

Sr. No.237

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

CWP No. 6087 of 2018(O&M)

Date of decision: 24.05.2018

Rajnish Chaddha and others

.....Petitioners

versus

State of Haryana and others

.....Respondents

**Coram: Hon'ble Mr. Justice Mahesh Grover
Hon'ble Mr. Justice Rajbir Sehrawat**

**Present: Mr. Rahul Sharma-1, Advocate
for the petitioners.**

Mr. Sandeep Moudgil, Addl.AG, Haryana.

Mr. Lokesh Sinhal, Advocate
for respondent No. 2-HSIIDC.

Mr. R.S.Rai, Sr. Advocate and
Mr. Chetan Mittal, Sr. Advocate with
Mr. Rajeev Anand, Advocate and
Mr. Shekhar Verma, Advocate
for respondent No. 4.

Mahesh Grover, J.(Oral)

This writ petition has been filed by few petitioners seeking a restraint on respondent No. 2 from obstructing or creating private interest in the five metre green belt and 15 metre wide public road next to their plots in Udyog Vihar, Phase 5, Gurugram, Haryana by auctioning in favour of private individual respondent No. 4.

It is not in dispute that the auction of some area adjacent to the plots occupied by the petitioners has come into being with a substantial amount of respondent No. 4 at stake. The area referred to by the petitioners as a green belt and 15 metre wide public road is a part of the auctioned area

where the HSIIDC has sold this land for construction of a commercial complex.

Learned counsel for the petitioners contends that immediately behind the industrial plots which were in their possession, 15 metres wide road have been in use since the year 2003 and being maintained by the Municipal Corporation. Consequently a public road can not be put to auction by the State or its agency as it would inconvenience the public at large. Reference has been made to the site plan and some photographs appended to the petition to highlight the grievance.

It has been argued by Shri Rahul Sharma, learned counsel representing the petitioners with some vehemence that State can not indulge in unhealthy practice at the cost of public inconvenience. This road in usage since the year 2003 has benefitted the people as also the industries located in the vicinity. Besides it provides a fire safety measure in itself considering the location of atleast two plots of the petitioners which are locked to a dead end making the movement of a heavy vehicle such as a fire brigade is virtually impossible.

Prayer is opposed by learned counsel for the Municipal Corporation as also the HSIIDC who have contended that allotment in favour of the petitioners was made in the year 1993-94 and the plan sanctioned at that time indicates no such green belt or a road as the one claimed by the petitioners. It is however conceded that somewhere along the line, with time, a road/passage did come into existence since the year 2003 and has been used by the public at large. It is however argued that this can not be construed to mean a legitimate right in favour of the petitioners over the area for a reason that the land belongs to the HSIIDC and if for some

reason it was used for some period of time then it can not restrict the rights of the HSIIDC and its claim to the area and put it to the intended and a beneficial use of commercial area in terms of a planned concept.

It has also been argued before us by Shri Lokesh Sinhal, learned counsel representing the HSIIDC that it would not be possible to give up this area as it has found a part of the auction process and has fetched healthy amount from respondent No. 4.

Respondent No. 4 is also represented and states that the entire project has been held up on account of these proceedings and the accompanying uncertainty huge amount invested is lying idle as they can not go ahead with the project. It has been categorically asserted before us that if this area is segregated from the auctioned area it may not be an attractive proposition for it to undertake.

We have heard the learned counsel for the parties and perused the site plan appended to the petition.

Undeniably in the year 1993-94 when the plots were allotted to the petitioners there was no road/passage existing in the site plan which absolutely unambiguous and reflects no area intended for green belt or road. If with the the progress of time some portion of this vacant area came to be used as a passage or a road, it can not render any legitimacy on the basis of usage to persuade us to declare it as a sanctioned road visualised in the plan.

Merely because some people including the petitioners have benefitted from prolonged usage would be no cause to declare it as a public road or a street if the land belongs to the HSIIDC. It would be within its rights to put it to use the way it was.

Learned counsel for the petitioners contends that the road was

constructed by the HSIIDC itself and this should be sufficient to retain it as it is.

We are afraid that we can not accept this plea of the petitioners for the very reason that we have stated above. Even assuming that it was constructed by the HSIIDC but as long as it belongs to them they would be entitled to put it to the use of the deemed beneficiaries. Apart from that site plan also indicates that the plots of the petitioners have easy access to 12 metres road from both sides independently.

Learned counsel for the petitioners referred to the photographs to show existence of the green belt indeed some area which is behind the premises of the petitioners has been maintained in a decent manner by themselves but this itself would not give any assertive right to the petitioners as they put it to use themselves of course without any hindrance or objection from the respondents.

For the aforestated reasons, we do not find any reason to interfere, therefore we disallow the petition. Respondent No. 4 would be at liberty to proceed with the project after seeking necessary approval from HSIIDC or any other agency.

[MAHESH GROVER]
JUDGE

24th May, 2018
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*