

23 \$~

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 5040/2011

%

Judgment dated 20.12.2012

SMT. VEENA VAID

..... Petitioner

Through: Ms.Seema Kashyap, Advocate

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: Ms.Mansi Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J, (ORAL)

1. Pleadings in this matter are complete. At the request of counsel for the parties, the present writ petition is set down for final hearing and disposal.
2. Counsel for the petitioner submits that by a common order dated 16.12.2002 while disposing of Writ Petition No.3791/2000 and 842/1997, a Division Bench of this Court had directed the NDMC or the MCD and the Government of NCT of Delhi to take all possible steps to re-locate the dairies operating in the municipal zones of Delhi to the outskirts of Delhi. Consequent to this order on 03.09.2004 the MCD published an advertisement in the newspapers and issued a press note, informing the dairy owners regarding allotment of dairy plots in Ghogha Dairy Colony Project measuring 60 sq. mtrs. and 96 sq. mtrs. on the outskirts of Delhi and eligible persons were called upon to apply in the prescribed application form.

Signature Not Verified

Signing Date: 26.09.2024 17:09:52
Certify that the digital and physical file have
been compared and the digital data is as per
the physical file and no page is missing.

It is the case of the petitioner that an application was submitted by the

petitioner on 12.09.2004 and the requisite amount was also deposited on 09.12.2004. The petitioner had mentioned in the application form that she was running a dairy with seven cattle from her house No.E-135, Shastri Nagar, Delhi-52. An allotment letter dated 23.05.2005 was issued to the petitioner, allotting a plot bearing No.D-38 measuring 60 sq. mtrs. under the said project. Reliance is placed on an order dated 30.08.2006 passed in WP(C)No.3791/2006, wherein following directions were issued:

“.....The running of dairy business will be the sole criteria to allot the plots with possession and if anyone found to be ineligible on the aforesaid criteria the possession shall not be given to such applicants. Similarly, if a person after taking possession of the plot is found misusing the same for the purpose other than running a dairy, the allotment will stand cancelled and money deposited will be forfeited by the MCD.....”

4. Counsel for the petitioner contends that before the verification could be carried out petitioner shifted her dairy to L-259, Shastri Nagar, Delhi-52 from her house No.E-135, Shastri Nagar, Delhi-52. It is also the case of the petitioner that an intimation in this regard was also given to the respondent. Respondent carried out verification and found that the dairy was not running at the address mentioned in the application form.
5. Since the petitioner was not running the dairy at the address mentioned in the application form but from another location, provisional allotment made in favour of the petitioner was cancelled in the year 2009.
6. By the present petition, petitioner seeks a direction to respondent to set aside the cancellation letter, cancelling plot bearing No.D-38 measuring 60 sq. mtrs. and /or allot another plot in Ghogha Dairy Colony.
7. Counsel for the MCD has opposed this petition *primarily* on the ground

10

that there is no infirmity, impropriety or illegality in the order passed by the respondent, by which the provisional allotment made in favour of the petitioner has been cancelled. It is submitted that one of the basic criteria for allotment of a plot was running an illegal dairy in an urban area. Counsel further submits that at the time of verification it was found that petitioner was not running a dairy at the address mentioned in the application form. Counsel for the respondent submits that in fact no intimation was sent to the respondent with regard to the change of address.

8. I have heard counsel for the parties and have considered their rival submissions. It is not in dispute before this court that pursuant to the press release the petitioner applied for allotment of a plot at Ghogha Dairy Colony for running a dairy. In the application form the petitioner had mentioned her address as house bearing No.E-135, Shastri Nagar, Delhi-52; where she was running a dairy, whereas at the time of inspection it was found that the dairy was not running at the said address.
9. Counsel for the petitioner has placed reliance on the verification form which has been filed on record in support of her plea that the inspection team visited the alternate site as well, which is evident from the document (annexure P-3), which has been placed on record, which reads as under:

“MUNICIPAL CORPORATION OF DELHI
(VETERINARY SERVICES DEPARTMENT)
Civil Lines ZONE

Subject : Verification regarding number of cattle found available in the illegal dairies – a Survey Report thereof.

Sl. No.	Book- ing Nos.	Name of applicant s Father/ Husband names thereof	Resid- ential Address	Dairy Address/ location (if different from residenti al address)	Whether dairy running at the said address (YES/ NO.)	Whether dairy running in Rural village (YES/ NO.)	No. of adult cattle found at the time of verificat- ion	Signat ures/ thumb impres sions of applica nt	Remarks, if any

86	667087	Smt. Vee na Vaid w/o. Jagdeep Vaid	H.No. E/135, Shastri Nagar, Delhi- 52	L-259, Shastri Nagar, Delhi-52	Yes	No	Total No. of animals are 07, Cow-07	Sh. Jagdeep Singh the Husband of the applicant	Applicant shifted his dairy from E/135 and now is running at L-259, Shastri Nagar, Delhi-52
				E/135, Shastri Nagar, Delhi-52	No		Nil		

Police Official
P.S. Sarai Rohilla
S.I. Ram Nath

V.O./official
Deptt. of Animal Husbandary
GNCTD"

V.O. of the Zone

10. The remarks appended on the right side of the document (Annexure-P/3), reads "Applicant shifted her dairy from E-135 and now is running at house no.L-259, Shastri Nagar, Delhi-52. It is the case of the petitioner that the inspecting team visited the alternate address i.e. house no.L-259, Shastri Nagar, Delhi-52, but it is only subsequently that the comments made in the remarks column have been scored off. The explanation rendered by counsel for the respondent in this regard is that the inspecting team was misled by the petitioner and was taken to an address, which was not mentioned in the application form.
11. The short question which arises for consideration is the effect of change of location from house No.E-135, Shastri Nagar, Delhi-52 to house no.L-259, Shastri Nagar, Delhi-52. By impugned order dated 03.12.2009 the respondent has rejected the application of the petitioner solely on the ground that during dairy verification conducted by the Zonal Verification Team, it was observed that the petitioner was not maintaining any dairy and, therefore due to non fulfillment of the allotment criteria the petitioner was found ineligible.

12. However, taking into consideration that in the verification application it has been noted that the petitioner was running a dairy, but from a different address and taking into consideration the endorsement that the applicant has shifted his dairy from one location (house No.E-135, Shastri Nagar, Delhi-52) to another location (house no.L-259, Shastri Nagar, Delhi-52), in my view the impugned order should have addressed this issue as well; as reading of the verification form would clearly show that the petitioner was running a dairy but from a different address. The effect of this endorsement would be that the petitioner was in fact running a dairy. The impugned order does not give shifting of the dairy as a reason for rejection.
13. Counsel for the petitioner submits that petitioner continues to run her dairy business with six cows. Taking into consideration the peculiar facts of this case and the purpose for relocating illegal dairy owner the impugned order is set aside. The respondent is directed to consider the case of the petitioner afresh. In case the petitioner is found to be eligible, an allotment will be made to the petitioner subject to availability of a plot.
14. Accordingly, writ petition stands disposed of in above terms. No costs.

G.S. Sistani
G.S.SISTANI, J

DECEMBER 20, 2012

SSN PDF