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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) NO.5035/2013
M/S SHANTI ELECTROPLATING Petitioner
Through: Mr. M.K. Gautam, Adv.

Versus

MCD & OTHERS Respondents
Through: Mr. G.D. Mishra, Adv. for R-1.
Ms. Renuka Arora & Mr. Kunal
Kohli, Advs. for R-3/DSI IDC.
Mr. Anul Aggarwal, Adv. for
GNCTD.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **16.09.2015**

1. The petition seeks, (i) a direction to the respondents No.2 &3 viz. Commissioner of Industries and Delhi State Industrial and Infrastructure Development Corporation Ltd. (DSI IDC) to allot an alternative plot under the Re-location Scheme of the Government of National Capital Territory of Delhi (GNCTD) to the petitioner in reference to its application dated 30th December, 1996 and at the same rates as prevailing at the time of booking of the plot by the petitioner in the year 1996; (ii) a direction to the respondent No.1 Municipal Corporation of Delhi (MCD), since succeeded by South Delhi Municipal Corporation (SDMC), to de-seal the industrial unit of the petitioner at 31, Main Market, Subhash Nagar, New Delhi; and (iii) damages for sealing of its premises since the year 2000 i.e. for 13 years, of Rs.50,00,000/-.

2. The petition was entertained and counter affidavits have been filed by SDMC and DSIIDC and to counter affidavit of the DSIIDC, rejoinder has been filed by the petitioner. The counsels have been heard.
3. The premises of the petitioner at 31, Main Market, Subhash Nagar, New Delhi were sealed for non conforming use thereof by the petitioner and in accordance with the directives issued by the Supreme Court as recorded in ***M.C. Mehta Vs. Union of India*** (2004) 6 SCC 588. The government, at that time had also floated a Re-location Scheme for such industrial units being operated in non-industrial areas. The petitioner, as per the prayer paragraph of the petition, had made an application in 1996 itself for allotment of a plot under the Re-location Scheme. However this petition has been filed only on 1st August, 2013 i.e. after nearly 17 years of the date on which the petitioner claims to have applied for plot under the Re-location Scheme and after 13 years from the date (30th November, 2000) on which the petitioner claims its premises to have been sealed and which are stated to be lying sealed till date.
4. It has been put to the counsel for the petitioner that the premises of the petitioner can be directed to be de-sealed, subject to the compliance by the petitioner of all the formalities required to be done in this regard and further subject to the petitioner furnishing an undertaking to this Court that upon the premises being so de-sealed, the petitioner shall not use the same for any non conforming purpose or in violation of the guidelines / directions of the Supreme Court in ***M.C. Mehta*** supra.
5. The counsel for the petitioner has drawn attention to the licence earlier issued by the MCD to the petitioner for running the electroplating

unit from the subject premises and contends that the said unit is not a industry and would fall within commercial purpose, which is permitted on the street on which the property of the petitioner is situated.

6. This Court in this proceeding cannot enquire as to whether the activity intended to be carried out by the petitioner from his premises is permitted or not. If the petitioner desires to, upon de-sealing of the property, carry on any polluting activity from the said premises, the petitioner will have to apply for permission therefor and only upon obtaining the permission would be entitled to carry on the said activity / activities. Else, the petitioner would be entitled to use the premises only for the residential or such of the commercial activity which may be permitted.

7. The counsel for the respondent No.5 Sub-Divisional Magistrate (SDM), Rajouri Garden, Delhi contends that the electroplating activity is a polluting activity which is prohibited and not permitted.

8. The counsel for the petitioner on behalf of Smt. Sushma Baluja, proprietor of the petitioner under instructions from Mr. Mohit Baluja, Nephew of the said Smt. Sushma Baluja present in Court states that Smt. Sushma Baluja furnishes an undertaking to the Court not to use the premises for any purpose other than residential and / or permitted commercial purpose in the event of the property being de-sealed. The petitioner through counsel has been made aware of the consequences of breach of undertaking given to the Court.

9. As far as the claim of the petitioner for allotment of an alternative plot under the Re-location Scheme is concerned, not only is the same highly belated and liable to be rejected on grounds of laches, acquiescence and

waiver but the counsel for the respondent No.3 DSIIDC also points out that upon the application of the petitioner for allotment of an alternative plot being rejected in the year 2000, the petitioner also obtained refund in the year 2002 of the initial amount deposited therefor. On enquiry, she further states that no further applications are being entertained today inasmuch as 50 eligible applicants who had applied as far back as in the year 1996 are still awaiting allotment owing to paucity of plots available for re-location.

10. This Court in ***DSIDC Vs. Naresh Gupta*** 128 (2006) DLT 777 (DB) has held that non-availability of the re-location plot is not a ground for continuing non conforming use.

11. Accordingly, while dismissing the petition, it is directed that subject to the petitioner filing an affidavit in this Court of the proprietor of the petitioner within three weeks from today, giving an undertaking to the Court in terms of above, the respondent No.1 SDMC shall de-seal the premises of the petitioner.

12. List before the Registrar General on 29th October, 2015, who will verify whether the affidavit filed by the proprietor of the petitioner is in terms of above and if the petitioner has furnished the undertaking as aforesaid, the respondent No.5 SDM shall, within two weeks thereafter, de-seal the premises.

No costs.

Copy of this order be given *dasti* under signature of the Court Master.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 16, 2015

‘gsr’..

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