

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18911-2021 (O&M)

Date of decision: 29.08.2022

M/s. Swapnil Properties Pvt. Ltd.

...Petitioner

Vs.

Haryana State Industrial and Infrastructure
Development Corporation Ltd. and another

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: Mr. Pardeep Singh Hundal, Advocate
for the petitioner.

Mr. Ankur Mittal, Ms. Kushaldeep K. Manchanda,
and Mr. Shivam Garg, Advocate for
respondents No. 1 and 2.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Robin Gill, Advocate for respondent No.3.

Ritu Bahri, J.

CM-8350-CWP-2022

Application is allowed and M/s. Shiva Medichem Export Pvt.
Ltd. is impleaded as respondent No.3.

Amended memo of parties is taken on record.

CWP-18911-2021

The petitioner is seeking direction to the respondents to decide
its representation dated 01.10.2020 (Annexure P-10) wherein prayer is made
for denotifying the land as per Section 101-A of the Right to Fair
Compensation and Transparency in Land Acquisition, Rehabilitation and
Resettlement (Haryana Amendment) Act, 2017 w.e.f. 24.05.2018.

The brief facts of the case are that the petitioner is owner in
possession of land bearing Khewat/Khata No. 522/652, 653 Khasra no.

1479/852/2 Min (2-10), 1479-/852/2 Min (1-4), Total land 3 Bigha 14 Biswa and Khewat/Khata no. 508/638, Khasra no. 1481/853/2 (4-4) total land 4 Bigha 4 Biswa, total area both the Khewat 7 Bigha 18 Biswa in the Revenue Estate of Village Khandsa, Tehsil and District Gurgaon vide different registered sale deeds bearing No. 4179, 4180 dated 05.06.2006 and 5528, 5529 dated 23.06.2006 and sale deed dated 10.10.2006 after getting NOC Certificate issued by the District Town Planners Enforcement Gurgaon. The land of the petitioner falls in Urban Area, Gurgaon. The petitioner purchased the property measuring 6 Bigha 1 Biswas and 10 Biswani after getting NOC from the District Town Planner Enforcement, Gurgaon in the year 2006 and the total amount of Rs.42 lacs was affixed as a stamp duty.

The grievance of the petitioner is that as per the gazette notification dated 27.01.2011 (Annexure P-2), the land of the petitioner was acquired by the Highway Authority of India under Section 3A of the Highway Authority Act. The petitioner has placed on record allotment letters bearing memo No. 5 dated 02.04.2010 and Memo No. 10 dated 27.10.2009 as Annexure P-3 whereby the Estate Officer HUDA Gurgaon allotted industrial plot No. 540, Sector-37-II in favour of Muses Technology (India) Pvt. Ltd. and in favour of M/s. IMT Auto Components Pvt. Ltd. The petitioner has also placed on record allotment and possession letters dated 11.08.2014 and 05.08.2015 as Annexure P-4 to show that after allotment to the above said private limited companies, the petitioner's land which was situated in Sector-34, Gurgaon, was again allotted to M/s. Muses Technology Pvt. Ltd. and M/s. H.A. Cot. Spin. Further, the allotment of industrial plot No. 74 situated in Sector-34, Gurgaon was allotted to M/s.

Shiva Medichem Exports Pvt. Ltd. vide allotment letter dated 08.08.2014 (Annexure P-5). The petitioner has also placed on record letter bearing No. 512 dated 31.01.2014 (Annexure P-6) whereby request was made by M/s. IMT Auto Components Pvt. Ltd. to the Estate Officer, HUDA, Gurgaon for physical possession of the site after demarcation of plot No. 7 situated in Sector-34, Gurgaon. Plot No. 7 was in the land of the petitioner and on 10.10.2019, the allottee came to take possession over the plot. The petitioner filed CM-17665-2019 for ad-interim injunction in CWP-26536-2018. Vide order dated 29.11.2019 (Annexure P-7) passed by this Court, direction was given to maintain the status quo in the said petition. Thereafter, petitioner made a representation to HSIIDC for release of land in Sector 34, Gurgaon on 03.06.2020 (Annexure P-8). Vide letter dated 13.08.2020, the petitioner was requested to attend the hearing with respect to representation dated 03.06.2020. Vide order dated 31.08.2020, CWP-26536-2018 was dismissed by the petitioner with liberty to pursue the matter with HSIIDC and the status quo order was vacated. Thereafter, the suit filed by the petitioner for injunction was also withdrawn vide order dated 06.08.2021. The petitioner then moved a representation P-10, Since the representation was not decided, he filed present writ petition.

On notice, short reply by way of affidavit of the Assistant Town Planner, HSIIDC, Sector-6, Panchkula dated 07.08.2022 on behalf of respondent No. 1 has been filed. In para 4 of the said reply, the stand taken by the respondent No. 1 is that the land in question was purchased by the petitioner in District Gurugram in the year 2006 and the notification under Section 4 of the Land Acquisition Act, 1894 for acquiring the land was issued on 30.01.1989 and the land was purchased after issuance of such

notification. As per three judges Constitutional Bench of Hon'ble Supreme Court of India in the case of ***Shiv Kumar and another vs. Union of India and others, AIR 2019 (SC) 5374***, wherein it has been held that the sale deeds executed after issuance of notification under Section 4 of the Act of 1894 are void *ab initio* and has no legal validity in the eyes of law. It is further stated that one of the co-sharers (from who the land in question was purchased by the petitioner) of the land, challenged the acquisition proceedings by filing ***CWP-4677-1990*** titled as ***Fateh Singh vs. State of Haryana and another***. This High Court stayed the dispossession and further proceedings vide order dated 09.04.1990 and, thereafter, the said writ petition was admitted by the High Court vide order dated 06.11.1990 and the stay was ordered to be continued. Copies of the writ petition, orders dated 09.04.1990 and 06.11.1990 have been annexed as Annexures R-1 to R-3. During the pendency of the said writ petition, the land owner sold the land to the petitioner in complete violation of the order passed by this Court. The said writ petition was ultimately dismissed by this Court vide order dated 21.03.2011 (Annexure R-4). Even the application filed by the petitioner therein for recalling order dated 21.03.2011 after withdrawing SLP from the Hon'ble Supreme Court of India, was also dismissed vide order dated 02.02.2017 (Annexure R-5). After dismissal of the writ petition and vacation of stay, award was passed on 18.07.2011 by the Land Acquisition Collector and the possession of the land in question was taken by recording Rapat Roznamcha No. 1034 dated 18.07.2011. The compensation amount with respect to land in question was sent to the Court of ADJ, and acquisition proceedings have attained finality for all intents and purposes.

The petitioner approached this High Court again by filing CWP-26536-2018 seeking lapsing of acquisition proceedings under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act, 2013'), which was taken up for hearing after the decision of the Hon'ble Supreme Court of India in the case of ***Indore Development Authority vs. Manoharlal and others AIR 2020 SC 1496***. The said writ petition was dismissed as withdrawn vide order dated 31.08.2020 with liberty to approach HSIIDC. The petitioner is now seeking benefit under Section 101-A of the Act, 2013 and under the policy dated 14.09.2018. In para 16 of the short reply, it is further clarified that the land in question has been acquired for public purpose i.e. for allotment of industrial purpose after carrying out development. The petitioner cannot seek denotification of the land under Section 101-A of the Act, 2013 as a matter of right as the land in question has vested in the State and stands already utilized.

Reference has been made to a recent judgment of the Hon'ble Supreme Court of India in ***Ram Swaroop (dead) through LRs and another vs. State of Haryana and others, arising out of SLP (Civil) No. 16421-2021*** dated 15.11.2021, wherein it has been categorically held that Section 101-A of the Act, 2013 does not give any vested right to land owners to seek de-notification or even that upon denotification, the land in question must return to the erstwhile owners only. The State Government is at liberty to pass such order other than release of land in favour of the landowners. In the said judgment, the Hon'ble Supreme Court held that once the land was viable and was utilized by the Government, no case is made out to release the land under Section 101-A of the Act, 2013.

After the judgment of *Ram Swaroop (dead) through LRs and another's case (supra)*, this Court dismissed the writ petitions bearing CWP Nos. 11367-2021 on 09.05.2022 and CWP-3071-2022 on 25.03.2022 whereby the prayer of the petitioners for de-notification of land under Section 101-A of the Act, 2013 was rejected.

In the present case, as per the afore-said reply, the land in question affects plot No. 71-76, Sector-34 Gurugram and the plots have already been carved out on the land in question and after carrying out development works, these were allowed to M/s. Shiva Medichem Exports Pvt. Ltd. vide letter dated 08.08.2014 by the Haryana Urban Development Authority, after issuing allotment letter for allotting plot No. 74, measuring 3874.44 Sq. Mtr. in Sector 34, Gurugram at tentative total sale consideration of Rs.7,88,94,200/-. The possession has also been handed over to the said allotted.

Keeping in view that the land in question has already been allotted, possession given and sale consideration has been deposited with HUDA, no case to direct the respondents to decide its representation dated 01.10.2020 (Annexure P-10) wherein prayer is made for de-notifying the land as per Section 101-A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana Amendment) Act, 2017 is made out.

Writ petition is hereby dismissed.

(RITU BAHRI)
JUDGE

29.08.2022

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)
JUDGE