

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 114/2007

CEE PARKES AUTO INDUSTRIES THROU
Through

..... Petitioner

Mr. Sanjib Dutta, Adv. with Mr. Rabin
Majumdar, Advocate.

versus

D.S.I.D.C.LTD.

..... Respondent

Through

Ms. Renuka Arora, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

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

ORDER
21.08.2009

%

1. The petitioner M/s Cee Parkes Auto Industries have an industrial unit in Anand Parbat area. In 1996, the petitioner had applied for allotment of an industrial plot under the relocation scheme initiated by Government of NCT of Delhi and deposited Rs. 30,000/-. The respondent DSIDC by their letter dated 28th March, 1998 informed the petitioner that after preliminary scrutiny, they were found eligible for allotment of an alternative industrial plot measuring 100 Square

Mtrs. and they should deposit Rs. 57, 375/- within 60 days from the date of issue of the letter. The petitioner deposited the said amount on 26th May, 1998. Subsequently, the petitioner deposited payments of Rs. 1, 22, 582/-and Rs. 2,10,000/- on or about 18th January, 2001 and 30th October, 2001. It appears that there was confusion about credit of amount of Rs. 2,10,000/-, which was wrongly deposited under another application number. The petitioner had written letters for correction.

2. In 2005, the respondent DSIDC started making allotment of the industrial plots to persons, who had made the full payment. However, the petitioner was not given possession of the Plot No.295. Pocket-I, Sector-4, Bawana Industrial Complex, New Delhi. The petitioner after unsuccessful correspondence, has filed the present writ petition.

3. The respondent DSIDC in their counter affidavit have substantially accepted the aforesaid facts and payments made.

4. The respondent DSIDC in defence has relied upon the public notice dated 14th July, 1999, the relevant portion of which reads as under:-

“The government has decided that the following categories of industrial units will not be considered for allotment under the relocation scheme for the time being:-

- (a) Units situated in commercial areas.
- (b) Units located in Anand Parbat, Samaipur Badli and Shahdara as these areas are covered by redevelopment scheme under the Delhi Master Plan 2001.
- (c) Service Sector industries such as Atta Chakkies, Dry cleaners, Scooter repair centres etc.
- (d) Eligible units who have applied for allotment of land measuring 400 sqm. And above would be offered only 250 sqm. Plots.” (Emphasis supplied)

5. As per the said public notice, the petitioner, whose factory/industrial unit was/is located at Anand Parbat area, could not be considered for allotment under the relocation scheme.

6. The matter was considered in the third meeting of the High Powered Project Implementation Committee and it was reiterated that the units located in Anand Parbat, Samaipur Badli and Shahdara areas will be considered for regularization in terms of the redevelopment scheme as per the Master Plan of Delhi 2021. Similar decision was taken by the Commissioner of Industries on 9th September, 1999. As per the original scheme, conditions of eligibility mentioned in the brochure were as under:-

“Eligibility:

- (i) Non-confirming industrial units working in industrial and/or other non-confirming areas which are non-hazardous, non-noxious and non-polluting shall be considered for allotment of flatted factory/industrial

plot for relocation.

- (ii) No new industrial unit shall be considered for allotment in flattened factory complexes/industrial areas proposed to be developed. (Emphasis supplied)

One of the terms at serial (iv) was as under:-

“If an applicant unit is in possession an industrial area plot/shed/flat in approved industrial area of Delhi in his own name in case of proprietary concern, in the name of any of the partners in case of partnership firm or in the name of any of the Directors in case of a Pvt. Ltd./Ltd. Company, it shall not be considered for allotment of industrial accommodation under this Scheme of relocation. Such units shall have to close down and shift to the premises already in their possession in the approved industrial area. Similarly, if an applicant unit had been allotted plot under earlier shifting programme of D.D.A. but it still continuing activities in the residential/non-conforming area then he shall not be considered for allotment under this Scheme.” (Emphasis supplied)

7. A perusal and reading of the eligibility conditions indicates that industrial units operating in non-conforming or residential areas or non conforming industrial units were eligible for allotment of industrial plots under the relocation scheme. There was restriction on an applicant, who was in possession of an industrial area plot/shed/flat in an approved industrial area of Delhi.

8. The respondent DSIDC in view of the aforesaid public notice/resolutions have stated that as per the Master Plan of Delhi 2001, the petitioner, who has an industrial unit in Anand Parbat area, was not entitled to allotment of a plot under the relocation scheme at Bhawana Industrial Complex. It is a well acknowledged and known fact that a large number of applications for allotment of industrial units were received and all applicants could not be accommodated as limited number of plots were available. Classification of deserving and others had to be done. Public notice dated 14th July, 1999 and decisions of the High Powered Committee and Commissioner of Industries were taken to classify applicants/industries, who would be allotted plots. Others were not entitled to allotment of plots.

9. Similar issue had arisen before a Division Bench of this Court in ***DSIDC Vs. Naresh Gupta*** 128 (2006) DLT 777 . In the said appeal, the DSIDC had challenged judgment of a single Judge issuing mandamus to DSIDC to make allotment as the applicants had deposited payments for allotment of industrial plots under the relocation scheme as demanded by DSIDC. The Division Bench accepted the stand of DSIDC that the said applicants were not eligible for allotment as per the policy decision and allotment letters were wrongly issued. Referring to the policy decision taken by the DSIDC and GNCTD, the Court noticed the following submissions:-

“10. It is submitted by Counsel for the appellant that about 51,000 applications were received for plots for relocation of industries and less than 18,000 industrial plots were available and all applicants could not be allotted plot/flatted factories. The policy in question was framed so that where the industry was of the nature needed to be immediately relocated, could be accommodated. Non-hazardous units of those areas where the Development Plan-2001 provided for redevelopment of area as industrial area or units in commercial areas should not be considered for immediate allocation of alternate plot. It is stated that all the respondents who had paid consideration for the plot, they were earlier falling in the category of ‘eligible candidates’ but after the announcement of policy as given above, they fell out of the category of ‘eligible candidates’ and, therefore, could not be given possession as the plots are to be allotted to those who are eligible according to the new policy.”

10. The Division Bench has approved the policy decision taken by the DSIDC, inter alia, holding that it was not arbitrary and did not require interference. Further the applicants were entitled to retain possession and entitled to in situ regularization. The Division Bench noticed that the Supreme Court had passed a number of orders in the case of M.C. Mehta Vs. Union of India W.P.(C) No.4677/1985 for removal of industries from non-conforming/residential areas and had issued directions to ensure relocation of these industries. It was observed that the policy decision taken by the respondent DSIDC, not to allot industrial

plots to applicants who were being considered for in situ regularization, as there was huge demand for plots, which were in short supply and only limited number of plots were available, was just and fair. It was held that the policy decision taken was in consonance with the directions of the Supreme Court to give priority to those cases where industrial activities were not permitted under the Master Plan of Delhi 2001. In view of the decision of the Division Bench, no direction can be issued for allotment of an industrial plot to the petitioner.

11. The petitioner, however, will be entitled to refund of entire amount along with the interest @ 9 % per annum from the date of deposit till the payment is made. Liberty is given to the petitioner to ask the respondent DSIDC to retain some amount towards earnest money, in case they want their application for allotment of industrial plot remain alive and wait for availability of industrial plots. These directions are also in consonance with the decision in the case of DSIDC Vs. Naresh Gupta (Supra).

The writ petition stands disposed of.

SANJIV KHANNA, J.

AUGUST 21, 2009

NA