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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25596 of 2015
Date of decision:04.07.2016

Shri Dewan Shiksha Samiti ...Petitioner

Versus

National Fertilizers Ltd. and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajiv Atma Ram, Senior Advocate, with
Mr. Arjun Partap Atma Ram, for the petitioner.

Mr. Aftab Khan, Advocate, for
Mr. Ashwani Talwar, Advocate, for respondents No.1 and 2.

Mr. P.P.Chahar, DAG, Haryana.

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Rakesh Kumar Jain, J.

This petition is filed for the issuance of a writ in the nature of *mandamus,* holding that no permission is required by respondents No.1 and 2 in permitting the petitioner to run the school on one hand and directing respondent No.3 to grant permission, as requested by respondent Nos.1 and 2 for leasing out the school building on the other.

In short, State of Haryana had acquired 1055 Kanal 02 Marlas of land of village Taraf-Afgan and Nangal Kheri, Tehsil and District Panipat in the year 1999 for the National Fertilizers Limited (hereinafter referred to as the "company") for the purpose of construction of its township of fertilizers plant. The deed of conveyance transferring the said land to the

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company was executed on 21.09.1999 between the State Government and the company. The company set up a township for its workers at the aforesaid land. Earlier, a Kendriya Vidyalaya was established by the company within its premises to impart education to the children of the workers and management employees. The aforesaid Kendriya Vidyalaya ran into losses and ultimately closed on 03.04.2014. Thereafter, being desirous to run a school in its premises, the company issued a Notice Inviting Tender (NIT) dated 05.03.2015, in response to which the petitioner participated in the tender process and was the successful bidder. The Letter of Intent (LOI) was issued by the company in favour of the petitioner on 14.05.2015, leasing out the school building along with playground for running the school for 30 years at the initial monthly lease amount of ₹3,11,000/- for 5 years with a stipulation of enhancement @ 20% after every 5 years on cumulative basis. It was also specifically mentioned in the LOI that *"however, the leasing out of the school in your favour i.e. Shri Dewan Shiksha Samiti, Narwana, shall be subject to statutory permissions including permission from Directorate of Industries, Haryana Government"*. Thereafter, the petitioner repeatedly requested the company to hand over the school building to it and execute the lease deed in its favour for the purpose of commencing and running the school, but its prayer has not been acceded to, on the ground that the company had already requested the State Government vide letter dated 01.10.2014 and reminder dated 03.12.2014 but no response has been received from the State Government in this regard.

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Feeling aggrieved from the inaction on the part of the company as well as the State Government, the petitioner has filed the present petition in which it has confined its grievance to the non-handing over of the site of the school and non-execution of lease of the school in their favour for the purpose of running the school.

The company, in its reply, has set up a claim that Clause 2(iv) of the conveyance deed dated 21.09.1999, requiring the company to take prior written permission of the State Government before leasing out the land/building, was not required to be incorporated in the conveyance deed at all as it could have been only in case of a private company and not in case of a government company. However, it has applied to the State Government for permission to lease out the said land.

In reply, the State Government has solely relied upon Clause 2(iv) of the conveyance deed dated 21.09.1999, in which it has been provided that "*not transfer by way of sale, gift, exchange, mortgage or otherwise the said land or the buildings constructed thereon or any right, title or interest therein without the prior written permission of the Government*".

Counsel for the petitioner has vehemently argued that once it has been specifically mentioned in the tender document that the school will be started from the academic session 2015-16 commencing from 01.04.2015 and the petitioner has been declared successful bidder and even the Letter of Intent has already been issued to it, the company should have handed over the site of the school and executed the lease deed in favour of the petitioner so that the school could have commenced from the academic session 2016-2017 because the academic session 2015-2016 has already expired.

Counsel for the company has also supported the case of the petitioner by arguing that Clause 2(iv) was itself illegal and should not have been incorporated in the conveyance deed as the company is covered under Section 3(cc) of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") and not under Section 3(e) of the Act. It is further submitted that the expression "company" is defined in Section 3(e) of the Act as a company as defined in section 3 of the Companies Act, 1956, other than a Government company referred to in Section 3(cc) of the Act and Section 44-A of the Act further provides restriction on transfer of the land by sale, mortgage, gift, lease or otherwise only in case of a company, as provided under Section 3(e) of the Act and not in the case of a government company. Ultimately, it has been argued by learned counsel for the company that there should have been no restriction on transfer of the school building/land by way of lease in favour of the petitioner by the company, being a Government company, as it is covered under Section 3(cc) of the Act as more than 51% of the paid-up share capital of the company is owned by the Central Government.

However, learned State counsel has argued that since there was specific Clause 2(iv) in the conveyance deed dated 21.09.1999 with regard to non-transfer of land by way of sale, gift, exchange, mortgage or otherwise, therefore, prior permission of the State Government is mandatory before leasing out the land in favour of the petitioner. He has also submitted that the State Government, vide its letter dated 11.01.2016, has informed the company that *"as per decision of State Government dated 05.01.2016, it has been decided that official/officers of State Government/Department of Industries & Commerce, Haryana may be included in the process (inviting/opening of tender etc.) of shifting the society in PPP mode to ensure transparency"* and this letter dated 11.01.2016 is prospective in nature.

I have heard learned counsel for the parties and examined the available record with their able assistance.

Before proceeding further, it would be relevant to refer to certain part of the conveyance deed, Letter of Intent and the provisions of the Act, which are reproduced as under:-

Clause 2(iv) of the Conveyance Deed dt. 21.09.2009

"2. THE COMPANY hereby Covenants with the Government that it shall;

(i) to (iii) xxx xxx xxx xxx

(iv) Not transfer by way of sale, gift, exchange, mortgage or otherwise the said land or the buildings constructed thereon or any right, title or interest therein without the prior written permission of the Government. However, the Government hereby agrees that the Company shall have the liberty to mortgage the said land together with buildings erected and or to be erected thereon in favour of the Industrial Finance Corporation of India (hereinafter referred to as I.F.C.I.), Industrial Development Bank of India (hereinafter referred to as I.D.B.I.) and the Industrial Credit and Investment Corporation of India (hereinafter referred to as I.C.I.C.I.).

Contents of the Letter of Intent dated 14.05.2015

"With reference to our NIT No.NFL/PT/P&A/School/2015/01 dated 05.03.2015 for leasing out of School building along with playground for running school in NFL Township, Panipat and your offer dated 19.03.2015, we intend to lease out the School building along with playground in your favour for running the school for 30 years at your quoted initial monthly lease rent of Rs.3,11,000/-(Rupees Three Lacs Eleven Thousands only) for 5 years which shall be further enhanced @ 20% every 5 years on cumulative basis. Further, in addition to lease rent, all further levies and applicable taxes including property tax, municipality tax, service tax, duties and fees etc. shall be payable by Shri Dewan Shiksha Samiti. However, the leasing out of the school in your favour i.e. Shri Dewan Shiksha Samiti, Narwana, shall be subject to statutory permissions including permission from Directorate of Industries, Haryana Government. The said NIT shall form the part of the agreement for leasing out the school building to be executed between NFL and Shri Dewan Shiksha Samiti, Narwana. Other terms shall be as per the NIT.

Detailed work order for leasing out the school building shall follow."

Provisions of the Land Acquisition Act, 1894

"**3. Definitions.--** In this Act, unless there is something repugnant in the subject or context,-

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[(cc) the expression "corporation owned or controlled by the State" means any body corporate established by or under a Central, Provincial or State Act, and includes a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, being a society established or administered by Government and a Co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, being a co-operative society in which not less than fifty-one per centum of the paid-up

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share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;]

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[(e) the expression "Company" means-

(i) a company as defined in section 3 of the Companies Act, 1956 (1 of 1956), other than a Government company referred to in clause (cc);

(ii) a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc);

(iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in clause (cc);]"

"**44-A. Restriction on transfer, etc.–** No company for which any land is acquired under this Part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government."

There is no dispute that the land measuring 1055 Kanal 02 Marlas in village Taraf-Afgan and Nangal Kheri, Tehsil and District Panipat was acquired by the State of Haryana for the company for the purpose of establishment of its township of fertilizer plant. The deed of conveyance was executed for transferring the land to respondent Nos.1 & 2. However, respondent Nos.1 and 2 have alleged that the National Fertilizer Limited is not a company as defined under Section 3(e) of the Act as it is a Corporation as defined under Section 3(cc) of the Act. Copy of the shareholder pattern of respondent No.1 as on 31.12.2015 indicating the Government of India holding the 89.71% shares is also attached as Annexure R-1/1. It is further submitted by respondent Nos.1 and 2 that

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even if there is clause 2(iv) in the conveyance deed but it does not have any statutory backing in view of Section 44-A of the Act, which clearly provides that previous sanction of the appropriate government is required in case of a company which is defined under Section 3(e) of the Act. Respondent No.1 is a company/corporation, as defined under Section 3(cc) of the Act and not covered under Section 3(e) of the Act because of the exemption provided under Section 3(e)(i) of the Act.

In the face of the provisions of the Act, respondent No.3 cannot be held entitled to take advantage of Clause 2(iv) of the conveyance deed to claim its intervention/participation in the process of leasing out the school building belonging to respondent Nos.1 and 2.

Thus, in view of the aforesaid discussion, the present writ petition is hereby allowed and it is held that no permission is required to be obtained by respondent Nos.1 and 2 from respondent No.3 for leasing out its school building to the petitioner, which is the highest bidder for running the school constructed in the NFL township.

July 04, 2016 **(Rakesh Kumar Jain)**
vinod* **Judge**