

Sr. No.	Date	Orders
		<p>11-11-2003</p> <p>Present : Mr. Dinesh Agnani, Advocate for the petitioner. Ms. Monica Sharma, Advocate for the respondent.</p> <p>+ CW 4386/2003</p> <p>The petitioner is the perpetual lessee of plot No.A-50/2 and A-50/3. Okhla Industrial Area Phase-II in pursuance to the duly executed registered lease deed dated 4.12.1970. The petitioner started manufacturing of paint and chemicals from the said plot. However, in the year 1996, the issue of carrying on manufacturing activity of hazardous nature in these areas was considered by the Supreme Court in <u>M.C. Mehta v. Union of India &amp; Ors.</u> AIR 1996 SC 2231 and it was held that such hazardous and obnoxious industries are not permitted to operate in Delhi by provisions of Master Plan and were thus to be relocated and shifted.</p> <p>In pursuance to the aforesaid directions of the Supreme Court, orders were passed by the competent authorities on 27.9.1996 for closure of the industrial operations and the petitioner claims that he shifted the industrial activity to a new location from 7.1.1997.</p> <p>The petitioner wrote a letter to respondent No.1 DDA seeking permission to mortgage the plot in favour of Allahabad Bank in view of the provisions in the perpetual lease deed requiring such prior permission for mortgage. Since there was no response to the said letter, the petitioner sent reminders but to no avail.</p> <p>The request of the petitioner was rejected by respondent No.1 vide letter dated 22.6.2000 on the ground that the petitioner industry fell within the list of hazardous industries. The petitioner vide its letter dated 14.7.2000 responded to the same stating that he had already shifted the industry to Faridabad and the plots were used only for storage. The Registration Certificate of the unit in Faridabad was also</p>

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		<p>the request of the petitioner vide letter dated 12.1.2001.</p> <p>Some communication took place between Allahabad Bank and respondent No.1 on account of the fact that Allahabad Bank claimed rights as a mortgagee in respect of the plot in question while the DDA stated that they had not granted any such permission.</p> <p>The writ petition has been filed by the petitioner seeking directions against the respondent to consider the application of the petitioner and to grant permission to mortgage in terms of clause II (5)(b).</p> <p>In the counter affidavit filed by the DDA it has been stated that permission was earlier granted to the petitioner to mortgage the plot in favour of Delhi Finance Corporation on 7.12.1970 but the permission could not be granted at the request of the petitioner on 12.6.2003 as on inspection it was found on 22.5.2003 that the unit is continuing to store paints and varnishes and a small workshop for mixing and matching of paints is existing. It was claimed that the business being carried out by the petitioner was under the category of obnoxious/hazardous industries.</p> <p>The learned counsel for respondent on the last date of hearing relied upon the Delhi Master Plan - 2001 and invited the attention of this court to Group H industries. Item No.7 deals with paints. The relevant extract is as under:</p> <p><b>“Group-H</b></p> <p>INDUSTRIES PROHIBITED WITHIN UNION TERRITORY OF DELHI</p> <p>(a) HAZARDOUS/NOXIOUS INDUSTRIAL UNITS CELLULOSIC PRODUCTS</p> <p>XXX                      XXX                      XXX</p>

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		<p data-bbox="606 247 1261 277">7. Paints, enamels, colours, Fire Hazard</p> <p data-bbox="606 287 950 427">varnish (other than litho varnish) varnish removers, turpentine and turpentine substitutes"</p> <p data-bbox="446 466 1555 787">A query was thus put to learned counsel for the respondent as to whether shops selling paints are permitted or not. Learned counsel replied to the same stating that the same would fall within the category of commercial activity. This aspect has been examined by the learned counsel for the respondent and the same position is reiterated today.</p> <p data-bbox="446 824 1555 1074">The effect of the aforesaid is that on one hand it is not disputed that paint shops can be run in these areas and would not be categorized as hazardous industries under Group H but if storage of paint and mixing takes place, the same would be hazardous.</p> <p data-bbox="446 1111 1555 1432">I fail to appreciate the aforesaid submission in view of the fact that the <del>for</del> business of sale of such paint would require its storage. The mixing and matching of paints takes place through machines or otherwise and it is not being shown as to how mere storage can be hazardous while storage and sell would be commercial.</p> <p data-bbox="446 1469 1555 1728">Learned counsel for the petitioner states that the petitioner has already filed an undertaking before this court dated 10.11.2003 undertaking that the property shall be used only for storage and mixing and matching and no manufacturing activity would be carried out in the premises.</p> <p data-bbox="446 1765 1555 1947">Learned counsel for the respondent at this stage states that in the counter-affidavit it has also been stated that the petitioner has not given Form D and completion certificate as also an affidavit to the effect that the plot has not been sold.</p> <p data-bbox="446 1983 1555 2091">Learned counsel for the petitioner states that the petitioner has already informed the respondent that in a fire, documents of the petitioner were lost and the</p>

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	23	<p><del>petitioner should not be called upon to furnish Form D and completion certificate</del></p> <p>since admittedly the case of the petitioner was found in accordance with law for grant of permission earlier when such permission was required.</p> <p>I find force in the contention of learned counsel for the petitioner in view of the permission earlier granted by the DDA when all these matters would have been examined in view of <sup>now</sup> non-availability of documents of the petitioner. In so far as the affidavit to be filed with the respondent is concerned, learned counsel for the petitioner state that the affidavit shall be filed within a week from today.</p> <p>In view of the aforesaid, a writ of mandamus is issued directing the respondent to issue the necessary permission to mortgage in respect of the plot in question in favour of Allahabad Bank, Scindia House, New Delhi within three weeks from today subject to the petitioner submitting the undertaking as aforesaid.</p> <p>Parties are left to bear their own costs.</p> <p>November 11, 2003 gg</p> <p><i>Sanjay Kishan Kaul</i> SANJAY KISHAN KAUL, J.</p>