

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

CWP No. 26085 of 2018 (O&M)

Date of decision: 10.10.2018

M/s Horizon Agrochem Limited

.. Petitioner

vs

State of Haryana and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Mahabir Singh Sindhu**

Present: Mr. B. S. Rana, Senior Advocate with
Ms. Pooja Bansal, Advocate, for the petitioner.

Rajesh Bindal, J.

1. Challenge in the present petition is to the orders dated 11.7.2014 (Annexure P-16) and 15.7.2015 (Annexure P-24), with the grievance that the sale of shamlat land in favour of the petitioner has wrongly been cancelled.

2. Mr. B. S. Rana, learned senior counsel appearing for the petitioner submitted that in the year 1993-94, the petitioner applied for issuance of letter of intent/ license for setting up a sugar mill in the area of village Kot Basawa Singh, Tehsil Chhachrauli, District Yamuna Nagar. The letter of intent was granted by the Government of India on 21.5.1994. As for setting up of a sugar mill, large chunk of land was required, the petitioner approached the Gram Panchayat Kot Basawa Singh for sale of about 20 acres of land for setting up the sugar mill at the market rate. A resolution was passed by the Gram Panchayat on 7.2.1995 subject to the condition that one member of each family of village Kot Basawa Singh will be given regular appointment in the sugar mull as per educational qualification.

3. In fact, from the very beginning, after the land was sold to the

petitioner, it remained in litigation. There were many tenants sitting on the land. The petitioner had to get them evicted from the same. Litigation was also initiated by another sugar mill in the year 1993 itself, as a result of which the petitioner was not able to set up the sugar mill in time. He was not at fault at any time. The State of Haryana vide notification dated 9.9.1994 under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act') sought to acquire land measuring 245 kanals 1 marla situated in village Kot Basawa Singh and 251 kanals 3 marlas of village Kot Sarkari for setting up of Sugar Mill by the petitioner. Aforesaid land was acquired for which the petitioner not only paid compensation as assessed by the Land Acquisition Collector but had even paid the amount enhanced by the learned Reference Court. A notice to show cause as to why the land owned by the Gram Panchayat, which was transferred in favour of the petitioner may not be cancelled, was issued to the petitioner on 2.4.2014. The reason was that the petitioner had failed to fulfill the conditions of transfer of the land and had failed to establish the sugar mill within two years, as a result the village did not get any benefit. Without affording effective opportunity, vide order dated 11.7.2014 transfer of land in favour of the petitioner was cancelled and the petitioner was held entitled to recover the amount originally paid by it to the Gram Panchayat.

4. The aforesaid order was challenged by the petitioner before this Court by filing CWP No. 16515 of 2014, which was dismissed as withdrawn with liberty to approach the State Government to reconsider its decision, vide order dated 3.11.2014. Thereafter, the petitioner filed representation to the Government. The same was rejected vide order dated 15.7.2015. However, the order was not communicated to the petitioner. It

was received after filing application under the Right to Information Act, 2005.

5. Impugning the order cancelling transfer of panchayat land in favour of the petitioner, learned senior counsel for the petitioner submitted that once the transfer had been approved by the State Government considering the same to be in the larger interest of the residents of the Gram Sabha of the area, the same could not have been cancelled. There were compelling circumstances due to which the petitioner could not set up the sugar mill. It had taken effective steps. The petitioner company had paid the amount of compensation for acquisition of 62 acres of land, additionally required to set up the project. Because of pendency of litigation, the petitioner was not able to set up the same. Even the pictures produced on record suggested that some construction had started, however, the same could not be completed. The petitioner should not be deprived of the rights which it has got with the transfer of land in its favour on payment of due consideration, under Rule 12 of the Punjab Village Common Lands (Regulation) Rules, 1964. Ownership of the land was recorded in the name of the Gram Panchayat. In the case in hand, the land at the time when it was transferred in favour of the petitioner was banjar kadim and the amount received from the petitioner was utilized for the welfare of the residents of the village.

6. After hearing learned counsel for the petitioner, we do not find any merit in the present petition. The petitioner claimed that it was issued letter of intent for setting up of sugar mill in the area of village Kot Basawa Singh, Tehsil Chhachrauli, District Yamuna Nagar but the fact remains that the petitioner company did not own a single inch of land when the letter of

intent was issued on 25.1.1994. The resolution of the Gram Panchayat passed on 7.2.1995 shows that it was decided that about 20 acres of land was to be transferred in favour of the petitioner company at market rate for setting up of sugar mill, subject to the following conditions:-

- “1) Permanent Employment will have to be given to a member of every family of village Kot Basawa Singh as per educational qualification.
- 2) Gram Panchayat will give the land for Sugar Mill.
- 3) The land which is to be given by Gram Panchayat to HORIZON Agrochem Ltd. for Sugar Mill; the same is on lease with the lessees up to April, 1995. In case, the work starts on this land prior to April, 1995 then the Lessees will have to be compensated.
- 4) The Gram Panchayat shall be the owner of the standing trees etc. in the Panchayat Land.
- 5) The Gohar going from Kohar Basti to Arjun Majra; the said Gohar shall be made Pucca upto Harijan Basti.”

7. A communication dated 25.4.1995 from Deputy Commissioner, Yamuna Nagar to the Director, Department of Development and Panchayat, Haryana (Annexure P-8) on record shows that after removing discrepancies pointed in the earlier communication dated 29.3.1995, the proposal was being re-submitted (the communication dated 29.3.1995 or the letters of request made by the petitioner are not on record). A bare perusal of the aforesaid communication shows that contents thereof were totally misleading. The proposal was sent for transfer of about 20 acres of land owned by the Gram Panchayat in favour of the petitioner. The letter suggested that for establishing the sugar mill, the petitioner had obtained 62 acres of land from other sources and with the sale of 20 acres land belonging to Gram Panchayat, the total area would come out to 82 acres,

which would be sufficient to establish a sugar mill.

8. The arguments raised by learned counsel for the petitioner that the land was banjar kadim at the time of sale is belied from the contents of this letter which mentions that as per the khasra girdawari, the land was being cultivated since 1991. The undisputed fact is that on that day the petitioner had not arranged 62 acres of land from any other source rather a process for acquisition of 62 acres of land was initiated by the State by issuance of notification under Section 4 of the Act on 9.9.1994, which was followed by notification under Section 6 of the Act. The award for the aforesaid land was announced by the Land Acquisition Collector on 15.5.1995. There is nothing on record to suggest whether the process required to be followed for acquisition of land, which was initiated for benefit of the petitioner, a private company, was adopted or not.

9. Be that as it may, the fact remains that on the date when the proposal was sent by the Deputy Commissioner for transfer of Gram Panchayat land in favour of the petitioner on 25.4.1995, the petitioner had not arranged 62 acres of land as mentioned therein. The facts mentioned in the aforesaid letter were misleading as this could clearly be mentioned therein that process for acquisition of balance land required has been initiated by the State. Permission was granted vide order dated 15.6.1995 with the following conditions:-

- “i) The land in question will be used for setting up Sugar Mill only. If the company fails to set up the sugar mill within the two years of the said land from the date of issue of these orders, the land will stand transferred back to the Gram Panchayat automatically.
- ii) The company will provide employment at least to one member of the family residing within the jurisdiction

of Gram Panchayat Kot Basawa Singh according to his qualification.

- iii) At present if there is any tree standing in the said land the same will be sold by the Gram Panchayat; and
- iv) The company will get the Gohar mettled from Kahar Basti to village Kot Basawa Singh to village Arjan Majra.”

10. It is not in dispute that there was a specific condition that in case the petitioner company failed to set up the sugar mill within two years, the land will be transferred back to the Gram Panchayat. The fact that the petitioner has not set up the sugar mill till date is not in dispute. Once the sugar mill itself has not been set up, there is no question of grant of employment to the members of the families of the residents of the village.

11. There was no proper assessment of the value of the Gram Panchayat land at the time of transfer, is evident from the fact that for acquisition of adjoining land where notification under Section 4 of the Act was issued on 9.9.1994, the value finally assessed by this Court in RFA No. 3827 of 1993 – Mangat Ram vs The State of Haryana and another, decided on 23.12.1999, was ₹ 1,35,000/- per acre with all statutory benefits, whereas for the transfer of land belonging to Gram Panchayat in favour of the petitioner as approved on 15.6.1995, the value assessed was merely @ ₹ 70,000/- per acre.

12. Plea that the petitioner could not set up the sugar mill because of pendency of the litigation and the efforts required to be made by it to evict the tenants therefrom is merely to be noticed and rejected for the reason that the petitioner should have acted with its eyes open when it had agreed to the conditions laid down for transfer of the land in its favour. Apparent object was to grab the land of the village at throw away prices.

13. Hence, we do not find any illegality in the order passed by the State in cancelling the permission granted for transfer of land in favour of the petitioner.

14. Further, initially the order of cancellation of permission for transfer of land was passed on 11.7.2014 after affording opportunity of hearing to the petitioner, however, later on CWP No. 16515 of 2014 filed in this Court challenging the same was withdrawn on 3.11.2014 with liberty to file application for re-consideration. Such an application filed on 9.12.2014 was rejected vide order dated 15.7.2015. The present writ petition has been filed more than three years thereafter. To cover the delay, it is sought to be submitted that the aforesaid order was never communicated to the petitioner, hence, application under the Right to Information Act, 2005 was required to be filed. But the fact remains that for more than three years the petitioner never asked for any information with reference to any order passed on the application, as application under the Right to Information Act, 2005 was also filed for the first time on 3.5.2018 i.e. more than three years after the application for re-consideration of the matter had been filed.

15. No other argument was raised.

16. For the reasons mentioned above, we do not find any merit in the present petition. The same is accordingly dismissed.

(Rajesh Bindal)
Judge

10.10.2018
vs

(Mahabir Singh Sindhu)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No