

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.9616 of 2013(O&M)

Date of decision:1.9.2015

Suman Villas Pvt. Ltd.

....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. Rupinder S. Khosla, Senior Advocate with
Mr. Aman Sharma, Advocate for the petitioner.

Ms. Palika Monga, DAG, Haryana for respondent No.1, 2 and
4.

None for respondent No.3.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to the notifications dated 07.07.2011 and 06.07.2012 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act'), respectively notifying 223.94 acres for development of land i.e. residential Sector 8, Jhajjar.

The petitioner is the owner of land measuring 67 kanals 3 marlas apart from 46 kanals 18 marlas purchased in the year 2007. The petitioner applied for a licence to develop a group housing scheme on 17.07.2008. Since the petitioner had applied for a group housing licence prior to publication of the notification under Section 4 of the Act, the

petitioner seeks exemption from acquisition in terms of policy of the State Government dated 26.10.2007 as modified on 24.01.2011.

In the written statement, it has been averred that the application of the petitioner was found to be deficient, therefore, the communication dated 13.10.2008 was addressed to the petitioner to remove the discrepancies, copy of which is annexed as Annexure R-1. The petitioner was given 15 days' time to remove the discrepancies. Since the petitioner did not remove the discrepancies, another communication was sent on 24.08.2009 (Annexure R-2) returning the application filed by the petitioners. The relevant extract reads as under:-

“Vide above referred letter notice was issued to submit the deficit papers within 15 days, but the company have not fulfilled the same till date. Therefore, your application is returned, under Rule 7 of the Haryana and Regulation of Urban Areas Rule, 1976 and it is also made clear that seniority of your application will be considered from the date of submission of application complete in all respects.”

The petitioner has taken more than 3 years to respond to such communication when it sent a communication on 30.08.2012 saying to the following effect:-

“Reference your letter Memo No.5 DP-JE (G)-08/8877 dated 13.10.2008, advise us to submit the copy of Guide Map and Survey Plan. That we are submitting, but due to heavy recession in real estate market and Jhajjar is ‘C Class’ City, so sales of flats is almost nil, now we want to take this license and resubmit the fresh land schedule along LC-I of reduced land. Kindly request you please forward our file for report.”

It is thereafter, the application was again found to be deficient vide communication dated 25.10.2012. Later, the application was returned

forfeiting part of the scrutiny fee vide communication dated 04.04.2013. It is thereafter on 19.07.2013, the petitioner was informed that the application filed by the petitioner has been filed as the same is not in accordance with the provisions of Act/Rules.

Learned counsel for the petitioner has vehemently argued that the petitioner has got a licence of the adjoining portion on 19.03.2008 and that the petitioner having submitted an application for licence before the publication of the notification under Section 4 of the Act, therefore, the petitioner is entitled to the licence of the said area. It is contended that in the policy for release of land, any land-owner who entered into collaboration agreement even after publication of notification under Section 4 of the Act is entitled to release of land. Therefore, it does not stand to logic as to why the owner is not entitled to release the land having applied for a licence.

We find that the petitioner did apply for a licence in the year 2008 but failed to meet out the discrepancies pointed out by the Department. The application was returned with further stipulation that seniority will be considered from the date application is submitted. The petitioner had taken more than 3 years to submit the application. But again such application was found to be deficient. In the policy dated 24.01.2011, an application for converting the land into a colony can be considered provided it is submitted prior to issuance of notification under Section 6 of the Act. Whereas, after return of the application on 24.8.2009, the application was submitted after publication of a notification under Section 6 of the Act.

Another argument raised by Mr. Khosla is that the objections filed by the petitioner under Section 5-A of the Act have not been dealt with by the Land Acquisition Collector or by the State Government. A perusal of the objections dated 06.08.2011 (Annexure P-7) shows that the petitioner has objected to application only for the reason that it had applied for a licence. It is also pleaded that it is a case of extension of approved group housing scheme.

We do not find any merit in the said argument as well for the reason that there is no policy of the State Government to exempt land from acquisition if the licence has been applied for after notification under Section 6 of the Act was published. In the present case, notification under Section 6 of the Act was published on 06.07.2012 whereas the discrepancy was purportedly removed when the application was re-filed on 30.08.2012 i.e. after the publication of notification under Section 6 of the Act. Thus, we find that the petitioner is not entitled to the benefit of policy dated 24.01.2011.

In view thereof, we do not find any merit in the present writ petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

SEPTEMBER 1, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE