

17.

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

+ W.P.(C) 9141/2007

KISHAN SINGH

..... Petitioner

Through Mr. Anil Kumar Oberoi & Mr. Kunal
Rawat, Advocates.

versus

DELHI STATE INDUSTRIAL DEVELOPMENT
CORPORATION & ANR

Respondents

Through Ms. Renuka Arora, Advocate for DSIDC.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% **21.10.2009**

1. The stand taken by respondent-DSIDC is that the petitioner's industrial unit is located in Nai Basti, Anand Parbhat, an area which is slated for in situ regularization. Accordingly, it is submitted that the petitioner is not entitled to alternative allotment of an industrial plot under the relocation scheme. This aspect was considered by a Division Bench of this Court in ***DSIDC versus Naresh Gupta***, 128 (2006) DLT 777(DB), wherein the policy decision not to allow industrial plots under the relocation scheme to units located in Anand Parbhat, Samaipur Badli and Shahdara areas, was upheld. It was observed that as per the policy decision, units located at Anand Parbhat, Samaipur Badli and Shahdara areas are covered under the redevelopment scheme under the Master Plan of Delhi 2001 for in situ regularization. Challenge by the owners of

industrial units located in areas meant for in situ regularization was rejected holding that the authorities had not arbitrarily changed the policy and no vested right in spite of payment received had accrued. It was observed by the Division Bench as under:-

"12. A perusal of the policy shows that the policy was not contrary to the judgment of the Hon'ble Supreme Court. It was not a scheme for IN SITU regularization in respect of 24 areas about which application was made before the Hon'ble Supreme Court. The service industries in the nature of essentials like atta chakkis, dry cleaners, etc. which are necessary for the service to the surrounding residential areas has been allowed to remain in their present locations and not considered for alternative plot under the policy. The units which were already located in commercial areas and were neither hazardous nor noxious or not emanating pollution only were allowed to continue in the commercial areas.

13. XXXX

14. XXXX

15. The policy under which respondents have been denied the possession cannot be branded as arbitrary or discriminatory. No allegations of mala fide have been made. The policy is a result of short supply and huge demand of plots. Since the administration is faced with a problem that there were large number of applicants and only limited number of industrial plots, the above policy was framed. We consider there was no arbitrariness or discrimination."

2. Learned counsel for the petitioner submitted that the petitioner had made full payment of the alternative plot and some others who were

operating industrial units at the said locations have been allotted industrial plots under the relocation scheme.

3. Respondent-DSIDC in their additional affidavit filed on 10th February, 2009 has explained that process for release of possession of plots commenced in November, 2001 and at that time there were no specific guidelines with regard to Samaipur Badli, Anand Parbhat and Shahdara industrial areas. It is stated that location-wise checks were not made to ascertain whether a particular unit was within or outside in situ areas and, therefore, errors and mistakes have been made in some cases. In paragraph 6 of the additional affidavit, it is pointed out that except in the case of M/s Vishkarma Jobs, five other industrial units mentioned by the petitioner fall outside boundary of the industrial area of Anand Parbhat. It is stated that in the case of M/s Vishkarma Jobs, possession of the plot has been given inadvertently and by mistake.

4. Learned counsel for the petitioner disputes the factual averments made by DSIDC in paragraph 6 of the additional affidavit. I need not dilate and go deeper into this aspect as the respondents have already taken a policy decision not to allow industrial plots under relocation scheme in case an industry is located in an area slated for in situ regularization at Anand Parbhat, Samaipur Badli or Shahdara areas. The said policy should be followed uniformly and consistently. However, mistakes and errors made by the respondents in making allotment

contrary to the policy, cannot confer any legal right on the petitioner and does not entitle the petitioner to invoke Article 14 of the Constitution of India. A similar contention was also raised before the Division Bench in the case of ***Naresh Kumar*** (supra) and was rejected with the following observations:-

"20. Another plea raised by the respondents is that in one case adjoining unit has been given possession of plot. In the affidavit the appellant has stated that in that case possession was given due to inadvertent mistake. We consider that on this ground respondent/petitioner cannot be given possession. Two wrongs do not make one right as observed by the Hon'ble Supreme Court in II (2006) SLT 176=(2006) 2 SCC 604, *Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit, Indore v. President, Indore Development Authority*:

8. So far as the allotment of non-eligible societies is concerned even if it is accepted, though specifically denied by the Authority, to be true that does not confer any right on the appellant. Two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters, there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong

action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the appellant cannot strengthen its case. It has to establish strength of its case on some other basis and not by claiming negative equality (see Union of India v. International Trading Co.).”

5. The petitioner is accordingly entitled to refund of the amount deposited by him. The amount will be refunded along with interest @ 9% per annum from the date the amount was received with option to the petitioner to permit the respondents to retain earnest money in case he wants to keep his application for allotment of plot alive and wait for further availability of plots/property.

The writ petition is accordingly disposed of. There will be no order to costs.

SANJIV KHANNA, J.

**OCTOBER 21, 2009
VKR**