



CAO ASSESSMENT REPORT

**Regarding Concerns in Relation to
IFC's Investment in Shapoorji Pallonji (#34628) in India**

October 2021

Office of the Compliance Advisor Ombudsman
for
the International Finance Corporation and the
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to IFC and MIGA Boards of Executive Directors. CAO's mandate is to facilitate the resolution of complaints from people who may be affected by IFC and MIGA projects in a manner that is fair, objective, and constructive; enhance the social and environmental outcomes of projects; and foster public accountability and learning to enhance the environmental and social performance of IFC/MIGA and reduce the risk of harm to people and the environment.

For more information, see www.cao-ombudsman.org

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LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman (IFC/MIGA)
IFC	International Finance Corporation (World Bank Group)
MIGA	Multilateral Investment Guarantee Agency (World Bank Group)
SPCL	Shapoorji Pallonji and Company Private Limited

1. OVERVIEW

In December 2020, CAO received a complaint from an individual in relation to Shapoorji Pallonji and Company Private Limited (SPCL or "the Company") in India. The complaint raises concerns that the Complainant's farmland was forcibly and illegally taken from him and developed for selling affordable housing units. Impacts on the local environment were also mentioned.

CAO found the complaint eligible for further assessment in December 2020. During CAO's assessment, no consensus was reached on a dispute resolution process. Since a CAO dispute resolution process requires voluntary agreement to participate by the complainant and the IFC client, the complaint will be referred to CAO Compliance for appraisal of IFC's performance, as per CAO's Policy¹.

2. BACKGROUND

2.1 The Project

IFC committed an amount of US\$35 million in a US\$200 million platform, Joyville Shapoorji Housing Private Limited (Joyville), set up by Shapoorji Pallonji and Company Limited, in India, to fund the construction of affordable housing developments. The platform was expected to acquire approximately 10 land parcels and subsequently develop projects on those parcels resulting in the construction of approximately 25,000 homes. According to IFC, SPCL is the flagship company of the Shapoorji Pallonji Group ("SP Group"). The SP Group was established in 1865 and has interests in real estate, construction, infrastructure, logistics, textiles, financial technology, water purification, and other areas.

2.2 The Complaint

In December 2020, CAO received a complaint from an individual ("the Complainant") who claimed to have forcibly lost access to his land and house located in Pune, India, after it was acquired by SPCL to build affordable housing units. The Complainant also argued that the construction of high-rise buildings and other project-related infrastructure on that land could cause damage to the environment due to the presence of a water stream that has allegedly been used for a long time for irrigation purposes in the surrounding farmland. The Complainant informed CAO that he also submitted a complaint to IFC. As the CAO assessment process started, IFC communicated to the Complainant that per the Complainant's request, IFC would continue to engage with the Complainant through the CAO process.

The issues raised during the assessment are described in more detail below.

¹ The implementation of the new CAO Policy includes transitional arrangements for CAO cases that were ongoing as of July 1st, 2021. For more information, please refer to the following document: <http://www.cao-ombudsman.org/documents/CAOPolicy-TransitionalArrangements.pdf>

3. ASSESSMENT SUMMARY

3.1 Methodology

The aim of the CAO assessment is to clarify the issues and concerns raised by the Complainant(s), gather information on the views of different stakeholders, and determine whether the Complainant(s) and the IFC Project Sponsor would like to pursue a dispute resolution process facilitated by CAO, or whether the complaint should be handled by CAO's Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint-handling process). This report does not make any judgment on the merits of the complaint.

In this case, CAO's assessment of the complaint included:

- a desk review of project documentation;
- telephone and email communications with the Complainant;
- telephone and email communications with SPCL's management; and
- telephone and email communications with relevant IFC staff.

A CAO assessment typically involves a field visit to meet with the complainants and project sponsor, to understand the situation better. Due to COVID-19-related restrictions on travel and social gatherings, CAO could not arrange in-person meetings with the relevant stakeholders involved in this case. However, CAO decided not to delay the assessment of the complaint and conducted the assessment via virtual platforms, with the consent of both parties.

3.2 Summary of Views

This section presents a broad overview of the issues and perspectives of the parties, as expressed by the Complainant and SPCL's management, respectively. It does not comprise a judgment by CAO about the merits of the complaint.

Complainant's Perspective

The Complainant alleged that a portion of his farmland and house was forcibly and illegally taken from him and acquired by SPCL to build and sell affordable housing units. The Complainant explained to CAO that his father had taken the land on lease under the traditional feudal system for cultivation of crops and became entitled to obtain full ownership of the land following the adoption of a state law regulating farmland tenure. After his father's death, the Complainant continued to cultivate the land. Since the original landlord of the plot contested the Complainant's claim to be recognized as the owner of the land, the matter was brought to court and eventually reached the Supreme Court of India in 2004.

The Complainant explained to CAO that, in 2014, while the dispute was still pending before the Supreme Court, the landlord allegedly sold the land to a local horse breeding company, which he maintains to be financially linked to SPCL. The Complainant indicated that after he lost the land and had to engage in legal proceedings to regain access to the land, his health deteriorated. The Complainant further alleged that, although he was dispossessed of the land, the house located on the land remained in the Complainant's ownership. However, the Complainant informed CAO that the house was demolished two years later. The Complainant maintains that the part of the land bearing his demolished house was illegally included in the project area. Following the dismissal of his claim by the Supreme Court, the Complainant filed a curative petition in 2018 against the decision, believing that it had been unfairly reached. The curative petition is currently still pending.

In the Complainant's view, the Company deceived its investors and prospective home buyers by failing to disclose the ongoing dispute with the Complainant over the land ownership. The Complainant also indicated to CAO that he believes that IFC failed to carry out its due diligence when investing in the project and that IFC should investigate the land acquisition and the utilization of funds received by its client and withdraw its investment in SPCL. The Complainant informed CAO that he has been receiving external pressures and threats to withdraw his case from the court and the CAO, and that he fears for his safety and that of his family members.

Furthermore, the Complainant raised concerns about potential impacts that the construction of high-rise housing buildings by SPCL may have on the environment, due to the presence of a water stream where the project is being constructed.

Company's Perspective

According to the Company, the land claimed by the Complainant was acquired by a special purpose subsidiary company of SPCL, and the property rights were legally transferred to Joyville. The Company maintained that it carried out all the necessary due diligence related to the land acquisition process and is confident that the transactions carried out to obtain ownership of the land were done legally, in a way that did not infringe on anyone's rights.

The Company further indicated that the land claimed by the Complainant does not fall within the framework of the Joyville development footprint. The Company explained to CAO that the footprint encompasses the entire project layout, including both buildings and open areas. The Company provided a visual map of the property layout, which in their view shows that the location of the area that is being developed by Joyville does not extend to the portion of land claimed by the Complainant.

The Company asserted that all the applicable regulations and guidelines were followed during the acquisition of the land; they believe that the fact that the Supreme Court did not confirm the Complainant's land ownership claims validates their perspective on the matter. Based on the reasons above, the Company informed CAO that they are not interested in pursuing a dispute resolution process facilitated by CAO.

4. NEXT STEPS

During CAO's assessment, no consensus was reached between the Complainant and the Company to participate in a dispute resolution process. As per CAO's Policy, since a dispute resolution process requires voluntary agreement to participate by both the complainant and the IFC client, and in recognition of the Complainant's wish that CAO should conduct an appraisal of IFC's performance in the relation to the complaint, the complaint will be referred to CAO Compliance function.

ANNEX A. CAO COMPLAINT-HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is carried out by CAO dispute resolution specialists. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

As per the IFC/MIGA Independent Accountability Mechanism (CAO) Policy,² the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgement** of receipt of the complaint.

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of CAO (no more than 15 business days).

Step 3: **Assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 90 business days, with possibility of extension for a maximum of 30 additional business days if after the 90-business day period: (1) the Parties confirm that resolution of the complaint is likely; or (2) either Party expresses interest in dispute resolution, and there is potential that the other Party will agree.

Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's Dispute Resolution function is initiated. The dispute resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected.³

OR

Compliance Appraisal/Investigation: If the parties opt for an investigative process, the complaint is transferred to CAO's Compliance function. The complaint is also transferred to the Compliance function when a dispute resolution process results in partial or no agreement. At least one Complainant must provide explicit consent for the transfer, unless CAO is aware of Threats and Reprisals concerns. CAO's Compliance function reviews IFC/MIGA's compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate following a three-step process. First, a compliance appraisal determines

² For more details on the role and work of CAO, please refer to the full IFC/MIGA Independent Accountability Mechanism (CAO) Policy: <https://www.ifc.org/wps/wcm/connect/d3e7f1c4-fd6b-40fd-ae76-fb028916611d/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf?MOD=AJPERES&CVID=nFDGwP2>

³ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has concluded the dispute resolution process and transferred it to CAO Compliance for appraisal.

whether further investigation is warranted. The appraisal can take up to 45 business days, with the possibility of extending 20 business days in exceptional circumstances. Second, if an investigation is warranted, the appraisal is followed by an in-depth compliance investigation of IFC/MIGA's performance. An investigation report will be made public, along with IFC/MIGA's response and an action plan to remediate findings of non-compliance and related harm. Third, in cases where non-compliance and related harm are found, CAO will monitor the effective implementation of the action plan.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**