

\$~23

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

+ **W.P.(C) 6630/2012 and CM No. 17492/2012**

MAHAJAN POLISHERS

..... Petitioner

Through: Mr U. S. Chaudhary and Mr Vipin
Chaudhary, Advocates.

versus

GNCT AND ORS

..... Respondents

Through: Mr Santosh Kumar Tripathi, ASC,
GNCTD with Mr Parth Vashishtha
and Mr Shashank Tiwari, Advocates
for GNCTD.

Ms Anusuya Salwan and Ms Nikita
Salwan, Advocates for DSIIDC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

15.02.2018

1. The petitioner has filed the present petition aggrieved by the tentative cost fixed for the plot of land allotted to the petitioner under the reallocation scheme.
2. The petitioner was carrying on business of polishing the Steel Utensils at K-107, Krishna Park Extension, New Delhi, which was a non-conforming area. In terms of the order passed by the Supreme Court in *M.C. Mehta v. Union of India & Ors: (1996) 4 SCC 750*, all polishing industries running in non-conforming residential areas were directed to be reallocated to conforming / industrial areas. For the purposes of reallocation of industrial units, the respondents framed a reallocation scheme, whereby units

functioning in non-conforming / residential areas were eligible for allotment of alternate plots in industrial areas.

3. In terms of the said scheme, the petitioner submitted an application dated 28.03.1996 for allotment of an industrial plot.

4. The petitioner's application was rejected on the ground that his license was valid only up to 1995 and by a communication dated 05.05.2000, the petitioner was called upon to collect the refund of its earnest money submitted alongwith its application.

5. The petitioner represented against the rejection of his application by a letter dated 17.06.2000. Since the petitioner's representation was not considered, he filed a writ petition (bearing W.P.(C) 3523/2000) impugning the respondent's decision to reject his application for allotment of an alternate plot. The respondents justified their action of rejecting the petitioner's application on the ground that he had not submitted the necessary evidence to establish that his business was in existence on the cut of date (19.04.1996). The petitioner countered the aforesaid submission by producing certain documents.

6. After considering the same, this Court allowed the aforesaid writ petition by an order dated 07.04.2008. The order rejecting the petitioner's application for industrial plot/flat under the reallocation scheme was set aside and the respondents were directed to consider the documents produced by the petitioner and pass appropriate orders within a period of six weeks from the said date. Since no decision was communicated to the petitioner pursuant to the order dated 07.04.2008, the petitioner filed a Contempt

Petition (Civil Contempt Case No. 455 of 2008) on 28.07.2008. In those proceedings, the Court was informed that the petitioner's application had been considered and rejected by the Flat Allotment Committee. The said Contempt Petition was disposed of by directing the respondents to communicate the copy of the rejection order to the petitioner and further permitting the petitioner to institute appropriate proceedings to challenge the same.

7. The rejection order was communicated to the petitioner by a letter dated 30.07.2009. The petitioner filed another writ petition (W.P.(C) 13758/2009) impugning the said order of the allotment committee rejecting his application for an alternate plot/flat.

8. The above writ petition was allowed with costs by an order dated 17.03.2011 and the respondents were directed to allot a plot to the petitioner in accordance with the reallocation scheme within a period of eight weeks from the date of the said order.

9. Thereafter, the respondents issued a provisional eligibility allotment letter indicating the tentative cost of the industrial plot at ₹15,566/- per square meter. Thereafter, the respondents issued the allotment letter dated 06.09.2011 allotting an industrial plot measuring 150 sq meter in Industrial Estate at Bawana II at a provisional cost computed at ₹15,566/- per square meter.

10. Aggrieved by the same, the petitioner has filed the present petition. The learned counsel appearing for the petitioner states that at the relevant time, industrial plots were available at Narela and had the petitioner's

application been accepted at the material time, the petitioner would have been allotted an industrial plot at Narela at a cost of ₹3,000/- per square meter (or has subsequently enhanced to ₹4200 per square meter). He states that since the petitioner cannot be faulted for non consideration of his application, he should be allotted an industrial plot at Narela at the rate prevailing at the material time. He earnestly contended that the petitioner was not in a position to pay the enhanced rates.

11. The petitioner's prayer that he be charged a rate as prevailing in the year 2000 cannot be accepted. The said issue has been considered by this Court in various decisions including in ***T.K.Sabharwal v. NCT of Delhi & Ors: W.P.(C) 7670/2016, decided on 05.01.2018***, wherein this Court has held that the rates charged by DSIIDC at the material time when the petitioner is successful in securing an allotment by way of draw of lots is applicable. And, the petitioner is not entitled to claim that the charges as applicable at the material time when his name ought to have been included in the draw of lots be charged.

12. The learned counsel appearing for the petitioner states that if the petitioner cannot be allotted a plot at the rate prevailing in the year 2000, he be refunded the amount deposited alongwith his application with interest.

13. Ms Salwan, the learned counsel appearing for the respondents states that the petitioner can be granted interest at the rate of 7% per annum till the date of provisional allotment but he ought not be granted any interest thereafter. The said contention is unpersuasive. Indisputably, the petitioner cannot be faulted for the delay on the part of DSIIDC in considering his

application.

14. As noticed above, the rejection of petitioner's application was found to be unjustified and the petitioner had to approach this Court repeatedly for pursuing his claim for allotment of an industrial plot. In the meantime, the cost of the plot is increased manifold. Although, a direction to allot an industrial plot at the rate as existing in the year 2000 cannot be issued, but it would be highly inequitable if the petitioner is also denied reasonable interest on refund of his earnest money as he can no longer afford price being charged today.

15. In view of the above, the petition is disposed of by directing the respondents to refund the earnest money paid by the petitioner along with interest at the rate of 7% per annum from the date of deposit till the date of payment. The said amount would be paid to the petitioner within a period of four weeks from today.

16. The petition and the pending application are disposed of with the aforesaid directions.

VIBHU BAKHRU, J

FEBRUARY 15, 2018
RK