein it has been intimated that renewal of the tenancy agreement is not possible and in the meeting of the Board of Directors dated 17.10.2019 it has been decided to sell the Shops through tender. The said writ petitions were disposed off by the learned Single Judge observing that the decision taken by Respondent No.2 cannot be stated to be violative of any of the Constitution or fundamental right. Unless and until the policy decision is with *malafides* or taken ignoring the interest of the occupants in those Shops, it cannot be interfered by the High Court and taking into consideration the prayer made by the learned counsel appearing for the

Petitioners therein that an opportunity to participate in the second round of tender proceeding be given to the Petitioners, to which the learned counsel representing the Respondent No.2 has stated that the Petitioners will be given fair and reasonable opportunity to participate in the next auction proceedings. The Petitioner herein who was aware about the issuance of the Tender Notification has not chosen to approach this Court for redressal of any of his grievance, but he was watching the play by sitting on fence. He also points out that some of the tenants have challenged the auction proceeding scheduled on 17.08.2020 by filing WPC No. 1879/2020 and the learned Single Judge, taking into consideration the facts and circumstances of the case, dismissed / disposed off the writ petition. He submits that as the Tender Notification dated 07.08.2020 and the auction dated 17.08.2020 is not under challenge, no relief can be granted to the Petitioner at this stage.

4. We have heard the learned counsel for the respective parties and perused the documents enclosed along with the writ petition.
5. From perusal of the reliefs sought for in the writ petition as extracted in the preceding paragraph, it is apparent that the Petitioner has challenged the Auction Notice dated 18.03.2020 and notice dated 12.05.2020, which were already withdrawn as per the submission made by the learned counsel for Respondent No.2 and thereafter fresh Tender Notifications have been issued on 07.08.2020 and followed by 11.08.2020. In view of the relief sought for by the Petitioner in paragraph 10.1 of the writ petition, no relief can be granted to him in these proceedings.

6. The writ petition being sans merit is dismissed. However, the Petitioner would be entitled to file appropriate proceeding before the appropriate forum available to him in accordance with law for other reliefs for which he is entitled for.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Chandra