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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 04.07.2017

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W.P.(C) 8577/2014

GALTEX INDUSTRIES

..... Petitioner

Through: Mr. Tarun Sharma and Ms. Aakansha
Kapoor, Advs.

versus

**GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI & ANR**

..... Respondents

Through: Mr. Siddharth Dutta, Adv for R-1.

Mr. Abhishek Pundir and Ms. Nikita
Salwan, Adv for R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (ORAL)

1. The petitioner (Galtex Industries) is aggrieved by the order dated 18.05.2011 wherein his claim for allotment of an alternate plot (under the Re-location Scheme) stood rejected.

2. The petitioner was manufacturing canvas shoes and was functioning from a non-performing residential area bearing No. 19, Swaran Park, Udyog Nagar, Mundaka. On 24.12.1996 vide application No.13608, the petitioner

applied for an alternate industrial plot under the Re-location Scheme of the respondent. He deposited a sum of Rs.1,20,000/- in the same year.

3. On 06.04.2000, respondent No.2 rejected the application of the petitioner. It was held that the petitioner was ineligible to perform an industrial activity in Delhi as his activity was hazardous and noxious falling under category H(a) Industrial Activity under the Master plan 2001 (MPD 2001). On 27.12.2000 in terms of the directions passed by the Apex Court [in W.P. (C) No.4677/1995], the industrial unit of the petitioner was sealed. The unit of the petitioner was de-sealed on 13.03.2001.

4. In the year 2008, W.P.(C) No.367/2008 was filed by the petitioner. This writ petition was premised on the rejection order dated 06.04.2000 vide which the claim of the petitioner seeking allotment of an industrial plot has been rejected. This petition was disposed of on 23.9.2009. A consent order had been passed. The respondent agreed to re-examine the claim of the petitioner and to decide whether the petitioner falls in the green category or whether he was engaged in category H (a) activities under the MPD-2001. The petitioner was given a personal hearing.

5. On 24.06.2010 (Annexure 'D') the petitioner received a communication wherein his case for allotment of an alternate plot of 250

square meters (as per the Re-location Scheme) was to be considered by placing it before the Land and Flat Allotment Committee for ratification of the decision of this Committee.

6. Vehement submission of the petitioner is that after this communication dated 24.06.2010 which was in his favour, he did not hear anything from the Department. He was accordingly constrained to file an RTI query. On 22.09.2014, the information supplied to him was that his application (13608) stood rejected and he was not considered eligible for allotment of an alternate plot. The said communication reads herein as under:-

2	<i>Status for application No.13608 why this plot not yet allotted. Copy of recommended letter dated 24.06.2010 also enclosed.</i>	<i>The Application of M/s Galtex Industries (Appl No.13608) now stands rejected and is not eligible for allotment of alternate industrial plot under relocation scheme. The case was rejected in the 44th meeting of Land and Flat Allotment Committee held on 18.05.2011. The Committee had decided that the unit in question is located at redevelopment industrial area at Udyog Nagar, Swarn Park, Mundka, Delhi and as the area under question is earmarked for re-development as confirmed industrial area, hence unit functioning therein need not to be</i>
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		<i>relocated.</i>
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7. This information also informed the petition that 24 plots measuring 250 square meters had been allotted after 24.6.2010.

8. The case of the petitioner is premised on these two submissions. His first submission is that the rejection of his application for the reason as aforementioned was incorrect as his unit was in fact never functioning i.e. even after it had been de-sealed in 2001. The petitioner had never taken it upon himself to start any activity after the de-sealing. Thus the rejection of the application of the petitioner on the ground that the unit was functioning and therefore need not be re-located was a wrong decision. His second submission is that 24 other persons had been allotted plots after 24.6.2010 and they were identically placed as the petitioner. He has suffered discrimination.

9. The counter affidavit of respondent No.2 (DSIDC) has refuted these submissions. Contention of respondent No.2 is that the petitioner had admittedly applied for an alternate plot vide his application No. 13608. His application was dismissed on 06.4.2000 as nobody had appeared on his behalf in spite of a communication dated 28.10.1998 to submit documents.

He had sought a review vide a letter dated 15.06.2004. His case was re-considered. It was informed to him that the reasons for rejection of his application was on the ground that his unit belonged to H(a) category i.e. hazardous and noxious. This was clear from the address of the factory added in the Sale Tax documents. Accordingly, this review petition was decided against him vide letter dated 15.07.2004.

10. Meanwhile the earnest money deposited by the petitioner (Rs.1,20,000/-) was also returned back to him vide letter dated 07.10.2008. The fact that the earnest money stands returned to the petitioner is not in dispute.

11. Further stand of respondent No.2 is that pursuant to the directions contained in W.P. (C) No.667/2008, the case of the petitioner was re-examined. The petitioner appeared before the Appeal Committee on 20.10.2010. The Committee was of the view that since the unit of the petitioner was existing in a conforming industrial area, he did not require a re-location. This was decided in the minutes of the Appeal Committee dated 13.11.2009.

12. Thereafter on the separate representation (dated 10.02.2010) filed by the petitioner, his case was referred to the Industrial Land Management and

Advisory Committee (ILMAC). His case was considered vide minutes dated 31.5.2010 and he was recommended allotment of an industrial plot subject to ratification of this decision by the Land and Flat Allotment Committee. The case of the petitioner was placed before the Land and Flat Allotment Committee for consideration. The matter was considered at length. Vide minutes dated 18.05.2011, the Committee held that since that the area at Udyog Nagar, Swaran Park, Mundaka is earmarked for re-development and being in a conforming industrial area, the unit functioning therein need not be relocated; further under the relocation scheme, there was short supply of land as compared to the demand and a lot of policy decisions were taken keeping in view the objectives of the relocation policy as also the larger public interest. One such policy decision was taken in the case of the applicant who being in a conforming area was not to be considered for the purpose of an alternate allotment.

13. Rejoinder was filed reiterating the averments made in the petition and refuting the defence set up by respondent No.2.

14. On behalf of the petitioner, the primary submission of the petitioner is that his case had been considered for the purpose of relocation and the communication dated 24.06.2010 had clearly created a vested right; he had

been informed him that his case had been recommended for allotment of 250 square meters of land. This recommendation could not now be overlooked and rejection of his claim for the alternate plot vide the second communication dated 18.05.2011 requires a relook. His second submission is that the petitioner has been discriminated upon; 24 other plot holders had got alternate plots of 250 square meters each; their case is not different from that of the petitioner.

15. Both these arguments have been countered.

16. On the perusal of the record and on an appreciation of the submissions and counter submissions made by the parties, this Court is of the view that the case of the petitioner must necessarily fail.

17. This is for the following reasons. Admittedly, the petitioner had a unit at 19, Swaran Park, Udyog Nagar, Mundaka from where it was functioning. His case was that he was manufacturing canvas shoes. The case of the respondent is that the petitioner was performing an industrial activity which was hazardous and noxious falling in category H (a) of MPD-2001. There is no document placed on record by the petitioner to substantiate his case that he was not carrying out a hazardous or noxious activity. In fact the sales tax documents filed by the petitioner were to the contrary. Further admitted

position is that although the unit of the petitioner had been sealed (in terms of the directions of the Apex Court in W.P.(C) No.4677/1995) on 27.12.2000 yet the same was de-sealed on 13.03.2001. It has nowhere been averred by the petitioner that he was not functioning after 13.03.2001. Since admittedly the petitioner's unit had been de-sealed on 13.03.2001, the obvious presumption is that this unit again started to function. The petitioner had filed a review application before respondent No.2 on 15.06.2004 seeking review of the order dated 06.4.2000. His case was re-considered. It was again rejected for the reason that the unit of the petitioner belongs to H (a) category i.e. a hazardous and noxious activity. This communication was sent to the petitioner on 15.07.2004. This communication made a reference to the address of the factory which was added on 14.06.1996 in the sales tax documents which had led to this conclusion. Admittedly, the earnest money of Rs.1,20,000/- deposited by the petitioner (seeking allotment of an alternate plot) had also been received back by him in the year 2008. This was without protest and a voluntary acceptance.

18. Further admitted position is that vide order dated 23.03.2009 passed in W.P. (C) No.667/2008, the specific averment made by the petitioner that he is not carrying out a hazardous activity but in fact was carrying out a green

activity/manufacturer of footwear was again to be re-considered by the respondent. The petitioner appeared before the Appeal Committee on 20.10.2010. The Appeal Committee in its earlier meeting dated 13.11.2009 had rejected the case of the petitioner for the reason that since the unit of the petitioner fell in an industrial conforming area, it did not require a relocation.

19. The separate representation of the petitioner dated 10.02.2010 led to the order being passed by the Deputy Commissioner of Land recommending the allotment of a plot which recommendation was to be placed before the Land and Flat Allotment Committee for ratification. This has clearly been stated in this communication dated 24.06.2010. The Land and Flat Allotment Committee in its 44th meeting held on 18.05.2011 rejected the case of the petitioner. As already informed to the petitioner and also on the information obtained by the petitioner under the RTI Act, it had been reiterated to the petitioner that the unit of the petitioner being located in a re-development conforming industrial area (Udyog Nagar, Swaran Park, Mundaka) the unit was not required to be relocated.

20. The whole case of the petitioner is in fact premised on his submission that although his unit had been de-sealed in the year 2001 but it was never functioning and thus the decision of the Committee rejecting his claim for

alternate allotment on the ground that the unit was functioning therein is missing. This submission of the petitioner is only an oral submission. Nowhere in the entire body of the petition, has it been stated by the petitioner that he was not functioning from the said unit after it had been de-sealed in 2001. In fact the review application filed by the petitioner on 15.06.2004 as also his representation dated 10.02.2010 were both premised on his submission that he was not carrying on any hazardous/noxious activity under H (a) category of MPD-2001; his was a green activity. It was never his case that he was not functioning from the unit. His submission in W.P. (C) No.367/2008 was also to the effect that he was carrying out a green activity and not a noxious or a hazardous activity. He was again given an opportunity to represent his case before the Department. The Department rejected his claim holding that since his unit was located in a conforming industrial area, the question of relocation could not be accepted. At no stage did the petitioner point out that it was not a functional unit. This submission made at this stage before this Court being only an oral submission carries no weight. This argument has necessarily to be rejected.

21. The second submission of the petitioner that he has been discriminated as 24 other persons have received alternate plot is also a mis-understanding

of the correct position. In fact the RTI information obtained by the petitioner on this count reads herein as under:-

<i>1</i>	<i>Kindly let us know how many plot of 250 sq. mtrs. Allotted after 24.06.2010 to as on date</i>	<i>The list of all allottees under Relocation Scheme is already available on DSIIDC website (www.dsiidc.org). However as per this office record, 24 plots measuring 250 sq. mtrs. have been allotted after 24.06.2010 as on date.</i>
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22. The petitioner had sought information as to who all had been allotted alternate plots; information disclosed was that 24 plots measuring 250 square meters have been allotted after 24.06.2010. The date of 24.06.2010 is relevant. The case of the petitioner was considered and rejected on 18.05.2011 by the Land and Flat Allotment Committee. This was much after the date of 24.06.2010. The submission of the petitioner that the case of those allottees is identical to the petitioner has been refuted by the Department; the petitioner has also failed to place on record anything to show that his case is identical with those 24 persons. If his case was identical, he could well obtain such an information under the RTI Act and place it before the Court. No such information is on record. It is only a general blanket observation made by the petitioner in his petition laying out

his grievance that he has been discriminated. In the absence of any further detail, this Court is not inclined to hold that there has been any discrimination qua the petitioner. This is also in view of the stand taken by respondent No.2 (reply to ground E) wherein respondent No.2 while specifically denying this allegation has stated that the allegations made by the petitioner are even otherwise vague; no specific averments have been made. The same having been refuted and denied by respondent No.2, no such ground of discrimination has also been made by the petitioner.

23. Even otherwise, the object of the Policy of the Government was to relocate those persons whose units stood closed; since the unit of the petitioner was de-sealed in 2001; the Policy of the Government rightly did not apply to him; there was no question of a relocation when his unit already stood located in a re-development conformity industrial area.

24. This writ petition must necessarily fail. It is dismissed.

INDERMEET KAUR, J

JULY 04, 2017

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