

(2022) 11 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Petition No. 2350 Of 2011, Civil Miscellaneous Application
No. 5011 Of 2011

Aghum Bahl

APPELLANT

Vs

DSI IDC And Anr

RESPONDENT

Date of Decision : 01-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 136, 226
Indian Contract Act, 1872 — Section 20, 60

Citation : (2022) 11 DEL CK 0002

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Rajiv Aneja, Anusuya Salwan, Bankim Garg, Shakaib Khan, Anuj Aggarwal, Ayushi Bansal, Sanyam Suri, Aoshya Singh

Final Decision : Allowed

Judgement

C. Hari Shankar, J

1. The petitioner is the sole proprietor of Aghum Enterprises, which was running an industrial unit in the Samaipur Badli industrial area, involved in manufacture of moulded sports and rubber belts since March 1979. The unit remained functional till June 1998, when the petitioner shifted to the Libaspur industrial area.

2. The issue of relocation of industrial units situated in the city of Delhi, to suburban areas in the National Capital Region (NCR) was examined, in detail, by the Supreme Court, resulting in an order passed on 8th July 1996 in M.C. Mehta v. Union of India 1996 (4) SCC 750, which directed that industrial units within Delhi be relocated to other areas in the NCR.

3. Following the said decision, the Government of National Capital Territory of Delhi (GNCTD) and the Delhi State Industrial and Infrastructure Development Corporation (DSIIDC) identified industries which were required to be relocated.

Guidelines for such relocation were issued by the GNCTD (hereinafter "the Relocation Scheme"), identifying seventeen categories of industries which were required to be so relocated, thus:

Sl.No.

Category of Industry

Code No.

1.

Food Processing & Allied Products

01

2.

Drugs and Pharmaceuticals

02

3.

Electronics and Telecommunications

03

4.

Textile and Textile based wearing apparels

04

5.

Electrical goods including appliances

05

6.

Auto Parts, Light Engineering and Service industries

06

7.

Printing, Paper Products and Allied Packaging

07

8.

Plastic, Polymer and Allied Packaging

08

9.

Rubber based products

09

10.

Leather goods

10

11.

Coir and Jute Products

11

12.

Furniture, Fixtures, and other wood based
products, cane and bamboo products

12

13.

Petroleum based products & Plastics Processing

13

14.

Ceramics and Allied Products

14

15.

Machinery and Machine Tools

15

16.

Chemical Products

16

17.

Others, not classified elsewhere including service enterprises

17

4. Applications were invited from units engaged in the said industries, situated in non-conforming areas, for relocation. The eligibility for relocation was thus

stipulated in the said notice:

"1. Eligibility:

(i) Non-conforming industrial units working in residential and/or other non-conforming 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 the Flatted Factory Complexes/Industrial areas proposed to be developed."

5. Clause 3 of General Conditions for application further stipulated as under:

"3. The applicants are also required to submit an Undertaking alongwith the application in the prescribed form on non-judicial stamp paper of Rs.2/- duly attested by a Notary public/1st Class Magistrate to the effect that on allotment of the plot/flat he shall shift from the present place to the industrial estate where the plot/flat is allotted failing which it will be presumed that the said unit IS not interested in relocating its manufacturing activities and as such shall stop operating in residential/non-conforming areas w.e.f. 1-1-1997."

6. There is no dispute about the fact that the industry in which the petitioner's unit was engaged was one of the industries enlisted in the afore-noted guidelines issued by the GNCTD. Equally, there is no dispute that Samaipur Badli, in which area the petitioner's unit was located, was a non-conforming area. The petitioner's unit was, therefore, indisputably entitled, as on the date when applications were invited, for relocation.

7. Accordingly, on 23rd December 1996, the petitioner applied for relocation of its unit, under the afore-noted Relocation Scheme. As required by the Relocation Scheme, the petitioner also discontinued industrial activities in its unit w.e.f. 1st January 1997.

8. Having waited for two years for being allotted an alternative plot, the petitioner, in 1998, shut down and sold its unit at Samaipur Badli and shifted to the Libaspur industrial area. However, the unit in which the petitioner was functioning at Libaspur was taken by the petitioner on rent. There is no dispute about the fact that, at the time when the petitioner shifted to Libaspur, the Libaspur industrial area was also a non-conforming industrial area, within the meaning of the Relocation Scheme.

9. On 14th July 1999, the Commissioner (Industries), GNCTD issued the following public notice:

"Dated 14/7/99

RELOCATION OF INDUSTRIES UNDER THE

'RELOCATION SCHEME'

PUBLIC NOTICE

In response to the advertisement inviting application for allotment of industrial plots/flats under the 'Relocation Scheme' Govt. of NCT of Delhi received 51,851 applications upto the last date for receipt of applications i.e. 31.12.1996.

All the above applications have been scrutinized to determine the

eligibility of Individual applicants on the basis of guidelines approved by Govt. of Delhi. The basic criteria in determining eligibility was documentary proof of establishment of the unit before 19.4.1996 which was the date of the Hon'ble Supreme Court's order.

In addition, units covered under the banned categories of industries

as well as industries under the Household sector are not eligible for

relocation. Scrutiny has been completed on the basis of documentary proof alone, and in cases where documentary proof was not available on file, units were called for personal hearing by the Scrutiny Officers. The Govt. has decided that the following categories of industrial units will not be considered for allotment under the Relocation Scheme for the time being.

1. Units situated in commercial areas.
2. Units located in Anand Parbat, Samaipur Badli and Sahadara as these areas are covered by the redevelopment scheme under the Delhi Master Plan-2001.
3. Service sector industries such as Atta Chakki, Dry Cleaners, Scooter repairs centre etc.
4. Eligible Units who have applied for allotment of land measuring 400 sq.mtrs. and above will be offered only 250 sq.mtrs. plots.

The list of eligible applicants is being reconciled and computerised. The list will be displayed in the offices of Commissioner of Industries, Govt. of NCT of Delhi, CPO Building, Kashmere Gate, Delhi-6 and DSIDC, N-36, Bombay Life Building, Connaught Circus, New Delhi by the

end of July, 1999. All queries in this regard may be addressed

to Sh. H. Malik, Jt. Director of Industries, Tel.No.2966876 or

Sh. J.S. Chaudhary, Dy. Director of Industries, Tel.No.2961817 or Sh. Ravi Dutt Verma, Inspector, one window service Tel. No.2961587.

(J.B. SINGH)

SECRETARY & COMMISSIONER (INDUSTRIES)

GOVT. OF N.C.T. OF DELHI"

(Emphasis Supplied)

10. This was followed by the following communication dated 20th July 1999 from

the Department of Industries to the MD, DSIIDC:

"Department of Industries

Govt. of National Capital Territory of Delhi

C.P.O. Building, Kashmera Gate, Delhi-6

Dated 20th July, 1999

In continuation to my D.O. Letter NO. AD 1 (R)/31/CI/98/2185 dated 8.7.99 regarding implementation of the decision in the Cabinet Meeting held on 07.06.1999 and 3rd meeting of the High Powered Project Implementation Committee in respect of 'Relocation Scheme'. The following important decisions are also brought to your kind notice for necessary action please.

(i) The units located in commercial areas should be allowed to continue in the existing locations. These cases should not be considered for allotment of plots/flats under the 'Relocation Scheme'.

(ii) Service industries such as Atta Chakkis, Dry Cleaner's etc. are not to be considered for allotment under 'Relocation Scheme'.

(iii) Units located in Anand parbat, Samaipur Badli and Shahdara areas being considered for the time being as these areas are covered under redevelopment scheme under the Delhi Master Plan-2001.

(iv) The units who have applied for industrial plots measuring more than 400 sq.mtrs. will be offered a maximum of only 250 sq.mtrs.

(v) The size of the plots recommended should not exceed double the area presently occupied by the unit. However, no such restriction is imposed in case of flats.

(vi) Where Municipal Corporation License is being relied as proof of establishment, the MCL should be valid at least upto 31.03.1995.

(vii) Units which are functioning from more than one premises and submitted separate applications in respect of each premises, the requirement of plot area of all the locations should be clubbed together and if it exceeds 400 sq.mtrs. then the provisions proposed for larger units should be applied.

(viii) Change in Constitution of the applicant unit involving blood relation should be accepted at this stage so as to avoid change of hands.

(ix) Where the MCL is in the name of owner of the unit, affidavit may be obtained that the said MCL has not been used by any other unit except the applicant unit for establishing the date of establishment of unit. The Industries Department, Government of N.C.T. of Delhi, had initially sent files of 8,831 applicants to D.S.I.D.C. without scrutiny. These applicants were considered eligible on the basis of Cabinet decision dated 23.08.1997 wherein it was decided that no

scrutiny needs to be done in respect of applicants who had applied for grant of permission to High Power Committee for operating in residential areas and were also found in existence during the survey conducted by D.P.C.C. However, these cases and other cases recommended to DSIDC from time to time in the past need to be checked for conformity with the above decisions. You are, therefore, requested to kindly review the eligibility of 8,831 applicants taking into consideration the decisions now taken by Cabinet/High Powered Project Implementation Committee. Copies of the Cabinet decision & minutes of the High Powered Project Implementation Committee are enclosed herewith for ready reference.

It may also be mentioned that Supreme Court vide its orders issued from time to time directed 1328 Hazardous/Naxious and heavy & large industries falling under H(a) & H(b) categories of MPD-2001 to close down their activities in Delhi and shift to other states of N.C.R. There is a possibility that some of these industries might have applied for allotment of plots under the 'Relocation Scheme List of 1328 industrial units is enclosed herewith. While issuing Provisional Eligibility letters to the units, care may be taken to exclude the above units. If any of the above 1328 units is found to have applied under 'Relocation Scheme' its application may be rejected straight way.

You are also requested to take immediate steps for acquisition of the additional 794 acres of area identified in Structural Plan for development of industrial areas.

With

Yours

Sd/-

(J.P. SINGH)"

(Emphasis Supplied)

11. The above decision was advertised by the Commissioner (Industries) by way of the following Public Notice, which was brought out in national daily on 4th September 1999:

"OFFICE OF THE COMMISSIONER OF INDUSTRIES GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI

RELOCATION OF INDUSTRIES UNDER THE RELOCATION SCHEME

PUBLIC NOTICE

Industrial units who have applied for allotment of industrial plots/flats under the 'Relocation Scheme' were informed vide advertisement appearing in daily newspaper on 15.7.1999 that the list of applications found eligible for allotment of industrial plots/flats would be available in the office of the Commissioner of Industries, Government of NCT of Delhi, G.P.O. Building, Kashmere Gate, Delhi by the end of July, 1999. It was also informed that following categories of

industrial units would not be considered for allotment under the Relocation Scheme.

1. Units situated in Commercial Areas.
2. Units located in Anand Parbat, Samaipur Badli and Shahdara Areas as these areas are covered by Redevelopment Scheme under the Delhi Master Plan-2001.
3. Service Sector Industries such as Atta Chakkies, Drycleaners, Scooter Repair Centres etc.
4. Eligible units who have applied for allotment of land measuring 400 sq. mtrs. and above will be offered only 250 sq. mtrs. plots.

Status in respect of each application has been reflected in the Office Computers available at Telephone Nos. 2966875, 2964847 and 2961587. Cases of the applicants who have been found ineligible for allotment of plot/flat are being reexamined on the basis of representations received. Last date

for submission of such representations including copies of all

relevant documents has been fixed as 30.09.1999. No request

for reconsideration of the cases will be entertained after 30.09.1999.

It has come to the notice of this Office that forged documents are being submitted by some of the applicants to secure eligibility under the 'Relocation Scheme'. Applicants are being cautioned not to indulge in such practices. Appropriate action will be taken by the Department against the applicants submitting forged documents.

J.P. Singh

DIR 953/99 Secretary & Commissioner (Industries)"

(Emphasis Supplied)

12. Samaipur Badli, the area in which the petitioner's erstwhile unit was located was, therefore, declared an ineligible area under the Relocation Scheme by the afore-noted Public Notice. It may be noted, here, that units which were slated for redevelopment were commonly known as "in situ" industrial units, inasmuch as they were being redeveloped in the very area in which they were located.

13. Following the above decision, on 9th September 1999, the Commissioner of Industries, GNCTD addressed the following letter to the Chief Manager (Relocation), DSIIDC:

"OFFICE OF THE COMMISSIONER OF INDUSTRIES GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI

C.P.O. BUILDING: KASHMERE GATE : DELHI

No. ADI/(R)/97/CI/2191 Dated 9/9/99

To,

Shri Bhagwan Dass

Chief Manager (Relocation)

Delhi State Indl. Devp. Corp.,

N -Block, Bombay Life Building,

Connaught Circus,

New Delhi-1.

Sub.: Relocation of industries from residential and non-conforming areas to conforming use zones.

Sir,

Please refer to your letter No. DSIDC/RL/Policy/1/Part-I/98/ 1410 dated 12.8.99 vide which certain clarifications have been sought in respect of certain Issues. The necessary clarifications are given below:

I. A review of all the cases in which provisional eligibility letters have been issued is required to be undertaken by the DSIDC immediately so as to identify the following categories which are not to be considered for allotment under the Relocation Scheme:-

II. Units situated in commercial areas.

III. Units located in Anand parbat, Samaipur Baadli and Shahdara as these areas are covered by the redevelopment scheme under the Delhi Master Plan-2001.

IV. Service Sector Industries such as Atta Chakkies, Dry-Cleaners, Scooter Repair Centres etc.

V. Eligible units who have applied for allotment of land measuring 400 sq.mtrs. and above will be offered only 290 sq. mtrs. plots.

The department has already requested DDA to provide demarcations for the areas of Anand Parbat, Shahdara and Samai Pur Badli falling under redevelopment scheme. Requisite details shall be made available immediately after these are received from D.D.A.

The Department of Industries has scrutinized cases where the units have applied for allotment of industrial plots measuring more than 400 sq. mtrs. Necessary recommendations in these cases shall be sent to you shortly after necessary approval is received from Hon'ble Lt. Governor, Delhi. However, cases already approved and sent to the D.S.I.D.C. in the first lot of 8,831 cases needs to be reviewed by the D.S.I.D.C.

Please find enclosed a copy of the D.O. letter sent by Commissioner of Industries to Managing Director- D.S.I.D.C. for your ready reference.

Yours faithfully,

(H.L. MALIK)

Encl.: As above. JT. DIRECTOR OF INDUSTRIES(R)”

14. On 22nd August 2000, the petitioner’s application for allotment of an alternative plot under the Relocation Scheme was rejected by the respondents. The petitioner appealed, against the said decision, to the Appellate Committee constituted under the Relocation Scheme. The Appellate Committee, noting that the units which had shifted their premises after the cut-off date were allowed for allotment of alternative units, recommended the petitioner’s case.

15. Following this, on 22nd October 2001, the DSIIDC issued a letter to the petitioner, informing that, based on preliminary scrutiny, the petitioner’s unit had been found to be provisionally eligible for allotment of alternative industrial plot admeasuring 200 sq. mtrs. On 7th May 2004, the DSIIDC issued an allotment letter to the petitioner, informing the petitioner that it had been allotted an alternative industrial Plot No. 74, admeasuring 200 sq. mts. in Sector 4, Pocket G, Bawana, at a tentative cost of ? 4,200/- per sq. mtr. Complete payment of ? 6,85,000/-, as required by the said allotment letter dated 7th May 2004, was made by the petitioner on 2nd August 2004, within the time stipulated therein.

16. On 31st May 2005, Libaspur was declared an area slated for in situ redevelopment. Learned Counsel for the petitioner was at pains to point out to the Court that the said decision would not affect the case of the petitioner, as (i) the eligibility of the petitioner for allotment of an alternative industrial plot had to be reckoned as in 1996, when Samaipur Badli was yet a non-conforming area and (ii) the petitioner did not own any industrial plot in Libaspur.

17. Nonetheless, in December 2005, the Officer on Special Duty (RL) wrote to the Joint Commissioner of Industries, GNCTD, with reference to the application of the petitioner for allotment of an alternative industrial plot under the Relocation Scheme. Clarification regarding release, to the petitioner, of the alternative industrial plot located at Bawana was sought, on the sole ground that Samaipur Badli had been declared an area intended for in situ redevelopment under the MPD 2001. The petitioner has placed, on record, file notings of the Assistant Executive Engineer (CD)-V and of the Executive Engineer (CD)-V in the office of the DSIIDC, opining that the petitioner’s unit was entitled to be allotted an alternative industrial plot. Despite these notings, the matter was further referred, by the respondents, to the Industrial Land Management Advisory Committee (ILMAC).

18. The ILMAC, vide decision dated 1st March 2011, opined that the petitioner was not eligible for allotment of an alternative plot under the Relocation Scheme as (i) Libaspur in which the petitioner was then situated had also been declared an in situ area under the redevelopment plan and (ii) changes subsequent to 19th April 1996, which was the cut-off date, could not render an applicant

eligible.

19. The ILMAC, therefore, placed the matter before the competent authority for cancellation of the allotment, to the petitioner, of the Bawana plot.

20. Aggrieved by the said decision, the petitioner has moved this Court under Article 226 of the Constitution of India, seeking (i) an appropriate writ quashing and setting aside the decision dated 1st March 2011 of the ILMAC and (ii) a writ of mandamus, directing the respondents to handover, to the petitioner, Plot No. 74, Sector 4, Pocket G, Bawana Industrial Complex, under the Relocation Scheme.

Rival Contentions

21. I have heard Mr Rajiv Aneja, learned Counsel for the petitioner and Ms Anusuya Salwan, learned Counsel for the respondent, at length.

22. Mr Aneja emphasizes the fact that, during the period the petitioner's unit continued at Samaipur Badli, it had never been declared an in situ industrial area and that by the time it was so declared, the petitioner had shifted to Libaspur which, too, at the time was a non-conforming industrial area and was declared in situ subsequently in 2005. In any event, the petitioner's location at Libaspur was, according to the petitioner, irrelevant, as the petitioner was not owning any industrial plot in Libaspur, but was occupying the plot on tenancy basis. The right of the petitioner to allotment of an alternative industrial plot asserts Mr Aneja, relates back to 1996, and that right could not be defeated or eviscerated by subsequent developments, none of which applied to the petitioner. Mr Aneja emphasizes the fact that, while declaring the petitioner to be eligible for allotment of an alternative industrial plot on 22nd October 2001, and while allotting an alternative industrial plot to the petitioner on 7th May 2004, these considerations had been borne in mind.

23. Mr. Aneja has further submitted that the petitioner was effectively being put to prejudice for having not continued in the Samaipur Badli area. He submits that, had the petitioner continued in Samaipur Badli, he would have been entitled to do so, as the area was slated for in situ redevelopment. Mr. Aneja submits that, having applied for relocation in 1996 and having, in accordance with the Relocation Scheme, discontinued industrial operation at Samaipur Badli w.e.f. 1st January 1997, the petitioner could not be denied the benefit of relocation by retrospectively applying the decision to declare Samaipur Badli as an in situ area for redevelopment, which was taken only in 1999, by which time the petitioner had already shifted to Libaspur. The declaration of Libaspur as in situ, he further submits, could have no effect on the case of his client as, prior thereto, the petitioner had already been handed over the possession letter, granting him possession of the Bawana plot. Having allowed the petitioner's appeal against the decision to cancel the allotment of an alternative industrial plot made to him and on the basis of the said decision of the Appellate Committee, the petitioner having disgorged the entire amount payable for the allotment of an alternative

industrial plot, Mr. Aneja submits that the respondents could not be permitted to resile on its obligation to allot, to the petitioner, the plot earmarked for it. Mr. Aneja placed reliance in support of his submission, on the judgment of this Court in GNCTD v. Bhushan Kumar MANU/DE/0479/2008, as well as the order dated 19th August 2015 passed by the Supreme Court in SLP(C) 015620-015621/2008 DSIIDC v. Yashpal Madan and Ors., in the appeal preferred by the DSIIDC thereagainst. Before the Supreme Court, in the said appellate proceedings, Mr. Aneja points out that the DSIIDC had agreed to abide by the guidelines laid down by the Supreme Court in Kavita Ahuja v. DSIIDC MANU/SC/1081/2010. He also relies on the judgments of the Supreme Court in Tej Prakash Pathak v. Rajasthan High Court 2013 (4) SCC 540 and of the High Court of Calcutta in Chhanda Koley v. Bharat Petroleum Corporation Ltd MANU/WB/0833/2018.

24. Arguing, per contra, Ms. Anusuya Salwan, learned Counsel for the DSIIDC submitted, initially, that the issues stand covered against the petitioner by the judgment of a Division Bench of this Court in DSIIDC v. Naresh Gupta (2006) 88 DRJ 604(DB) : (2006).

25. Ms. Salwan submits that, in view of the change in policy as manifested by the Public Notice dated 14th July 1999 (issued by the Commissioner (Industries), Govt. of NCT of Delhi), communication dated 20th July 1999 (from the Department of Industries to DSIIDC) and the public notice dated 4th September 1999 brought out in the National dailies by the Commissioner (Industries), the petitioner lost any right to allotment of an alternative plot, as the right was claimed on the basis of the situs of the petitioner's industrial unit at Samaipur Badli, which had been removed from the list of areas eligible for allotment of an alternative plot. Ms. Salwan submits that the right to allotment of an alternative plot would have to be assessed on the date when the allotment became ripe for grant, and not on the date when the application for allotment of an alternative plot had been made. As, on the date when the alternative plot at Bawana had become available for allotment to the petitioner, Samaipur Badli had already been declared an area ineligible for allotment of alternative plots, no alternative plot, she submits, could be allotted to the petitioner. Ms. Salwan, in that regard, differs from the impugned decision dated 1st March 2011 of the ILMAC, to the extent the ILMAC relied on status of the Libaspur industrial area as one of the grounds to justify reversal of the decision to allot an industrial plot to the petitioner. Libaspur, or its status, according to Ms. Salwan, was really irrelevant in the entire scheme of things. The petitioner's case, she submits, would have to be examined on the basis of the fact that he had, at one time, been located in Samaipur Badli. As Samaipur Badli was no longer an area eligible under the relocation scheme, Ms. Salwan submits that the revisiting, by the respondent, of the decision to allot an alternative plot to the petitioner was justified in law and on facts.

26. Ms. Salwan has placed reliance on the judgment of a Division Bench of this Court in Naresh .

Analysis

DSI IDC v. Naresh Gupta (2006) 88 DRJ 604(DB) : (2006)

27. The respondents before the Division Bench in Naresh Gupta (2006) 88 DRJ 604(DB) : (2006) (hereinafter "Naresh Gupta etc."), who were the original petitioners, claimed to be aggrieved – as is the petitioner in the present proceedings – by the fact that, after alternative plots had been allotted to them under the relocation scheme, the allotment was cancelled and no possession of the plots was given to them. Naresh Gupta etc. had also applied for relocation pursuant to the notice issued in 1996 as a sequel to the orders passed by the Supreme Court in M.C. Mehta 1996 (4) SCC 750. Later, following the policy decision taken in 1999 by the Department of Industries, allotment of the alternative plots to Naresh Gupta etc. was cancelled. The cancellation was assailed by Naresh Gupta etc. as being violative of the judgment of the Supreme Court in M.C. Mehta 1996 (4) SCC 750.

28. The writ petition having been allowed by a learned Single Judge, DSI IDC appealed to the Division Bench. The Division Bench, after examining the orders passed by the Supreme Court, held that the policy decision taken in 1999, whereby the demographics of the relocation policy were changed, was not violative, in any way, of the orders passed in M.C. Mehta 1996 (4) SCC 750. In para 9 of the report, the Division Bench held that the judgment of the Supreme Court in M.C. Mehta 1996 (4) SCC 750, categorically laid down "that it was not a vested right of the persons who have put industry in non-conforming areas to continue there, nor it is the direction to give an alternate plot and then close industry in the non-conforming areas". The Division Bench understood the judgment of the Supreme Court as ordering "closing down of the industry irrespective of the fact that whether industry is allotted an alternative plot or not". In other words, held the Division Bench, "allotment of alternate plot is not a pre-condition for closing down the industry".

29. Taking stock of the difficulties faced in allotment of alternate plots, given the large number of applications received by the governmental authorities, the Division Bench did not find any arbitrariness in the 1999 revision of the relocation scheme. Para 15 of the report in Naresh Gupta (2006) 88 DRJ 604(DB) : (2006), in this context, observes thus:

"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."

30. The alternative plot had been allotted to Naresh Gupta etc. even though their units were located in an area slated for re-development. The allocation was, therefore, it was noted, in violation of the 1999 revised relocation scheme. In

that view of the matter, the Division Bench held that there was no arbitrariness in the decision to cancel the allotment. The judgment of the learned Single Judge was, therefore, reversed, the writ petition was dismissed and the appeal was allowed by the Division Bench.

GNCTD v. Bhushan Kumar MANU/DE/0479/2008

31. This case, too, involved a dispute identical to that which arises before me. Bhushan Kumar ("Bhushan", hereinafter), consequent on the notice issued by GNCTD in 1996, applied for allotment of an alternative plot on 26th December 1996 and deposited the requisite earnest money. DSIIDC informed him, on 3rd April 1998, that he had been found provisionally eligible for allotment of an industrial plot measuring 250 sq. mtrs under the relocation scheme. The letter called upon Bhushan to pay 30% of the cost of the plot. He did so, within the time provided. Consequent thereupon, vide letter dated 10th October 2000, DSIIDC declared Bhushan the allottee of industrial plot no. 281, Sector-1, Pocket-N, Bawana Industrial Area, and required him to deposit 50% of the total revised estimated cost of the plot. Bhushan made the said deposit. Nonetheless, DSIIDC did not hand over possession, to Bhushan, of the said plot. Bhushan, thereupon, approached this Court under Article 226 of the Constitution of India.

32. In its defence, DSIIDC contended that, though Bhushan's industrial unit was only 100 sq. yards in area, he had applied for an alternative plot of 400 sq. mtrs, to which he was not entitled under the relocation scheme. The entitlement of Bhushan was, according to DSIIDC, only to a plot of 150 sq. mtrs, pursuant to the revised Cabinet decision/policy of the GNCTD. DSIIDC, therefore, contended that Bhushan could not be allotted an alternative plot of 400 sq. mtrs area. DSIIDC relied on a number of authorities including the earlier decision of the Division Bench in Naresh Gupta (2006) 88 DRJ 604(DB) : (2006).

33. Bhushan, per contra, contended that, with the acceptance, by him, of the offer for allotment of alternative plot extended by the allotment letter dated 10th October 2000 and the payment, by him, of the amounts demanded therein, a concluded contract had come into existence, between DSIIDC and himself. That contract, it was sought to be submitted, could not be novated except by consensus ad idem.

34. Bhushan's arguments found favour with the Division Bench of this Court. Initially, in para 19 of the report, of its judgment, the Division Bench observed that though no right to allotment accrued in favour of Bhushan consequent to the initial provisional allotment letter dated 3rd April 1998, the subsequent final allotment letter dated 10th October 2000 brought, to an end, the provisional status of the allotment, which stood finalized thereby. At the time of issuance of the final allotment letter, the DSIIDC, it was noted, was well aware of the revised Cabinet policy. The DSIIDC could not, therefore, seek to rely on the said policy to justify cancellation of the allotment letter. Holding that, in the circumstances, Bhushan was entitled to be allotted an alternative plot of 250 sq. mtrs, the

Division Bench held cancellation of the allotment to be unjustified. On the aspect of novation, the Division Bench, in para 31 of the report, held thus:

"31.If the appellant- Corporation was negligent or careless in issuing the above letters to the respondent-allottees, they are to be blamed. The respondent-allottees acted on the basis of the said letters and made payments for the plot size mentioned in the letters. With exchange of these letters and payment of consideration, a concluded and a binding contract came into existence between the appellant and the respondent - allottees. The said binding contract cannot be washed away, modified, novated or cancelled contrary to law. Recently, Supreme Court in Civil Appeal No. 6666/2000 titled Delhi Development Authority, N.D. and Anr. v. Joint Action Committee, Allottee of SFS Flats and Ors. reported in MANU/SC/0202/2008, AIR 2008 SC 1343 has observed that relationship between the parties arises out of the contract and in such cases terms and conditions of the contract have to be complied with by both the parties. Terms and conditions can be modified with mutual consent and not unilaterally unless there exists a provision in the law or in the contract itself. Novation of the contract under Section 60 of the Contract Act must precede with the parties being ad idem insofar as the terms and conditions are concerned. It was accordingly observed that the DDA as a contracting party could not have altered or modified the terms of contract without informing the parties to the contract and bringing the modified or altered conditions to the notice of the other contracting parties. A policy by itself is not law or a Statute which has an effect of thrusting new terms and conditions of the contract upon a contracting party. A policy decision taken by the Council of Ministers not to allot a plot double the size of an existing plot does not affect or modify or alter terms and conditions of a binding contract. It may be noticed here that the policy decision taken by the Council of Ministers on 23rd August, 1997 was not circulated to the allottees either by wide publicity, public notice or individual notice. It remained in the files of the appellant-DSIDC. The respondent-allottees were not aware of any such policy or guidelines made by the Council of Ministers. It is not the case of the appellant that both DSIDC and the respondent- allottees shared a mutual mistake of a fact of a fundamental character, which will have the effect of the contract being non est or being hit by Section 20 of the Indian Contract Act. There was no mistake or misunderstanding, which prevented an effective agreement or binding contract coming into existence. The present case can at the best be one of unilateral mistake by the appellant-DSIDC, which was not known to the respondent-allottees. Section 22 of the Indian Contract Act states that a contract is not voidable merely because it was caused by or because one of the parties was under a mistake as to a matter of fact. The respondent-allottees are also not guilty of fraud, misrepresentation or unfair dealing so as to deny them relief in equity. Contracts are rarely rescinded on the ground of unilateral mistake unless the other side is aware of the said mistake and had actual knowledge of the said mistake or is guilty of fraud, misrepresentation or unfair belief. Moreover, the respondent-allottees have parted with money and had deposited the entire sale

consideration with the appellant-DSIDC. The same was accepted and retained by the appellant-DSIDC. In some cases, the respondent-allottees have even arranged funds from third parties on loan and interest.”

(Emphasis supplied)

35. Accordingly, the Division Bench held Bhushan to be entitled to an alternative plot admeasuring 250 sq. mtrs.

36. The decision in Bhushan was carried, in appeal by DSIIDC to the Supreme Court and was disposed of, with a batch of similar SLPs, vide order dated 19th August 2015.

Kavita Ahuja v. DSIIDC MANU/SC/1081/2010

37. Before, however, alluding to the said order, it is necessary to refer to the decision of the Supreme Court in Kavita Ahuja v. DSIIDC MANU/SC/1081/2010, rendered in the interregnum.

38. Among the Civil Appeals/SLPs which came to be decided by the Supreme Court in Kavita Ahuja MANU/SC/1081/2010 were included appeals preferred by the DSIIDC against judgments by the Division Bench of this Court, similar to the decision of this Court in Bhushan Kumar MANU/DE/0479/2008. Paras 20 to 27 of the report in Kavita Ahuja MANU/SC/1081/2010 deserve to be reproduced in extenso, thus:

“20. However, while making allotments, due to inadvertence, some allottees (including the Respondents in these cases) were allotted plots larger than their entitlement under the policy referred to above. The allottees were issued the allotment letters and most of them made full payment of the price. Long after the allotment and receipt of full price, DSIIDC realized that in the case of some of the allottees, the allotment was of plots of areas in excess of their entitlement. According to DSIIDC, 521 out of 18355 allottees were given plots of a size larger than their entitlement. DSIIDC therefore cancelled such allotments and offered down-sized alternative plots. 387 allottees accepted the down sized plots in lieu of the originally allotted larger plots. Out of the remaining 134 allottees, 28 allottees subsequently took possession of down sized plots. The others including the Respondents herein (in all about 106 allottees) did not accept the offer of down sized plots.

21. The private Respondents in these appeals approached the High Court challenging the cancellation of their plots on several grounds. They submitted that they are oustees who have been out of business for several years, that most of them have taken loans from either Delhi Financial Corporation or other financial institutions by mortgaging the plots, so as to pay the price of the plots to DSIIDC; and that if their allotments are cancelled, they will be put to irreparable hardship. The said writ petitions were allowed by a learned Single Judge of Delhi High Court by judgment and order dated 8.12.2005. The learned Single Judge held that the cancellations were illegal and possession of the plots

for which firm allotments were made should be handed over to the writ Petitioners. The appeals filed by DSIIDC have been dismissed by the impugned judgment dated 18.3.2008 with the following modifications:

...We direct that the allotment made to the Respondent-allottees should not be cancelled subject to the condition that the allottees shall pay Rs. 4200/- per sq.m. for the area upto double the area occupied by their unit (rounded to the nearest lower size of the plot being offered and subject to minimum of 100 sq.m.) but for the remaining or the additional area they shall pay market rate as on 25th September, 2001. The market rate as on 25th September, 2001 will be calculated on the basis of the reserve price fixed by DDA for the auction of plots in the said locality. In case no reserve price has been fixed, the same may be calculated on the basis of average bid price received in the auctions during the financial year preceding the year of allotment, less 10%. No interest will be payable on the enhanced amount till issue of fresh allotment letter.

22. DSIIDC has filed these appeals inter alia on the ground that the Scheme as modified from time to time made it clear that the size of the plots to be allotted to the oustees should not exceed double the area which was occupied by them before they were ousted from Delhi and that the maximum size of the plots should be 250 sqm. It therefore, contended that the allottees to whom allotment of plots of a size which was more than double of what was previously occupied, were not entitled to such plots and that DSIIDC was justified in cancelling the allotments and offering down-sized plots corresponding to their entitlement.

23. We find that the learned Single Judge and the Division Bench have considered the facts, circumstances and contentions before concluding that the allotments should not be disturbed. They have taken note of the fact that many had obtained loans and mortgaged the plots, and considered the hardship that will be caused by the abrupt cancellations/allotments at a belated stage. They also took note of the fact that no opportunity to show cause was given to the allottees, before cancellation. In the normal course, this is not a fit case for interference by exercising jurisdiction, under Article 136 of the Constitution, though DSIIDC may be technically correct in its submissions.

24. But certain developments, intervening circumstances and practical difficulties in implementation of the order of the High Court necessitate modifications of the directions issued by the High Court. They are:

(i) Before the Respondents obtained stay, DSIIDC had re-allotted 75 of the cancelled plots to other oustees waiting in the queue and those new allottees have been put in possession and some of them have even commenced construction. Those new allottees are not parties to these proceedings. If the order of the High Court is to be given effect the fresh allotments have to be cancelled leading to complications and further litigation.

(ii) The Division Bench of the High Court has directed that in regard to the excess area (over and above the entitlement), instead of downsizing, DSIIDC should

collect market rate as on 25.9.2001, based on the reserved price fixed by DDA for the auction of plots in the said locality. But DDA has not auctioned any plot in that locality or any neighbouring locality, either in the year 2001 or in the next few years. Therefore, it is not possible to give effect to the direction that the rate should be determined with respect to reserved price fixed by Delhi Development Authority in 2001.

25. It is not in dispute that in Bawana Industrial Estate, DSIIDC had itself allotted plots in the years 2001, 2002 and 2003 at the price of Rs. 4200/- sqm, even though the market value thereof was much higher. Having regard to the fact that the DDA auction prices are not available, we are of the view that interests of justice would be served if the allottees are directed to pay for the excess areas of their plots at double the DSIIDC allotment prices, that is at the rate of Rs. 8400/- sqm.

26. We are also of the view that wherever the cancelled plot of any of the Respondents, has been re-allotted to someone else, the re-allotment need not be disturbed but DSIIDC should allot a similar sized plot in the same industrial area to the Respondent.

27. We therefore dispose of these appeals making the following modifications in the order of the High Court to do complete justice between the parties and to find a solution to the problem:

(i) Wherever the cancelled plot of a Respondent has not been allotted to anyone else, the cancellation of allotment shall stand set aside. The earlier allotment made by DSIIDC shall stand. Consequently DSIIDC shall restore the plot to the Respondent-allottee.

(ii) Where DSIIDC, after cancellation, has re-allotted the plot of any Respondent-allottee to some other oustee, DSIIDC shall allot a plot of similar size in any other part of the Bawana Industrial Area.

(iii) In cases falling under Para (i) or (ii) above, the price payable by the allottee shall be Rs. 4200/- per sq.m. for the entitled area (that is double the area of his unit before ouster from Delhi) and Rs. 8400/- per sq.m. for the excess area of the plot.

(iv) Where any of the Respondent/allottee is not willing to pay the enhanced price for the difference in area, DSIIDC may offer a plot of one size lower than the plot that was earlier allotted to them, subject to a minimum of 100 sq.m. (that is, where the allotment was of a plot of 250 sq.m. the alternative allotment should be of 200 sq.m. plot or where the earlier allotment was of a plot of 150 sqm, the alternative allotment of a plot of 100 sqm). In such cases, DSIIDC shall neither claim any difference in price, nor shall be liable to refund any amount for the reduction of 50 sq.m.

(v) DSIIDC shall complete the process of restoration or allotment of alternative plots, as the case may be, in the same Industrial area (Bawana) within six

months from today.”

DSI IDC v. Yashpal Madan and Ors SLP(C) 015620-015621- 2008

39. The appeal of DSI IDC against the decision in Bhushan Kumar and similar cases subsequently came up the appeals before the Supreme Court on 19th August 2015, as already noted hereinabove, with the lead case being DSI IDC v. Yashpal Madan SLP(C) 015620-015621- 2008. The appeals were disposed of vide the following brief order:

“Learned counsel appearing for the petitioners in the above Special Leave Petitions would submit that the issues raised and canvassed in all these Special Leave Petitions are identical with the issues raised and decided by this Court in the case of Kavita Ahuja & Ors. vs. Delhi State Industrial & Infrastructure Development Corporation Ltd. & Anr., Civil Appeal Nos.2192-2201 of 2010 and in the case of Delhi State Industrial & Infrastructure Development Corporation Ltd. vs. Gulshan Arora & Anr., Civil Appeal No.2202 of 2010, decided on 16.02.2010 and requests to dispose of these Special Leave Petitions on the same terms, conditions, observations and directions as in the case of Kavita Ahuja (Supra) and Gulshan Arora (Supra).

In view of the statement so made by the learned counsel for the petitioners, we dispose of these Special Leave Petitions on the same terms, conditions, observations and directions as in the case of Kavita Ahuja (Supra) and Gulshan Arora (Supra).

Ordered accordingly.”

40. In view of the above decisions, the issue in controversy in the present petition is no longer res integra. It stands covered, on facts as well as in law, by the judgment of the Division Bench of this Court in Bhushan Kumar MANU/DE/0479/2008, which stands effectively affirmed by the Supreme Court in Kavita Ahuja MANU/SC/1081/2010 and Yashpal Madan SLP(C) 015620-015621- 2008.

41. I may note here, that Ms. Salwan did not advance any arguments to distinguish the decisions in Bhushan Kumar MANU/DE/0479/2008, Yashpal Madan⁸ and Kavita Ahuja MANU/SC/1081/2010.

42. In the present case, too, a final allotment letter was issued to the petitioner on 7th May 2004. The DSI IDC cannot, therefore, seek to place reliance on the revision in the relocation scheme in 1999, which was prior to the said letter. The entire amount which was required to be paid by the said letter, stands paid by the petitioner. A binding contract, thereby, came into existence between DSI IDC and the petitioner. That contract could not have been novated unilaterally by the DSI IDC by subsequently cancelling the allotment letters or refusing to grant possession of the allotted plot.

43. The fact that the petitioner was, by the time of issuance of the said letter, situated at Libaspur, and the status of the Libaspur Industrial Area, therefore,

become completely inconsequential, in view of the *raison d'être* of the decision in Bhushan Kumar MANU/DE/0479/2008, which stands affirmed by the Supreme Court.

44. Inasmuch as Naresh Gupta (2006) 88 DRJ 604(DB) : (2006) was cited in Bhushan Kumar MANU/DE/0479/2008 and Bhushan Kumar MANU/DE/0479/2008 has, subsequently, received the imprimatur of the Supreme Court, no reliance could legitimately be placed, by the DSIIDC, on Naresh Gupta (2006) 88 DRJ 604(DB) : (2006).

Conclusion

45. In view of the above, following the judgment of the Division Bench of this Court in Bhushan Kumar MANU/DE/0479/2008 and the judgment of the Supreme Court in Kavita Ahuja MANU/SC/1081/2010, read with the subsequent order in Yashpal Madan⁸, it is held that the petitioner is entitled to the alternate industrial plot earmarked for the petitioner as per the allotment letter dated 7th May 2004. In case the said plot has been allotted to any another person, the DSIIDC shall allot a plot of equivalent area to the petitioner, as was directed by the Supreme Court in Kavita Ahuja MANU/SC/1081/2010.

46. A writ of mandamus shall accordingly issue. The DSIIDC is directed to comply with the present judgement within 3 months from

today, and to submit a compliance report to this Court within 2 weeks thereof.

47. The petition stands allowed accordingly, with no order as to costs.