

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-1730-2018

Date of Decision: 25.1.2018

M/s Alfa Therm Ltd., Kundli, Sonipat

....Petitioner.

Versus

State of Haryana and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

PRESENT: Mr. N.C. Kinra, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to apply policy dated 20.5.1999 (Annexure P-16/3) on its unit which is operational/functional since 1995, was released from acquisition and, therefore, no External Development Charges (EDC) etc. was leviable for the approval of the building plan and to release all consequential benefits. Further, a prayer has been made for taking self decision on the representation dated 18.10.2016 (Annexure P-6) and the supplementary representation dated 4.1.2018 (Annexure P-16) on the basis of policy, Annexure P-16/3.

2. The petitioner is running a manufacturing unit on the land situated at village Kundli, Sonipat since 1995 having sale tax registration dated 2.6.1995 (Annexure P-1). The Excise and Taxation Department had

also issued a certificate dated 20.12.2017 (Annexure P-1/1) to the petitioner about the location of the unit. The petitioner applied for Change of Land Use (CLU) which was rejected by respondent No.2 vide order dated 20.1.1997. Against the said order, the petitioner filed an appeal before the Financial Commissioner and Secretary, Town and Country Planning and during the pendency of the appeal, the area under the Industry and adjoining area was declared as Industrial Zone. Respondent No.1 vide order dated 12.8.1997 (Annexure P-2) disposed of the appeal by remanding the matter to respondent No.2. Government of Haryana vide notification dated 5.8.1997 (Annexure P-3) issued under Section 4 of the Land Acquisition Act, 1894 (in short "the Act") followed by notification dated 29.7.1988 (Annexure P-4) under Section 6 of the Act acquired the land including the area where the industry of the petitioner was situated for the public purpose of development of Industrial Estate in village Kundli, Sersa and Nangal Kalan, Tehsil and District Sonapat. The petitioner filed objections under Section 5A of the Act. However, the land of the petitioner was released from the acquisition. Further, the petitioner was granted permission for CLU on account of compounding fee of ₹ 33,54,150/-, i.e. 50% of the total EDC vide letter dated 17.3.2003 (Annexure P-5) and the petitioner deposited the same. The petitioner applied for approval of additional building plan vide its application dated 30.11.2015. The Building Plan Approval Committee in its meeting dated 29.3.2016 sought 'No Dues Certificate' regarding the EDC and development charges as is clear from the letter dated 22.4.2016 (Annexure P-5/1). Since the petitioner was a running unit before the issuance of notification under Section 4 of the Act, no EDC was leviable on such units. Accordingly, the petitioner moved a

representation dated 18.10.2016 (Annexure P-6) to respondent No.2 for charging the EDC from the petitioner in the light of memo dated 17.3.2003. In response thereto, respondent No.2 called a report from the HSIIDC vide letter dated 29.11.2016 (Annexure P-7). A reminder dated 25.1.2017 (Annexure P-8) was also sent to the HSIIDC who vide letter dated 2.2.2017 (Annexure P-9) informed respondent No.2 that the petitioner was using the road developed by the HSIIDC w.e.f. October, 2011 and the other infrastructural services provided by them in the area were not being used by the petitioner. The petitioner vide reminder dated 13.7.2017 (Annexure P-10) requested respondent No.2 for withdrawal of the demand of EDC and refund the amount already paid under protest along with interest thereon. Respondent No.2 vide letter dated 31.7.2017 (Annexure P-11) directed the District Town Planner, Sonipat to send a clear cut report whether the petitioner availed the benefit of the external services. Further, vide letter dated 4.8.2017 (Annexure P-12), the petitioner requested respondent No.2 for taking action on its representation. The District Town Planner, Sonipat vide letter dated 11.8.2017 (Annexure P-13) informed respondent No.2 that the petitioner was using the road development by the HSIIDC and had not availed the benefit of other infrastructural services. The petitioner vide letter dated 1.12.2017 (Annexure P-14) requested respondent No.2 for expediting the decision on the representation, Annexure P-6. The petitioner also made a representation dated 20.12.2017 (Annexure P-15) to respondent No.2 for the refund of the EDC along with interest. Further, a supplementary representation dated 4.1.2018 (Annexure P-16) was also made by the petitioner to respondent No.2 by providing additional information/documents. The HUDA also framed policies dated 14.8.1996

(Annexure P-16/1), dated 25.8.1998 (Annexure P-16/2) and dated 20.5.1999 (Annexure P-16/3) in this regard. The petitioner vide application dated 14.6.2016 (Annexure P-17) for supply of certain information/documents from the office of respondent No.2 which was supplied vide reply dated 12.7.2016 (Annexure P-17/1) along with a copy of the instructions/policy dated 30.10.2001 (Annexure P-17/2). Vide letter dated 18.7.2016 (Annexure P-17/3), the petitioner was informed that EDC was charged at the rate of ₹ 22.74 lakh per gross acre while issuing CLU permission dated 17.3.2003 and as regards calculations of the said EDC rates, the application was transferred to the Senior Public Information Officer, HUDA. Since, the complete information was not supplied to the petitioner, it filed the appeals on 25.7.2016 and 1.8.2016. During the pendency of the appeals, a part of the information was supplied to the petitioner vide letter dated 16.8.2016 (Annexure P-17/4) by respondent No.2. Vide reply dated 16.8.2016 (Annexure P-17/5), the petitioner was informed that the policies dated 14.8.1996, 25.8.1998 and 20.5.1999 were applicable in the case of old units for the purpose of calculations of EDC and vide letter dated 19.8.2016 (Annexure P-17/6), it was informed that the reply dated 12.7.2016 had been withdrawn. Thereafter, the petitioner made several reminders, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent a representation dated 18.10.2016 (Annexure P-6) and the supplementary representation dated 4.1.2018 (Annexure P-16) to respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the

present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the representation dated 18.10.2016 (Annexure P-6) followed by a supplementary representation dated 4.1.2018 (Annexure P-16), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two months from the date of receipt of the certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

January 25, 2018
gbs

(ANUPINDER SINGH GREWAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes