

Dsidc Vs. Naresh Gupta

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Court : Delhi

Decided On : Mar-29-2006

Reported in : 128(2006)DLT777; 2006(88)DRJ604

Judge : C.J. and; Shiv Narayan Dhingra, J.

Acts : [Constitution of India](#) - Article 14

Appeal No. : LPA Nos. 2610-11/2005Shiv Narayan Dhingra, J.

1. These appeals have been preferred against the judgment of the learned Single Judge dated 22nd September, 2005 filed by the respondents herein.
2. We have perused the record and heard learned Counsel for the parties.
3. The writ petitions were filed by the respondents when after receiving confirmation of the allotment plots under relocation scheme framed by the Government, their eligibility was cancelled and they were not handed over the possession. The stand of the appellant is that the respondents had applied under relocation scheme pursuant to a notice issued in 1996 which was a sequel to the orders passed by the Hon'ble Supreme Court in M.C. Mehta case. However, later on in view of the policy decision taken by the Cabinet and communicated to the appellant by the Department of Industries, the eligibility of the respondents to have plot under relocation scheme was cancelled, since they were found ineligible under the policy approved by the Cabinet.

4. The learned Single Judge had come to a conclusion that since the appellant had received the entire sale consideration and the policy of the Cabinet as pleaded by the appellant, was contrary to the law laid down by the Hon'ble Supreme Court, the eligibility of the appellants could not have been cancelled and the possession of the plot could not have been withheld. The revised policy cannot be applied to the respondents. The directions were given to the appellant to give possession of the plots and to pay interest @ 5% p.a. on the consideration amount received by the appellant from the date the possession was to be handed over. The cost of Rs. 10,000/- was awarded to each respondent however, it was observed that if possession was handed over within a period of 30 days, the cost would be not payable.

5. In M.C. Mehta cases, a series of PILs had been filed by petitioner M.C. Mehta regarding the deteriorating state of affairs in the capital and the Hon'ble Supreme Court had from time to time passed several orders latest being M.C. Mehta v. Union of India AIR 2004 SC 4618. In the latest judgment, the Hon'ble Supreme Court has summarised all orders and directions given from time to time to the DDA, Delhi Administration and the Center.

6. The policy based on which the appellant had cancelled the eligibility of respondents is stated in Annexure R-4 (letter from the Department of DSIDC) which reads as follows:

Annexure R-4

Department of Industries

Govt. of National Capital Territory of Delhi

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

Dated : 20th July, 1999

In continuation of my D.O. Letter No.AD1 (R)/31/CI/98/2185 dated 08.7.99 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 location. These cases should not be considered for allotment of plots/flats under the Relocation Scheme .

(ii) Service industries such as Atta Chakkis, Dry Cleaners 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 up to 31.3.1995.

(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 NCT of Delhi, had initially sent files of 8,831 applicants to DSIDC without scrutiny. These applicants were considered eligible on the basis of Cabinet decision dated 23.8.1997 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 DPCC. 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 decisions & 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/Noxious 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 NCR. 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)

Shri D.M.Spolia

Managing Director

Delhi State Industrial Development Corpn. Ltd.

N-36, Bombay Life Building

Connaught Place

New Delhi.

7. It is to be seen whether this policy decision taken at the Cabinet level is contrary to the judgment of the Hon'ble Supreme Court in M.C. Mehta case. In M.C. Mehta an is was filed by the Government in respect of INSITU regularization of 'A' categories of industries. It was proposed that 24 residential areas where the density of the industry was around 70%, be recommended for INSITU regularization. The Hon'ble Supreme Court observed as under:

12. Regarding the total number of industrial units functioning in residential non-conforming areas, different surveys have given different figures, as per the material placed before this Court by Government. There is also no clarity as to the facts and figures regarding infrastructure etc. in respect of the industrial units being considered for INSITU regularization. Although in the affidavit filed on 5th August, 2000 by the Principal Secretary and the Commissioner of Industries of the Delhi Government, it was stated that the government had recommended INSITU regularization, it has not been stated as to what is the position of the water, electricity and other facilities for the industries, what is the planning for remaining 30% residents as they may be deprived of electricity, water and other facilities on account of over drawl by the 70% industrial units. Whether 30% who are using the premises in accordance with the permissible use in the master Plan must continue to suffer at the hands of those who are functioning in violation of the Master Plan. This question has remained unanswered despite elaborate arguments spread over various dates. On the aspect of INSITU regularization, the stand of the Delhi Development Authority, as contained in the affidavit of its commissioner (Planning) dated 11th September, 2000 was that the DDA was favorable considering INSITU regularization with the following conditions:

- (i) Building norms shall be the same as that for the residential premises.
- (ii) Non-pollutant/non-hazardous industries would be allowed to operate.
- (iii) Augmentation of infrastructure as per requirement would be undertaken to meet the growing demand as a result of conversion of these areas into manufacturing (light and service) household industries.

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15. In regard to the nature of survey that had been conducted resulting in the proposal of INSITU regularization in areas having 70% concentration of industries, the affidavit states that demand to secure vital and large scale changes in the Master Plan, which would have the effect of tearing its entire fabric apart, is based upon the preliminary and perceptive survey of three officers of the Industries Department of Government of Delhi. The report itself calls the survey 'preliminary'. The survey is neither scientific nor precise nor reliable. It does not even contain detailed particulars of industries 'whether they are polluting or non-polluting, licensed or un-licensed. The survey also does not indicate as to how many industrial units belong to those industrialists who may have already obtained the benefits of relocation once, either from the Delhi Development Authority or from the Industries Department or have secured space in flatted factories and have come back again to the non-conforming areas, while keeping the alternative plots allotted to them for shifting, or have set up additional unit or units in the residential areas.

19. At first instance, a proposal for INSITU regularization in 15 areas was considered. Now 24 areas are sought to be regularized. None of the aforesaid aspects regarding infrastructure has been considered before the proposal was sent by the State Government and Delhi Development Authority for INSITU regularization to the Central Government. How can Government of India agree to principle for INSITU regularization in isolation without anyone having examined the relevant considerations. It is evident that relevant aspects such as availability of

sewerage, drainage, power and water have not been examined. Further, a perusal of the survey document shows that many industrial activities were polluting in nature. The proposal was considered by the Delhi Development Authority on 20th December, 2002. The note dated 20th December, 2002 notices that a large number of industrial clusters are existing in various parts of the National Capital Territory of Delhi in contravention of land use provision of the MPD 2001 and thereby facing the problem in their continuance on their existing site and with a view to resolve this problem a policy needs to be evolved for regularization/ re-development of the said industrial clusters so that it may eventually be considered to be part of the MPD 2021. It was decided that a re-development proposal could be formulated and taken up by forming co-operative industrial society by the beneficiaries. Total re-development work will be undertaken by the co-operative society as their own cost. Changes in land use and enhanced FAR facilities were directed to be paid to the concerned authorities by the society. All these proposals, without examination of the relevant consideration as noticed hereinbefore, were approved and were forwarded to the Government of India. All this has happened despite the fact that the Ministry of Urban Development, in terms of its letter dated 8th September, 2000 had informed the Delhi Development Authority that the change in the Master Plan was not justified. No detailed justification for change of land used from residential to industrial and the parameters on which such change would be based had been given. The matter has also not been discussed and deliberated with the Central Pollution Control Board, Town and Country Planning organization and the Delhi Urban Arts Commission. It was not make clear as to what would happen to those who are using their residential premises in accordance with the provisions of the Master Plan. The changes in the Master Plan or its norms to accommodate illegal activities not only amount to getting award for illegal activities but also results in punishing the law abiding citizens. We may refer to another letter dated 15th November, 2001 sent by the Ministry of Urban Development to Delhi Development Authority on the issue of INSITU regularization stating that the issue of industrial housing sanitation, infrastructure and adherence of polluting control norms have to be stressed and detailed in such studies. DDA was also asked to consider whether such areas where non-confirming industries are presently operating are isolated black spot in otherwise

purely residential, semi-urban area or whether they represent logical extension of existing industrial neighbourhood. It reiterated that the quality of life, environment and the rights of the residence have to be highlighted in forefront.

8. It is evident from the observation made by the Hon'ble Supreme Court that it did not approve INSITU regularization of industries in the 24 areas as sought to be regularized by the Government. However, it would be noted that the policy decision taken on 20.7.1999, stated in para 6 above does not talk of any INSITU regularization of the industry and it only states that non-hazardous units situated in Anand Parbat, Samaipur Badli and Shahdara, which are the areas covered under re-development scheme under 'Delhi Master Plan-2001', be not considered eligible for alternate plot. It is made clear in the policy that all hazardous units falling under category [H (a)] and [H (b)] have to close down. Thus these three areas i.e. Anand Parbat, Samaipur Badli and Shahdara is not a case of INSITU regularization as proposed before the Hon'ble Supreme Court and not found favor, but it was a case where the Government wanted to go as per the Master Plan (MPD)-2001, where these three areas were already noted for industrialization.

9. The Hon'ble Supreme Court gave directions in para 69 which read as under:

69. In conclusion, having regard to the aforesaid, we issue the following directions:

1. All industrial Units that have come up in residential/non-conforming areas in Delhi on or after 1st August, 1990 shall close down and stop operating as per the following schedule:

a) Industrial Units pertaining to extensive industries (F' Category) within a period of four months.

b) Industrial Units pertaining to light and service industries (Category 'B' to 'F') within five months.

c) Impermissible household industries (Category 'A') within six months.

d) 6,000 industrial units on waiting list for allotment of industrial plots within 18 months.

2. the Central Government is directed to finalise the list of permissible household industries falling in (Category 'A') within a period of three months.

3. 6,000 industrial units on waiting list shall be allotted industrial plots within one year.

4. The Delhi Government may announce a policy within six weeks giving such incentives as it may deem fit and proper to those industrial units which came to be established after 1st August, 1990 and may close down on their own before the expiry of the time fixed in this order. The non-announcement of incentives by the Government shall not, however, delay the closure process.

5. The waiver and electricity connection of the industrial units found operating after the due date of closure shall be disconnected forthwith and in any case not later than a month of the date fixed for closure in Direction No. 1 above. If the industrial activity still continues, the premises shall be sealed within a period of not later than another one month.

The seal shall be removed and water and electricity connection restored only after filing of an undertaking by the industrial unit not to recommence any sort of industrial activity before an officer nominated for the purpose by the Delhi State.

6. The Central Government is directed to finalise within six months appropriate steps to be taken for making NCR region a success for industrial activity by removing the hurdles pointed out by the industry. The Governments of the adjoining States of U.P. Rajasthan and Haryana are directed to extend full co-operation.

7. The Municipal Corporation of Delhi shall consider within three months the aspect of withdrawal of exemption notification as suggested in the affidavit of its Town Planner filed on 28th October, 2002.

8. We appoint a Monitoring Committee comprising (i) chief Secretary of Delhi (ii) Commissioner of Police, Delhi (iii) Commissioner, Municipal Corporation of Delhi and, (iv) Vice-chairman of Delhi Development Authority. This committee would be responsible for stoppage of illegal industrial activity. It would, however, be open to

the aforesaid members of the Monitoring Committee to appoint responsible officers subordinate to appoint responsible officers subordinate to them to oversee and ensure compliance of the directions contained in the judgment.

9. The first Progress Report by the committee shall be filed by 31st August, 2004 and thereafter it shall be filed at least once in a period of every two months.

10. It is submitted by counsel for the appellant that about 51,000 applications were received for plots for relocation of industries and less than 18,000 industrial plots were available and all applicant could not be allotted plot/ flatted factories. The policy in question was framed so that where the industry was of the nature needed to be immediately relocated, could be accommodated. Non-hazardous units of those areas where the Development Plan 2001 provided for redevelopment of area as industrial area or units in commercial areas should not be considered for immediate allocation of alternate plot. It is stated that all the respondents who had paid consideration for the plot, they were earlier falling in the category of 'eligible candidates' but after the announcement of policy as given above, they fell out of the category of 'eligible candidates' and, therefore, could not be given possession as the plots are to be allotted to those who are eligible according to the new policy.

11. On the other hand the respondents have contended that the policy could not be changed by the appellant arbitrarily and even if the policy was changed, the appellants were governed by the earlier policy under which they had applied for the plot for relocated of industry. It is also submitted that policy was contrary to the judgment of the Hon'ble Supreme Court.

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 INSITU 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 cleaner's 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 alternate plot under the policy. The units which were already located in commercial areas and were neither hazardous nor naxious or not

emanating pollution only were allowed to continue in the commercial areas.

13. The judgment of the Hon'ble Supreme Court in M.C. Mehta case categorically lays down that it was not a vested right of the persons who have put industry in non-confirming areas to continue there, nor it is the direction to given an alternate plot and then close industry in the non-confirming areas. The Hon'ble Supreme Court has ordered closing down of the industry irrespective of the fact that whether industry is allotted an alternate plot or not. The allotment of alternate plot is not a pre-condition for closing down the industry. In M.C. Mehta v. Union of India : (2002)9SCC534 , the Hon'ble Supreme Court observed that vide its earlier order a committee was required to be constituted to investigate and give its consent as to which of the industries could continue to operate in the MCD and DPCC issuing necessary licenses and consent in accordance with law. Para 2 of the judgment reads as under:

2. By an order dated April 1996, this Court had directed an exercise to be carried out in order to ascertain which of the industries which were operating in residential areas were entitled to continue therein as per the terms of the master plan. A committee was required to investigate in the matter and was to give its consent as to which of the said industries could continue to operate in MCD and DPCC issuing necessary licenses and consent in accordance with law. The said order further directed that no non-conforming industry shall be permitted to carry on its activity after 31.12.1996. The order clearly stipulated that all those industries which have not obtained necessary permission from the Committee shall stop operating in the residential area with effect from 1.1.1997. 14. It is clear that all those industries which High Powered Committee considered should be removed from the residential areas was to be shut down, however, it is also apparent that there was not a blanket order to close every kind of commercial and industrial organization like dry cleaning units, atta chakkis, repair workshops etc. The policy stated in letter dated 20.9.1999 does not seem to be in contradiction to the judgment of the Hon'ble Supreme Court.

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.

16. In *Bannari Amman Sugars Ltd.. v. Commercial Tax Officer and Ors.* : (2004)192CTR(SC)492 the Hon'ble Supreme Court has observed as under:

9. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

10. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.

11. This Court's observations in *G. B. Mahajan v. Jalgaon Municipal Council* are kept out of the lush field of administrative policy except where policy is inconsistent with the express or implied provision of a statute which creates the power to which the policy relates or where a decision made in purported exercise of power is such

that a repository of the power acting reasonably and in good faith could not have made it. But there has to be a word of caution. Something overwhelming must appear before the Court will intervene. That is and ought to be a difficult onus for an applicant to discharge. The courts are not very good at formulating or evaluating policy. Sometimes when the courts have intervened on policy grounds the courts view of the range of policies open under the statute or of what is unreasonable policy has not got public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism.

12. As Professor Wade points out (in Administrative law by H.W.R. Wade, 6th Edn.) there is ample room within the legal boundaries for radical differences of opinion in which neither side is unreasonable. The reasonableness in administrative law must, therefore, distinguish between proper course and improper abuse of power. Nor is the test the courts own standard of reasonableness as it might conceive it in a given situation. The point to note is that the thing is not unreasonable in the legal sense merely because the court thinks it to be unwise.

13. In Hindustan Development Corpn. case it was observed that decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest where the doctrine of legitimate expectation can be applied. If it is a question of policy, even by way of change of old policy, the courts cannot intervene with the decision. In a given case whether there are such facts and circumstances giving rise to legitimate expectation, would primarily be a question of fact.

14. As was observed in Punjab Communications Ltd. v. Union of India the change in policy can defeat a substantive legitimate expectation if it can be justified on Wednesbury reasonableness. The decision-maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is therefore, clear that the choice of policy is for the decision-maker and not the court. The legitimate substantive expectation merely permits the court to find out if the change of policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. A

claim based on merely legitimate expectation without anything more cannot ipso facto give a right. Its uniqueness lies in the fact that it covers the entire span of time; present, past and future. How significant is the statement that today is tomorrow's yesterday. The present is as we experience it, the past is a present memory and future is a present expectation. For legal purposes, expectation is not same as anticipation. Legitimacy of an expectation can be inferred only if it is founded on the sanction of law.

15. As observed in *Attorney General for New South Wales v. Quinn* to strike the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be set the courts adrift on a featureless sea of pragmatism. Moreover, the negotiation of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of power when its exercise otherwise accords with law. If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider, but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is not the key which unlocks the treasure of natural justice and it ought not to unlock the gates which shut the court out of review on the merits, particularly, when the elements of speculation and uncertainty are inherent in that very concept. As cautioned in *Attorney General for New South Wales* case the courts should restrain themselves and respect such claims duly to the legal limitations. It is a well-meant caution. Otherwise, a resourceful litigant having

vested interest in contract, licenses, etc can successfully indulge in getting welfare activities mandated by directing principles thwarted to further his own interest. The caution particularly in the changing scenario becomes all the more important.

16. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies. As noted above, the ultimate test is whether on the touchstone of reasonableness the policy decision comes out unscathed.

17. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the stand point of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved, the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time enter into the judicial verdict, the reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalization of a particular business in favor of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country. (See *Parbhani Transport Coop Society Ltd. v. RTA*, *Shree Meenakshi Mills Ltd v. Union of India* , *Hari Chand Sardar v. Mizo Distt. Council*, *Krishnan Kakkanth v. Govt of Kerala and Union of India v. International Trading Co.*

17. The respondents have failed to show that there was any arbitrariness in the action of the Government or the appellant in changing the policy. The policy was in consistent with the desires of the Hon'ble Supreme Court to give priority to shift those industries which were causing more nuisance to the public and to shift industries from those areas which do not fall in the 'Master Plan MPD-2001' as industrial areas. The attempt of the Government by above policy is not to violate the order of the Hon'ble Supreme Court or to do INSITU regularization, but to balance the equities.

18. In *Hira Tikkoo v. Union Territory, Chandigarh and Ors.* : AIR 2004 SC3648 the Hon'ble Supreme Court has held that :

25. Surely, the doctrine of estoppel cannot be applied against public authorities when their mistaken advice or representation is found to be in breach of a Statute and therefore, against general public interest. The question, however, is whether the parties or individuals, who had suffered because of the mistake and negligence on the part of the statutory public authorities, would have any remedy of redressal for the loss they have suffered. The rules of fairness by which every public authority is bound, requires them to compensate loss occasioned to private parties or citizens who were misled in acting on such mistaken or negligent advice of the public Authority. There are no allegations and material in these cases to come to a conclusion that the action of the authorities was mala fide. It may be held to be careless or negligent. In some of the English cases, the view taken is that the public authorities cannot be absolved of their liability to provide adequate monetary compensation to the parties who are adversely affected by their erroneous decisions and actions. But in these cases, any directions to the public authorities to pay monetary compensation or damages would also indirectly harm general public interest. The public authorities are entrusted with public fund raised from public money. The funds are in trust with them for utilization in public interest and strictly for the purposes of the Statute under which they are created with specific statutory duties imposed on them. In such a situation when a party or citizen has relied, to his detriment, on an erroneous representation made by public authorities and suffered loss and where doctrine of 'estoppel' will not be invoked to his aid, directing administrative redressal would be a more appropriate remedy than payment of monetary compensation for the loss caused by non-delivery of the possession of the plots and consequent delay caused in setting up industries by the allottees.

19. In the present case also the administration has not envisaged the problem initially. While the number of plots available were only limited, the allotments were made even to those who could wait for relocation of industry from non-confirming areas as their industry was situated in Anand Parbat, Samaipur Badli and Shahdara or in the commercial areas and those whose industry was situated in the

residential areas other than the above three were left out. The industry cannot be regularized in other areas, while there is possibility of these three areas being developed into industrial areas after providing necessary infrastructure as per the observations made by the Hon'ble Supreme Court in M.C. Mehta case.

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 : AIR 2006 SC1142 *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.*)

21. We are, therefore, of the opinion that the appellant has right to cancel the eligibility of the respondents and refuse the possession in view of the pressing requirements of giving alternate plot to those industries which are totally in non-confirming areas. The appeals are allowed, however, the amount received by the appellants shall be returned to all respondents with interest @ 9% from the date the amount was received and the earnest money deposited shall be kept by the

appellant in case of only those respondents who want to keep their applications for allotment of plot alive and want to wait further availability of the plots/ property.

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