

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

Date of decision: 3rd February, 2011

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W.P.(C) 1591/2008

KISHAN LAL

..... Petitioner

Through: Mr. V.K. Sawhney & Mr. P.K.
Aggarwal, Advocates

Versus

M.C.D.

..... Respondent

Through: Mr. Ajay Arora & Mr. Kapil Dutta,
Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the communication dated 3rd September, 2007 of the respondent MCD to the petitioner cancelling the allotment earlier made to the petitioner of a plot of land in Ghogha Dairy Colony Project. The cancellation letter itself records that this Court vide order dated 31st

May, 2007 in W.P.(C) No.3791/2000 titled *Common Cause Society Vs. Union of India* and pursuant to the proceedings in which writ petition, the proposal for the Ghogha Dairy Colony Project had come up, had directed that the sole criteria for allotment of plots in the said project should be the running of dairy business by the applicants and if any of the applicants to whom allotment had been made were found to be not carrying on the said business, their allotments were directed to be cancelled. Pursuant to the said direction, according to the respondent MCD, a Committee comprising of Veterinary Officer of the respondent MCD, Veterinary Officer of the Government of NCT of Delhi and the SHO of the concerned Police Station was constituted and which Committee did not find the petitioner to be running the dairy business. Accordingly, the allotment in favour of the petitioner was cancelled.

2. It is the case of the petitioner that no inspection was carried out; that he had in fact been carrying on dairy business and in support whereof the copies of the general receipts dated 24th August, 2004, 8th December, 2004, 26th July, 2005 & 8th May, 2006 of the respondent MCD of payment under Sections 417/323 of Delhi Municipal Corporation Act, 1957 were filed along with the petition.

3. Notice of the petition was issued and the respondent MCD directed to produce the original file. A counter affidavit has been filed by the respondent MCD stating that inspection as aforesaid not only by the

officials of the respondent MCD but also by the officials of the Govt. of NCT of Delhi and the Police was carried out and allotment in favour of those not found carrying on dairy business were cancelled. It is also pleaded that out of 1373 applicants / allottees, 838 had not been found to be carrying on dairy business. The counsel for the respondent MCD has today argued that the respondent MCD having acted in accordance with the directions in the Public Interest Litigation aforesaid and having widely advertised by public notices in the newspapers, the said order, the remedy of the petitioner is not by way of this petition but was by way of moving an application in the aforesaid Public Interest Litigation only. It is contended that the respondent MCD had duly reported to the Division Bench of this Court in the Public Interest Litigation aforesaid of the cancellations and all of which was approved by the Division Bench. It is reiterated that the petitioner was not found running a dairy business.

4. No rejoinder was filed by the petitioner to the aforesaid counter affidavit.

5. The matter came up before the Court on 2nd August, 2010 when it was observed that the question whether the petitioner was carrying on dairy business at the relevant time or not was a disputed question of fact and no relief in writ jurisdiction could be granted and the remedy of the petitioner was by way of a suit. Though the counsel for the petitioner had then sought time to consider the matter but has since filed a rejoinder dated

5th October, 2010 and along with which some more receipts of the respondent MCD of payment of fine under Sections 417/323 or only under Section 417 of the DMC Act have been filed.

6. The counsel for the petitioner has contended that the petitioner is a poor person; that the respondent MCD has retained allotment in favour of those who could grease the palm of the officials of the respondent MCD and have cancelled allotment in favour of those who failed to succumb to the demands of the officials of the respondent MCD. He has contended that from the receipts aforesaid, the originals of which are also shown in the Court, it stands abundantly established that the petitioner was carrying on the dairy business at the relevant time and the allotment in his favour ought to have been retained. Attention is also invited to the orders dated 4th February, 2010 and 17th May, 2010 asking the respondent MCD to produce the records. It is contended that no records of any inspection have been produced inspite of directions.

7. The counsel for the respondent MCD has handed over in the Court the original file. However, a perusal thereof shows that only the constitution of the committee for inspection, scheduling of the date of inspection and the tabulation in which against the name of the petitioner it is mentioned that the dairy was not found, exist. Thus the same is not of much help.

8. The question which thus arises is whether in view of the receipts aforesaid, this Court can abandon the factual enquiry and make a direction for quashing the cancellation of the allotment in favour of the petitioner.

9. The provisions of law under which the challans were issued viz. Sections 323 & 417 of the DMC Act prohibit tethering (i.e. to chain an animal) or milking of any cow or buffalo in a public street and general use of premises for purposes requiring license, without the said license. As aforesaid the receipts filed by the petitioner are either only under Section 417 or under Section 417 read with Section 323 of the MCD Act. The receipts under Section 323 of the Act only indicate that the petitioner was found tethering the cattle in a public street. However, the same would not still qualify the petitioner as running a dairy business in a non conforming area and which in the Public Interest Litigation was made the criteria for allotment in Ghoga Dairy Project. The petitioner will have to lead evidence to show that he was at the relevant time carrying on the said business and which would be subject to cross examination. Without the same, this Court cannot return a finding of fact that the petitioner at the relevant time was carrying on a dairy business and without which no relief can be granted to the petitioner.

10. The counsel for the petitioner has argued that the petitioner has been pursuing the present petition in this Court for the last two years and is able to ill afford litigation. However, this Court can grant relief only when a

case thereof is made out and not on sympathetic grounds particularly in the matter of public largesse as apparently is the case with the allotments in Ghogha Dairy Project.

11. At this stage, the counsel for the petitioner states that a direction for refund of the monies deposited by the petitioner be issued to the respondent MCD. The counsel for the respondent MCD has fairly stated that the respondent MCD has no objection to the same. The refund be made to the petitioner as per policy along with interest, if any, in terms of the directions in the Public Interest Litigation and the Policy of the respondent MCD. The petitioner to visit the Veterinary Officer, Head Quarter, Town Hall of the respondent MCD on 21st February, 2011 along with a copy of this order and when the cheque in refund of the monies as aforesaid shall be delivered to the petitioner.

12. The petition is therefore dismissed as not maintainable with liberty to the petitioner to take appropriate remedies.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 03, 2011

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