

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

Date of decision: 14th January, 2011.

+ W.P.(C) 8135/2007 & CM No.4703/2009 (for ad-interim direction)

% SHANTI DEVI

..... Petitioner

Through: Mr. Gaurav Duggal, Mr. Shyam S. Sharma & Mr. Sanjeev K. Baliyan, Advocates.

Versus

M.C.D. & ANR.

..... Respondents

Through: Ms. Madhu Tewatia with Ms. Sidhi Arora & Ms. Mansi Gupta, 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 petitioner had in or about 2004-2005 applied for allotment of two plots of land in the Ghogha, Narela, New Dairy Colony under development by the respondent MCD. The petitioner against the column "address for correspondence" gave the address of "Dairy H. No.680, Village & Post Office-Bakner, Delhi-110040" and against the column "name of the place where Dairy is running" filled "Bakner". On the basis of the said representation of the petitioner, the respondent MCD on 23rd May, 2005

allotted two plots bearing No.B-106 and B-107 to the petitioner and the petitioner deposited a sum of ₹2,40,000/- with the respondent MCD thereagainst.

2. The scheme for development of Ghogha Dairy Colony was mooted pursuant to the directions in a public interest litigation being W.P.(C) No.3791/2000 titled *Common Cause Society Vs. UOI* pending before this Court with respect to the menace of stray cattle and in which this Court also took notice of the unauthorized dairies being run in the urban areas of the city and to rehabilitate the said dairies which were directed to be removed. In the said public interest litigation, in the order dated 30th August, 2006 it was noted that allotments had been made even to persons who were not running unauthorized dairies in Delhi and who were not in need of rehabilitation. This Court accordingly in the orders dated 30th August, 2006 and 31st May, 2007 in the public interest litigation directed the MCD to appoint a Committee to go into the applications of each of the persons to whom plots had been allotted and to cancel the allotments made to fictitious persons and those who were not in need of any rehabilitation.

3. It is the case of the respondent MCD that in pursuance to the aforesaid directions, inspections were carried out and notices issued and the petitioner was not found to be running any dairy and the allotment in favour of the petitioner was cancelled and petitioner intimated personally and also through the public notice dated 30th August, 2007.

4. It was then that this writ petition was filed contending that neither any notice was given to the petitioner before cancellation nor the cancellation otherwise intimated to the petitioner. The petitioner contends that she had vide letter dated 11th April, 2007 communicated to the respondent MCD that she had erroneously stated the address of the Dairy as Dairy No.680, Village & Post Office-Bakner, New Delhi which in fact was her residence and the dairy was being run by her in the name and style of Shanti Dudh Dairy, near MCD Park-2, Bakner, Delhi-110040. The counsel for the petitioner states that the respondent MCD in the counter affidavit in the present proceedings has not denied receipt of the said letter. The petitioner along with paper book has also filed a warning notice dated 14th September, 2007 stated to have been given by the Delhi Environment Management Services (DEMS) Department of the respondent MCD to the petitioner with respect to running of the dairy. The counsel for the petitioner thus contends that the finding of the MCD, of the petitioner not running a dairy and therefore being ineligible for allotment of plots in the Ghogha Dairy Colony and resultantly cancellation of the allotment to the petitioner is bad.

5. Notice of the writ petition was issued and vide interim order dated 19th March, 2010 it was directed that in case the petitioner succeeds in the writ petition, she will be entitled to allotment of plots as directed and the respondent MCD will ensure that plots are available.

6. The respondent MCD filed a counter affidavit reiterating that no

unauthorized dairy was found at the address given by the petitioner and thus the cancellation was valid. The petitioner has filed a rejoinder reiterating her case.

7. The counsels have been heard.

8. The counsel for the petitioner has also relied upon the documents received under the RTI Act of the inspection carried out by the respondent MCD in April, 2010 and in which total 11 adult buffaloes in the dairy of the petitioner were found. It is contended that the same is indicative of the finding in 2007 of the petitioner not running any dairy being incorrect.

9. The counsel for the respondent MCD states that from the file of the MCD made available to her today, it transpires that the MCD after the filing of the present writ petition decided to carry out a fresh inspection and in pursuance thereto a fresh order has been made on 21st July, 2010 whereunder cancellation of the allotment of plots in favour of the petitioner has been upheld not only for the reason of the petitioner not having a dairy at the address given by her but also on the ground that the dairy which was shown in the fresh inspection dated 16th April, 2010 was in a rural area and not in the urban area. It is contended that the scheme of Ghogha Dairy Colony was evolved only for the purposes of rehabilitating the illegal dairies in urban areas, removal whereof was directed by the High Court in the public interest litigation and for this reason only the land was to be allotted on cost basis and much below the market rates. It is also contended that the

inspection of 16th April, 2010 also found the buffaloes at “another” place, other than the place where the petitioner claimed her “earlier dairy” to be.

10. Though the aforesaid subsequent events have not been formally placed on record of this Court by the respondent MCD but it is felt that the matter in controversy entails disputed questions of fact and which cannot possibly be adjudicated in writ jurisdiction. It is felt that keeping this writ petition pending by permitting respondent MCD to file additional affidavit concerning subsequent events and thereafter giving opportunity to the petitioner to respond thereto, will not change the position. It will still have to be proved by the petitioner by leading evidence as to whether she, in 1997 had a dairy and whether the said dairy was within the urban area and owners of which dairies alone were entitled to rehabilitation at Ghogha Dairy Colony. I am also of the opinion that merely because a dairy was found on 16th April, 2010, cannot necessarily lead to the conclusion that the dairy existed in the year 2005-2007 also so as to make the petitioner eligible for allotment. This Court is flooded with writ petitions for allotment of land in Ghogha Dairy Colony, probably because the rate at which the land is being allotted by the respondent MCD, is far below the prevalent market rate. All the said questions would require evidence to be led with the petitioner being required to prove the existence of the dairy at the contemporaneous relevant time. Without a finding being positively returned of the existence of the dairy at the contemporaneous time, no relief can be granted to the petitioner.

11. The writ petition is therefore disposed of for the aforesaid reasons but with liberty to the petitioner to file appropriate proceedings to establish her case by leading evidence.

12. The counsel for the petitioner seeks extension of the interim order to protect the rights of the petitioner. Since the writ petition has remained pending in this Court for about three years, it is deemed expedient to protect the rights of the petitioner till the petitioner files a suit. In the circumstances, the interim order dated 19th March, 2010 shall remain in force for a period of one month from today and subject to the further orders in other proceedings, if initiated by the petitioner.

13. None of the observations contained herein, shall however prejudice the rights of any of the parties in other proceedings, if any.

No order as to costs.

Copy of this order be given *Dasti*.

**RAJIV SAHAI ENDLAW
(JUDGE)**

14th January, 2011

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