

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 1879 of 2020**

1. Rajendra Kumar Jaiswal S/o Late Jamuna Prasad Jaiswal, Aged About 50 Years R/o Fafadih, Raman Mandir, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Sadhana Jaiswal, W/o Rajendra Jaiswal, Aged About 50 Years R/o Fafadih, Raman Mandir, 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 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 Petitioner	:	Mr. Anumeh Shrivastava, Adv.
For State	:	Mr. Anand Verma, Dy. G.A.
For Respondents No. 2 & 3	:	Mr. Ashish Shrivastava, Adv.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****24/08/2020**

1. The present writ petition has been filed claiming for the following reliefs:-

- a. to quash/set aside the auction notices and its terms and conditions (Annexure P/1), and/ or
- b. to direct the respondent authority to decide/ act upon the pending representation dated 11.08.2020 (Annexure P/3), preferred by the petitioners within a stipulated period, and/ or
- c. to direct the respondent authorities to issue afresh auction notice for sale in strict compliance of Hon'ble Court's order 09.06.2020, after granting an opportunity of hearing to the petitioners, offered at Collector guideline rates, with such altered terms and conditions which suits the financial status of the present occupants, after a reasonable period of time when Corona Epidemic is over and the business practices have come back to normal."

2. It would be relevant at this juncture to mention that the present is a repeat writ petition. The earlier writ petitions by the petitioners were

WP(C) No. 1124 of 2020 and WP(C) No. 1129 of 2020 which came up for hearing before this Court on 09.06.2020. The petitioners then also had challenged the notice of auction published by the Raipur Development Authority in-respect-of the allotment of shops situated at Bombay Market, Raipur.

3. The grievance of the petitioners at the time of filing of the previous writ petitions was that the respondent/s have issued a notice that they intend to sell the property whereas the forms which have been published to be filled up by the participants reflect that the property would be leased to the highest bidders. This according to the petitioners was a conflicting stand on the part of the RDA therefore it needs clarification.
4. The writ petitions were disposed of on the submission made by the Counsel for the respondents that the Board of Directors of RDA have vide minutes of the meeting dated 17.10.2019 decided that these properties need not be leased out on rent any further rather it should be sold out by way of auction to the highest bidders. The writ petitions i.e. WP(C) No. 1124/2020 and WP(C) No. 1129/2020 finally got disposed of and for ready reference, the relevant paragraphs are reproduced as under:-

“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.

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.”

5. Further, at the time of the disposal of the writ petitions, the Counsel for the petitioners prayed that the respondents be directed to provide some reasonable time enabling the petitioners to participate in the auction proceedings. This prayer was acceded to by the learned counsel for the RDA, accordingly the writ petitions were disposed of. Subsequently, it is said that the earlier auction proceedings initiated was dropped by the Respondent RDA and a fresh auction proceedings was initiated permitting the petitioners also to participate and the petitioners are said to have participated in the said proceedings.
6. As per the instructions received by the respondents RDA, the petitioner No. 2 has been found to be the highest bidder and she has been offered the Shop No. D6 in the Bombay Market at the price offered by her, since the petitioner No. 1 did not submit/quote the minimum off set price, the petitioner No. 1 could not be allotted any shop.
7. At this juncture, Counsel for the petitioners submits that the reason for filing the present writ petition was that in between the petitioners have filed a representation to the authorities requesting them to change the terms and terminologies used in the format and that is the reason why the petitioners want that the auction proceedings be not finalized till the

writ petition or the representation is decided. Another ground which the petitioners raise is that the Government themselves are quoting a different price much lower price at a different shopping complex nearby whereas in the present shopping complex the price is much higher than the Government rates prescribed in the area.

8. Having heard the contention put forth on either side and on perusal of records, this Court is of the opinion that once after the earlier writ petitions having been disposed of as early as on 09.06.2020, the petitioners can not be permitted to take any other additional fresh grounds for the purpose of filing a fresh writ petition questioning the auction proceedings particularly when the conditions to the auction were the same in the auction proceedings under challenge in those writ petitions. So far as the subsequent representation for seeking modification in the terms and terminologies of the format, this Court is of the opinion that the order of this Court is very explicit in Para-8 of the said judgment of Writ Petitions Nos. 1124/2020 & 1129/2020 is concerned.
9. At this juncture, Shri Ashish Shrivastava, learned counsel for the RDA submits that there is no change in the stand taken by the RDA from the stand that was taken in the previous round of litigation, the RDA still intends to sell off the properties by executing a permanent lease for 30 years in favour of the petitioners.
10. It is the contention of the RDA that during this period of 30 years, the petitioners would not be required to pay any rent to the RDA. The bhoo-bhatak which is being charged by the petitioners is a nominal levy which is being made on yearly basis which in the instant case comes to only Rs.142 a year which cannot be under any circumstances be considered to be a lease rent rather it is just a sort of property tax which is being collected by the respondents.

11. It is the further contention of the learned counsel for the RDA that the said allotment made to each of the petitioners is also transferable that is to say that the allottees are permitted or have the right to re-transfer the allotment to any third party.
12. All the aforesaid submissions made by the Counsel for the Raipur Development Authority clearly indicate that they are still sticking to the stand that they had taken in the previous writ petitions wherein it was intended that the RDA does not intend to retain the property by giving it on lease rent, rather they intend to sell it by issuance of permanent lease with renewable clause.
13. Given the said stand taken by the respondents and also taking note of the fact that the petitioner No. 2 has participated and has quoted the price above the offset price fixed by the respondents the only recourse now left to the petitioners is to accept the said offer that they have made and after completing the requisite formalities take possession of the shops. The petitioners do not have any right to question the auction or challenge the same.
14. In the event, if the petitioners are not interested to take possession of the allotted shops they should immediately intimate the respondents in this regard within a period of 30 days from the date of receipt of copy of this order enabling the respondents to take appropriate recourse of re-auction of the said shops.
15. In the light of the observations made in the preceding paragraphs, the writ petition accordingly stands disposed of

Sd/-

(P. Sam Koshy)
Judge

Jyotijha