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HIGH COURT OF DELHI AT NEW DELHI

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**LPA No.168-169-2006 & Other connected Appeals
WP(C) No.2040/2007, WP(C) No.4882/2007,
WP(C) No.4940/2007**

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Date of Decision: 18th March, 2008

1. LPA 168/2006

GOVERNMENT OF NCT OF DELHI
TROUGH COMMISSIONER OF INDUSTRIES APPELLANT

Versus

BHUSHAN KUMAR & ANOTHER RESPONDENTS

2. LPA 141/2006

DSIDC & ANOTHER APPELLANTS

Versus

SANDEEP SETHI RESPONDENT

3. LPA 143/2006

DSIDC & ANOTHER APPELLANTS

Versus

NARESH KOHLI RESPONDENT

4. LPA 145/2006

DSIDC & ANOTHER APPELLANTS

Versus

ASHOKA INDUSTRIES RESPONDENT

5. LPA 147/2006

DSIDC & ANOTHER

.....APPELLANTS

Versus

RAJENDRA KUMAR GOENKA

.....RESPONDENT

6. LPA 149/2006

DSIDC & ANOTHER

.....APPELLANTS

Versus

M/S. PRAMOD KUMAR

.....RESPONDENT

7. LPA 151/2006

DSIDC & ANOTHER

.....APPELLANTS

Versus

DIAMOND RUBBER UDYOG

.....RESPONDENT

8. LPA 153/2006

DSIDC & ANOTHER

.....APPELLANTS

Versus

MOHD. IRSHAD

.....RESPONDENT

9. LPA 155/2006

DSIDC & ANOTHER

.....APPELLANTS

Versus

JAIN GRINDING WORKS

.....RESPONDENT

10. LPA 159/2006

DSIDC & ANOTHER

.....APPELLANTS

Versus

RAM BILAS

.....RESPONDENT

11. LPA 163/2006

DSIDC & ANOTHER

.....APPELLANTS

Versus

GHAI MINING TOOLS CO. P.LTD

.....RESPONDENT

12. LPA 166/2006

DSIDC & ANOTHER

.....APPELLANTS

Versus

BHARAT INDUSTRIES

.....RESPONDENT

13. LPA 170/2006

DSIDC & ANOTHER

.....APPELLANTS

Versus

PREM KUMAR MALIK

.....RESPONDENT

14. LPA 172/2006

DSIDC & ANOTHER

.....APPELLANTS

Versus

HEMANT KUMAR

.....RESPONDENT

15. LPA 174/2006

DSIDC & ANOTHER APPELLANTS

Versus

DEEP AUTO COLOURING WORKS RESPONDENT

16. LPA 176/2006

DSIDC & ANOTHER APPELLANTS

Versus

GARG INDUSTRIES RESPONDENT

17. LPA 178/2006

DSIDC & ANOTHER APPELLANTS

Versus

SACHDEVA PLASTICS RESPONDENT

18. LPA 180/2006

DSIDC & ANOTHER APPELLANTS

Versus

BHIKAR LAL PANCHAL RESPONDENT

19. LPA 182/2006

DSIDC & ANOTHER APPELLANTS

Versus

SKYLARK ENGINEERING WORKS RESPONDENT

20. LPA 184/2006

DSIDC & ANOTHER APPELLANTS

Versus

S.D. ENGINEERING WORKS RESPONDENT

21. LPA 186/2006

DSIDC & ANOTHER APPELLANTS

Versus

P.L. BAJAJ RESPONDENT

22. LPA 1050/2006

DSIDC & ANOTHER APPELLANTS

Versus

SUBHASH KHURANA RESPONDENT

23. LPA 1119/2006

DSIDC & ANOTHER APPELLANTS

Versus

VIJAY PRINTERS RESPONDENT

24. LPA 161/2006

DSIDC & ANOTHER APPELLANTS

Versus

PVC COMPOUND & FOOTWEAR
MANUFACTURERS ASSOCIATION ...RESPONDENT

25. LPA 348/2006

DSIIDC & ANOTHER APPELLANTS

Versus

NIKHIL GROVER RESPONDENT

26. WP(C) 2040/2007

PREM CHAND BANSAL PETITIONER

Versus

GOVT. OF NCT OF DELHI & ORS RESPONDENTS

27. WP(C) 4882/2007

PRRAVEEN KUMAR GARG PETITIONER

Versus

GOVT. OF NCT OF DELHI & ORS RESPONDENTS

28. WP(C) 4940/2007

SALIM AHMED PETITIONER

Versus

GOVT. OF NCT OF DELHI & ORS RESPONDENTS

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CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA**

1. Whether reporters of local papers be allowed to see the judgment ?yes
2. To be referred to the Reporter or not ?yes
3. Whether the judgment should be reported in the Digest ?yes

DR. MUKUNDAKAM SHARMA, CJ

1. Since the issues raised in all these appeals are similar, we propose to dispose of the same by this common judgment and order.

2. Three writ petitions having similar issues, filed before the learned Single Judge, were referred to us for consideration and disposal along with the present appeals. Accordingly these three writ petitions are also disposed of by this judgment and order.

3. Judgment and order dated 8th December, 2005 passed by the learned Single Judge, whereby the writ petitions filed by the respondents herein were allowed, is under challenge in these appeals. As LPA No.168-69/2006 has been taken as the lead case, facts of the said appeal are taken as illustrative.

4. Pursuant to the directions issued by the Supreme Court in a Public Interest Litigation being WP(C) No.4677/85 (PIL) titled **M.C.**

Mehta v. Union of India for shifting of industries from non-conforming areas, in 1996, the Department of Industries, Government of NCT of Delhi, the appellant herein, invited applications from industrial units situated in non-conforming areas for allotment of industrial plots for relocating their industrial units, in terms of a scheme formulated by it. On 26th December, 1996 vide application No.195 the respondent applied for a plot measuring 400 sq.mtrs. under the said Scheme and deposited 10% of the total cost of the 400 sq.mtrs plot @ Rs.3,000/- per sq. mtr. Vide letter No.DSIDC/RL CELL/i/98 dated 3rd April, 1998 DSIDC communicated to the respondent that he has been found provisionally eligible for allotment of an industrial plot measuring 250 sq.mtrs under the re-location scheme and was asked to pay 30% of the cost of the plot within sixty days from the date of issue/receipt of the said letter. Relevant clauses of the said letter read as under:

“(2) Based on preliminary scrutiny, your unit has been found to be provisionally eligible for allotment of an alternative industrial plot measuring 250 sq.mtrs.”

(4) This is provisional eligibility letter will not confer upon any right or claim seniority for allotment of industrial plot. Actual allotment will

be in accordance with the policies/guidelines framed by the Government governing priority of relocation depending upon availability of developed land, nature of industry to be relocated etc.”

Accordingly the respondent deposited Rs.94,500/-.

5. Thereafter, vide letter No.DSIDC/RLF/195/PLOT dated 10th October, 2000 DSIDC declared the respondent allottee of industrial plot No.281, measuring 250 sq.mtrs, in Sector-I, Pocket-N in Bawana Industrial Area and directed the respondent to deposit 50% of the total revised estimate cost of the plot which was revised to Rs.4,200/- per sq.mtr.. The same was deposited by the respondent. Vide letter dated 25th September, 2001 DSIDC directed the respondent to deposit the balance 50% of the cost of the plot and to collect possession letter after completing requisite legal formalities. Subsequently, on 19th December, 2001 DSIDC informed the respondent that the aforesaid plot measuring 250 sq.mtrs was ready for possession. Thereafter, when DSIDC did not hand over the possession, the respondent approached this Court by filing a writ petition.

6. In reply, DSIDC stated that the possession of the plot could not be handed over to the respondent herein as on scrutiny of

respondent's file and application it was found that the area occupied by the unit of the respondent was 100 sq.yards only while he had applied for 400 sq.mtrs under the re-location scheme. It was stated that the Government of Delhi on the basis of the Cabinet decision/policy directed the DSIDC to review the cases on the basis of the criterion that the size of the plots recommended should not exceed double the area presently occupied by the unit, (rounded to the nearest size of the plot being offered and subject to minimum of 100 sq.mtrs), therefore the respondent was not eligible for 250 sq.mtrs plot but only for a plot measuring 150 sq.mtrs. It was also stated that before DSIDC could intimate the respondent that his present allotment has been cancelled in terms of the Cabinet decision and he is only entitled to a plot measuring 150 Sq.mtrs., he approached the High Court by filing the writ petition. The stand of the DSIDC before the learned Single Judge was that the Government of NCT of Delhi had altered the policy at their end and the respondents herein could not have objected to the revised terms of allotment and as sufficient land was not available to allot to all the applicants downsizing of the plots has taken place. It was also contended

that since the relocation scheme was a policy, it did not attain immutability or irrevocability and a policy of this genre could always be modified if public interest so dictated.

7. The main argument of the respondents herein was that the allotment of plots having been made on receipt of full payment in respect of the said plots by DSIDC, a concluded contract had come into existence which would remain impervious to any so-called change in policy. The learned Single Judge after hearing arguments, allowed the writ petitions filed by the respondents herein. It was held by the learned Single Judge that the distinguishing feature of the present cases is the coming into effect of a concluded contract and that the DSIDC had recorded in their letters that firm allotment of plots had taken place. The learned Single Judge agreed with the argument of the respondents herein that the only tentative characteristic of the transaction was the price and not allotment of the plot or its dimensions, and held that no inchoate or tentative aspect of the contract existed at the time when DSIDC attempted to cancel the respective allotments. The learned Single Judge directed the DSIDC to hand over possession of the plots allotted earlier to the respondents herein

within fifteen days from the date of the judgment.

8. Aggrieved by the said judgment, the appellants filed the present appeals, on which we have heard the learned counsel appearing for the parties.

9. The learned counsel appearing for the DSIDC contended before us that the learned Single Judge erred in holding that a concluded contract has come into being subsequent to the dispatch of letters of allotment. It was contended that in the present case the question of concluded contract would not arise as the scheme under which the petitioners were held entitled to allotment was a beneficial scheme and no allottee could take benefit of a wrong committed by getting more than his entitlement. It is also submitted that the scheme under which the allottees were given allotment letters could not have been lost sight of and in case where the State largesse is being granted no one could avail benefit of more than what was his entitlement and therefore it was not a case of pure and simple contract between the government and the allottee but a case where, under a beneficial scheme, the parties were being granted plots of land for purpose of their relocation.

10.It was the contention of the learned counsel appearing for the respondents that as the offer of allotment was accepted by the respondents and full payment in terms thereof was made, the contract was concluded and neither the Government of NCT of Delhi nor the DSIDC could refuse to perform their part of the contract and wriggle out of the same. It was further contended that though they are not denying that a policy can be changed in exercise of administrative/executive power but it cannot have retrospective effect to adversely affect the vested right of a party under a concluded contract.

11.We have perused the issues and contention raised by both the parties and now we proceed to consider them accordingly.

12.After issuance of the advertisement inviting application for allotment of industrial plots under relocation scheme, in March 1998 implementation of the relocation scheme was entrusted to the DSIDC. The Commissioner of Industries, Government of NCT of Delhi, sent a list of 8831 industrial units and advised DSIDC to issue provisional eligibility letters. Accordingly, the DSIDC issued provisional allotment letter in March/April 1998 whereby the provisional allotment was made on the basis of norms of eligibility.

One of such norms relevant for adjudication of the present case is reproduced below for reference:

“ (10) As regards the entitlement of land of individual eligible units the following decision has been taken by the Cabinet.

(a) no cuts in respect of units requiring upto 100 sq.mtrs of land.

(b) 25% cut in the case of plot size measuring from 101 to 200 sq.mtrs subject to minimum size of plot being retained at 100 sq.mtrs.

(c) 30% cut with regard to plots measuring from 201 to 300 sq.mtrs. and

(d) 30% cut with regard to plots measuring from 301 to 400 sq.mtrs.”

13.In the Note for Council of Ministers date 4/7th June, 1998 it was, inter alia, stated that after preliminary scrutiny, final scrutiny of applications has been done at the level of Joint Directors of industries/Dy.Directors of Industries. At Clause 5(vii) it was mentioned that possession of only 1080 acres of land out of the original 1300 acres of land identified for acquisition has been taken as the remaining land is under heavy built-up structures. Additional land is required to be identified within the notified urban extension, availability of which is very limited. It is further stated that keeping in view the limited availability of land within the

notified urban extension, it is felt that applicants requiring plots measuring more than 400 sq.mtrs should either be asked to shift out from Delhi to the National Capital Region and the earnest money deposited by them be returned along with promised interest @7% or else they should undertake in writing to accept a plot of size measuring 250 sq.mtrs and effect necessary change in industrial activity. Further, under the paragraph 'clarifications on various points which came up during scrutiny of applications were sought from the 'land and flat allotment committee" at clause (c) it is stated as under:

"During scrutiny, it has been observed that some of the applicants are at present functioning from much less area as compared to the area applied. It was decided that the size of the plot recommended in such cases should not exceed more than double (rounded to the nearest lower size of plot being offered and subject to minimum of 100 sq.mtrs) the area presently being used for industrial purposes. However, no such restriction shall be imposed in respect of applicants who have applied for industrial flats. Since no such condition had been imposed by the Cabinet while deciding the eligibility criteria, it was decided that this decision may be got ratified by the Cabinet."

14.Subsequently, Commissioner of Industries issued a public notice dated 14th July, 1999 wherein it was stated that in response to the advertisement 51,851 applications were received and all the said

applications have been scrutinized to determine the eligibility of individual applicants on the basis of guidelines approved by Government of Delhi. It was also stated in the said public notice that the basic criteria in determining eligibility was documentary proof of establishment of the unit before 19th April, 1996, which was the date of the order of the Supreme Court. It was also stated that where documentary proof was not available on file, proprietors of units were called for personal hearing by the Scrutiny Officers. In the said public notice it was inter alia stated that the units which have applied for industrial plots measuring more than 400 sq.mtrs will be offered a plot measuring maximum of 250 sq.mtrs. Condition or term that size of the plot shall not exceed more than double of the existing area presently being used was not mentioned.

15. By letter dated 20th July, 1999 the Department of Industries, Government of NCT of Delhi, addressed to the Managing Director, DSIDC, referring to the Cabinet Meeting held on 7th June, 1999 and 3rd meeting of the High Powered Project Implementation Committee in respect of relocation scheme, it was further informed that the size of the plot recommended should not

exceed double the area presently occupied by the unit. The said clause is as under:

“(v) The size of the plots recommended should not exceed double the area presently occupied by the unit. However, no such distinction is imposed in case of flats”.

16. In the additional affidavit filed on behalf of the DSIDC in the writ petition, it was stated that in terms of the directions of the Supreme Court dated 12th September, 2000, draw of lot was held on 3rd October, 2000. It was also stated that out of 18355 allottees who had been allotted plots in pursuance of the the said draw and subsequent draw of lots, it was found that in 521 cases the area allotted was more than the actual entitlement as per the decision taken by the Cabinet. Accordingly, the said allottees were issued letters of cancellation of the plots and names and applications of 387 units who had paid 100% cost of the plots were put in the fresh draw of lots held on 6th June, 2003. After downsizing the area of plot, the excess payment had been refunded to most of the allottees. It was also stated that downsizing of the plots was done so as to implement the policy on a uniform basis and there is nothing arbitrary or illegal in the same.

17. In the rejoinder to the reply filed by the DSIDC in the writ

petition, the petitioners alleged that they have been discriminated vis-a-vis those persons to whom possession of the plots were given prior to taking of the impugned action inasmuch as their allotments were not cancelled. The argument was that though the petitioners had also deposited the entire cost of the plots, but since plots were not handed over to them, their allotments were cancelled for effecting the downsizing. It was also contended that nothing prevented the DSIDC from informing the petitioners in the year 1998/1999 itself that a decision was taken not to allot plot size of more than double of the area presently occupied by a unit. The DSIDC kept collecting the money from the respondents till December, 2002.

18. One of the points which was also raised by the respondent was that though on 10th October, 2000 he was informed that he has been allotted a plot bearing No.281, Sector-I, Pocket-N Bawana Industrial Complex which was three side open corner plot but subsequently he was informed that his plot is in Pocket-O instead of Pocket-N, the former being only a two side open plot. As the said issue was not pressed before the learned Single Judge and also before us, we are not commenting on the merits of the same.

19.The initial allotment letter dated 3rd April, 1998 did not confer any vested right on the respondent to claim allotment of a plot measuring 250 sq.mtrs as it specifically stated that the respondent was only provisionally eligible for the said allotment, but by subsequent final allotment by letter dated 10th October, 2000, specifically stating the size and number of the plot, the provisional status came to an end.

20.The respondents have contended that after issuance of final allotment letter and on receipt of full payment thereof a concluded contract came into existence which would remain impervious to any so called change in the policy as a policy cannot be given retrospective effect. From the aforesaid it is clear that before the issue of final allotment letter dated 10th December, 2000 the allotment of the plot was only provisional and no right to claim the plot measuring 250 sq.mtrs accrued to the respondents. The Cabinet decision/policy on which the appellant is placing reliance was in the knowledge of the appellant much before the final allotment was made as the same was communicated to DSIDC on 20th July, 1999. Thus the question of retrospective effect of the Cabinet decision/policy does not arise in the present case as the

final allotment was made much after the Cabinet decision/policy came into effect.

21. Coming to the contentions raised by the appellant-DSIDC, we find that they have alleged that the downsizing has been done keeping in mind the fact that there is scarcity of land and the said action, therefore, is in public interest. It is worth mentioning that all the the said allotments were made specifically mentioning the area and property number allotted to the applicant. The said contention raised by the appellant-DSIDC will not hold good in the light of the fact that if the allotment is made specifically mentioning the area and property number, it can be prima facie inferred that before earmarking the land, the DSIDC would have on paper divided the total available land among all the eligible applicants, as per their respective entitlement, whether in excess or otherwise. Also the factor that there was shortage of land was considered in the year 1998 itself when instead of 400 sq.mtrs for which the respondent had applied he was informed that a plot measuring maximum 250 sq.mtrs can be allotted to the respondent or to the other applicants and the said factor is also evident in the public notice dated 14th July, 1999. It has also been

brought to the notice of this Court by the respondents that DSIDC has advertised for auction of commercial plots at Bawana Industrial Complex. One such advertisement produced in the Court highlights that approximately 20000 industrial plots are available for auction which would take place on 30th December, 2006. Thus, the contention of the respondent that the said allotments were cancelled only because there was shortage of land and therefore it was in public interest to downsize the allotments is unacceptable in the light of the aforementioned advertisement.

22. Another contention of the DSIDC was that the cancellation was in consonance with the Cabinet decision/policy. It is pertinent to note that the said Cabinet decision/policy was in existence at the time when the final allotments to the respondent and other applicants were made and it was the DSIDC itself who has totally undermined the Cabinet decision/policy and made allotments contrary to the Cabinet decision/policy which is binding on it. The said act of the DSIDC shows gross negligence on the part of the DSIDC in making allotments of the said plots. The Cabinet decision/policy was of the year 1999, allotment was made in 2000 but the mistake could only be detected in the year 2003

after receiving full payment for the said plot and communicating that the said plot is ready to be handed over to the allottee. It may also be noted that the DSIDC have themselves stated that before allotment each and every application was scrutinised and only after the said scrutiny if the applicant was found eligible only then the allotment was made. The same is evident from the Note for Council of Ministers date 4/7th June, 1998 wherein it was, inter alia, stated that after preliminary scrutiny, final scrutiny of applications has been done at the level of Joint Directors of industries/Dy.Directors of Industries. We fail to understand that how come in as many as 521 cases even after such checks the DSIDC has made the said mistake in undermining the Cabinet decision/policy for allotment of plots.

23.Learned counsel for DSIDC has referred to decisions of the Supreme Court in ***PTR Exports (Madras) Pvt. Limited v. Union of India*** (1996) 5 SCC 268, ***Food Corporation of India v. Kamdhenu Cattle Feed Industries*** (1993) 1 SCC 71, ***Punjab Communications Limited v. Union of India*** (1999) 4 SCC 727, ***State of NCT of Delhi v. Sanjeev @ Bitto*** AIR 2005 SC 2080, ***Kasinka Trading & Anr. v. Union of India*** AIR 1995 SC 874,

Bannari Amman Sugars v. Commercial Tax Officer JT 2004 (10) SC 500 and a Division Bench decision of this Court in ***DSIDC v. Naresh Kumar*** 128 (2006) DLT 777 (DB). These decisions deal with the question of legitimate expectation, promissory estoppel and right of the government to change policy from time to time. It cannot be denied that the appellant has a right to amend and modify its policies in public interest. The doctrine of promissory estoppel, legitimate expectation or principles of Wednesbury Reasonableness may or may not apply when a challenge is made to modification or amendment of the earlier policy. However, in the present case the respondent allottees have not based their claim on the principles of promissory estoppel, legitimate expectation or Wednesbury Reasonableness. The claim of allottees is that a concluded contract between them and the DSIDC for allotment of plots of specific sizes has come into existence and DSIDC cannot by a change in its policy reduce the plot size.

24. It is also admitted case of the parties that pursuant to the decision of the Supreme Court in M.C.Mehta's case (supra) applications were invited from persons who had industries in non-conforming areas to apply for allotment of industrial plots. The

respondents allottees had applied pursuant to the said advertisement issued in the year 1996. The allottees were to deposit 10% of the total estimated cost depending upon the area for which they had sought allotment. Terms of offer specified the rate of land, which was @ Rs.3,000/- per sq.mtrs, but the said rate was subject to revision.

25. On 3rd April 1998, DSIDC informed the respondents allottees that they had been provisionally found eligible for allotment of alternative industrial plots for the area specified in the said letter which was either 250 sq.mtrs or 150 sq.mtrs. However, the said letter stated that provisional eligibility letter would not confer upon them any right to claim seniority for allotment of industrial plots. Actual allotment would be in accordance with policy/guidelines framed by the Government governing the priority of relocation depending upon availability of developed land, nature of industry to be relocated etc. By this letter the respondent allottees were required to deposit 30% of the estimated cost of the land for which they had been found to be provisionally eligible. Deposits were required to be made within sixty days failing which the respondent allottees were required to pay interest @ 18% per annum on

delayed payments. A reading of the above letter shows that the respondents-allottees were found to be provisionally eligible for allotment for the size of plots as per the area specified, but actual allotment was subject to the policy/guidelines to be framed by the government governing the priority of relocation depending upon available developed land and type of industry etc. Respondent-allottees deposited payments as demanded in terms of the said letter.

26. After a gap of nearly two years and six months, by letter dated 10th October, 2000, DSIDC informed the respondent allottees as under :

“2. This is to inform you that based on draw of lots held on 3rd October, 2000 you have been found successful for allotment of an alternative industrial plot measuring 250 sq. mtr. in Section I, Pocket N having plot No.281 at Bawana Industrial Complex. The tentative cost of the plot is Rs.4,200/- per sq. mt. which is subject to change depending upon the actual cost of development of the industrial plot and directions issued by the Govt. of Delhi in this regard.”

27. Respondent allottees were required to deposit 50% of the revised estimated cost of the plot @ Rs.4,200/- per sq.mtr and pay the balance amount in instalments as stipulated therein. In

paragraph 12 of the said letter it was mentioned that in case of any discrepancy, Government of Delhi/DSIDC reserves its right to withdraw/reject the offer of allotment. A reading of the said letter clearly shows that the appellant had time of nearly two years and six months between 3rd April, 1998 till 10th October, 2000 to scrutinise and examine the applications of the respondents allottees. Thereupon they issued letter dated 10th October, 2000 confirming exact size of the plots to be allotted to the respondents. It was stated that the tentative cost of the plot would be Rs.4,200/- per sq/m but subject to change depending upon actual cost of development. Accordingly allottees were directed to make payment as stipulated in the said letter. As far as size of the plot was concerned, the allotment letter dated 10th October, 2000 was categorical. In this regard we have reproduced para-2 of the said letter above.

28.Further, clause 3 of the aforesaid letter specified instalments, which had to be paid by the respondent – allottees in terms of the revised estimated cost. 50% of the revised estimated cost of the entire area of the plot was to be paid by 31st October, 2000 and further 20% had to be paid within six months of the issue of the

letter and third instalment of 20% of the revised estimated cost had to be paid within six months after payment of the second instalment. The balance 10% of the cost was to be paid at the time of handing over of actual possession along with the difference in cost.

29. The appellant by another letter dated 25th September, 2001 again confirmed allotment of a plot measuring 250 sq. mtrs/150 sq. mtrs to the respondent – allottees by making reference to the earlier letter dated 10th October, 2000. It was further stated in this letter that due to administrative reasons the schedule for depositing the balance 50% payment of the cost of the plot was deferred as notified in the leading newspaper. The respondent – allottees were informed that it had been decided that this balance 50% of the cost of the plot should be paid by 31st October, 2001. The letter also states that the cost of Rs.4200/- per sq. mtrs. was tentative and the allottee shall be liable to pay any increase in the cost of plot due to any reason whatsoever. Thus the appellant by letter dated 25th September, 2001 again confirmed the size of the plot, which was allotted to the respondent–allottees. The appellant had plenty of time till 25th September, 2001 to verify as

to the applications filed by the respondent-allottees, which were made in 1996.

30.The respondent-allottees deposited the entire cost as demanded by the appellant. The payments were made taking into account the plot size as was indicated in the letters dated 3rd April, 1998, 10th October, 2000 and 25th September, 2001.

31.By letter dated 19th December, 2001, the appellant informed the respondent – allottees the specific plot number that had been allotted to the respondent – allottees. The said letter also specified the area of the plots and was in conformity with the earlier letters dated 10th October, 2000 and 25th September, 2001 clearly stipulating that the respondent – allottees have been allotted plots admeasuring 250 sq. mtrs / 150 sq. mtrs, as the case may be. The appellant, however, refused to allot the plot of the said size to the respondent – allottees. The appellant-Corporation has taken the stand that the Government of NCT of Delhi had examined eligibility criteria for allotment of industrial plots to persons who had industries in non-conforming areas. In the Cabinet Meeting held on 2nd November, 1996, the eligibility criteria was examined and was fixed. Thereafter another meeting of the

Council of Ministers was held on 23rd August, 1997 when eligibility criteria was approved with some modifications. One of the modifications made by the Council of Ministers in its meeting held on 23rd August, 1997 was in respect of the units, who had applied for industrial plots of bigger size compared to the areas from which they were earlier functioning. It was decided that no unit would be entitled to allotment exceeding double of its present space “rounded to the nearest lower size” of the plot being offered and subject to a minimum of 100 sq. mtr. There is no dispute about the date of the said meeting of the Council of Ministers. The said meeting was held on 23rd August, 1997. The appellant, therefore, had sufficient time to scrutinise, verify and examine the applications filed by the respondent-allottees in 1996 before letters dated 10th October, 2000, 25th September, 2001 and 19th December, 2001 were issued specifying the plot size, which had been allotted to the respondent-allottees. If the appellant-Corporation was negligent or careless in issuing the above letters to the respondent-allottees, they are to be blamed. The respondent-allottees acted on the basis of the said letters and made payments for the plot size mentioned in the letters. With

exchange of these letters and payment of consideration, a concluded and a binding contract came into existence between the appellant and the respondent – allottees. The said binding contract cannot be washed away, modified, novated or cancelled contrary to law. Recently, Supreme Court in Civil Appeal No.6666/2000 titled ***Delhi Development Authority, N.D. and Anr. v. Joint Action Committee, Allottee of SFS Flats and Ors.*** reported in 2007 (14) SCALE 507, has observed that relationship between the parties arises out of the contract and in such cases terms and conditions of the contract have to be complied with by both the parties. Terms and conditions can be modified with mutual consent and not unilaterally unless there exists a provision in the law or in the contract itself. Novation of the contract under Section 60 of the Contract Act must precede with the parties being ad idem insofar as the terms and conditions are concerned. It was accordingly observed that the DDA as a contracting party could not have altered or modified the terms of contract without informing the parties to the contract and bringing the modified or altered conditions to the notice of the other contracting parties. A policy by itself is not law or a Statute which

has an effect of thrusting new terms and conditions of the contract upon a contracting party. A policy decision taken by the Council of Ministers not to allot a plot double the size of an existing plot does not affect or modify or alter terms and conditions of a binding contract. It may be noticed here that the policy decision taken by the Council of Ministers on 23rd August, 1997 was not circulated to the allottees either by wide publicity, public notice or individual notice. It remained in the files of the appellant-DSIDC. The respondent-allottees were not aware of any such policy or guidelines made by the Council of Ministers. It is not the case of the appellant that both DSIDC and the respondent- allottees shared a mutual mistake of a fact of a fundamental character, which will have the effect of the contract being non est or being hit by Section 20 of the Indian Contract Act. There was no mistake or misunderstanding, which prevented an effective agreement or binding contract coming into existence. The present case can at the best be one of unilateral mistake by the appellant-DSIDC, which was not known to the respondent-allottees. Section 22 of the Indian Contract Act states that a contract is not voidable merely because it was caused by or because one of the parties

was under a mistake as to a matter of fact. The respondent-allottees are also not guilty of fraud, misrepresentation or unfair dealing so as to deny them relief in equity. Contracts are rarely rescinded on the ground of unilateral mistake unless the other side is aware of the said mistake and had actual knowledge of the said mistake or is guilty of fraud, misrepresentation or unfair belief. Moreover, the respondent-allottees have parted with money and had deposited the entire sale consideration with the appellant-DSIDC. The same was accepted and retained by the appellant-DSIDC. In some cases, the respondent-allottees have even arranged funds from third parties on loan and interest.

32. The respondent-allottees will suffer loss and damage for no fault of theirs in case allotments are cancelled even after they have paid full amount as demanded by the appellant-DSIDC. In cases where they have taken loan they will be saddled with the liability to pay interest and other consequences for default. It is not denied that the policy was in existence even before the final allotments were made and the allotments were made specifically mentioning the area and property number and full payment in respect thereof were received and accepted.

33.It would cause prejudice to the respondent–allottees in case the appellant decides to unilaterally novate the contract and modify its terms and conditions by reducing the size of the plot. The party seeking relief i.e. the respondents, are not at fault. As already stated above, the appellant–DSIDC was at fault and was negligent and did not verify the facts in allotment application from 1998 onwards till December, 2001. The respondent–allottees were made to part with money for different sizes of plots and as per areas mentioned in the letters written by the appellant-DSIDC. The appellant-DSIDC now wants to reduce the size of the plot only on the ground of unilateral mistake. The appellant–DSIDC has not relied on Section 23 of the Contract Act. Doctrine of ultra vires has also not been relied upon. It is not a case of the appellant–DSIDC that the allotments in question are contrary to the object and purpose for which the corporation was established. Allotment is not prohibited by the Memorandum of the DSIDC.

34.At the same time, it may be noted that several other allottees have been allotted reduced or smaller plots in terms of the policy. Their requests for bigger plots have been rejected. The terms and conditions of the contract also gives some flexibility in charging

cost or price of the plot. The price as mentioned in the letters was always tentative and subject to increase. Balancing out these factors, we direct that the allotment made to the respondent-allottees should not be cancelled subject to the condition that the allottees shall pay Rs.4200/- per sq.mt. for the area upto double the area occupied by their unit (rounded to the nearest lower size of the plot being offered and subject to minimum of 100 sq.mtrs.) but for the remaining or the additional area they shall pay market rate as on 25th September, 2001. The market rate as on 25th September, 2001 will be calculated on the basis of the reserve price fixed by DDA for the auction of plots in the said locality. In case no reserve price has been fixed, the same may be calculated on the basis of average bid price received in the auctions during the financial year preceding the year of allotment, less 10%. No interest will be payable on the enhanced amount till issue of fresh allotment letter.

35.The above directions will apply only in cases where the respondent-allottees have not encashed the cheques for refund issued by the appellant-DSIDC or have encashed the refund cheques under protest or without prejudice to their rights and

contentions by writing letters within one month from the date when the refund cheque was received by them. In cases where allottees have accepted the refund cheques without demur or protest, they are estopped from making any claim. In the said cases, the respondent-allottees have accepted the fresh terms of the contract made by the appellant-DSIDC.

36.DSIDC is directed to issue fresh demand letters in terms of the aforesaid directions within six weeks from the date of this order and the respondents are allowed to make payments within four months thereafter. It is made clear that on failure to make such payment by the respondents within the specified time, the said excess allotment shall stand cancelled and the respondents will only be entitled to the allotment as per the Cabinet decision/policy. If the respondents do not wish to get the additional land at the aforesaid additional price, the allotment should be made within six weeks from the date of this order to such respondents as per their entitlement in terms of the Cabinet decision/policy.

37.The appeals are dismissed with the above modification in the order of the learned Single Judge. The writ petitions are also

disposed of in terms of the aforesaid order. However, this order is passed in the peculiar facts and circumstances of the present case and cannot be treated as a precedent in any other case. No costs

CHIEF JUSTICE

MARCH 18, 2008
“V”

SANJIV KHANNA
(JUDGE)