

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

Date of decision: 2nd August, 2013.

+ **WP(C) No.4858/2013 & CM No.11019/2013 (for stay)**

**SRI PRACHIN DURGA MANDIR & GAUSHALA
& ANR**

.....Petitioners

Through: Mr. Vimal Wadhwan, Advocate.

Versus

EAST DELHI MUNICIPAL CORPORATION & ANR. ...Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition, filed under Article 226 of the Constitution of India, impugns Clause 'F' of the Resolution No.77 dated 24th May, 2010 of the respondent Municipal Corporation as well as the notice/memorandum dated 23rd May, 2013 issued by the respondents to the petitioners asking the petitioners to remove the cows in excess of the maximum permissible number from their premises. The petitioners also seek a direction to the respondents to return the nine milching cows and five oxen seized from the premises of the petitioners on 19th July, 2013 and 29th July, 2013. Writ of prohibition, prohibiting the respondents from seizing any cow from the possession of the petitioners is also sought.

2. The case with which the petitioners have approached this Court is:
- (i) that the petitioners are running an ancient temple and a gaushala at their premises at Pandav Nagar, New Delhi since the year 1952;
 - (ii) that at present the petitioners have 34 cows and their progeny in their premises, all for the purposes of religious ceremonies and for offering of prayers and worshipping by the local inhabitants;
 - (iii) that a large number of residents of the area visit the said temple and gaushala regularly and particularly on the festivals of Ekadashis, Poornimas, Gopashtami, Janmashtmi etc.;
 - (iv) that out of 34 cows at present in the premises of the petitioners, only 10 are milching;
 - (v) that the petitioners maintain hygienic conditions in their gaushala and never let loose the cows in the streets; no part of the milk is sold to anyone at any cost and the cow dung is used by the residents of the area to make cakes thereof and burn the same to keep the mosquitoes away and the cow urine is also used for medicinal purposes;
 - (vi) that certain residents of the locality with a view to grab the

valuable land of the temple and gaushala of the petitioners have been making complaints and which has led to the cows in the temple of the petitioners being seized from time to time and which always creates tension and disharmony in the area;

(vii) that though the petitioners have approached the respondents several times for registration of their gaushala but the officials of the respondents have not done so under pressure from the land grabbers;

(viii) that the officials of the respondents on 19th July, 2013 forcibly took away nine milching cows and threatened to take away the remaining cows also;

(ix) that on the same day a notice dated 23rd May, 2013 accusing the petitioners of running an illegal dairy and keeping animals in excess of four permitted and asking the petitioners to remove the excess cows was also served on the petitioners;

(x) that the aforesaid action was taken by the respondents in the name of Resolution No.77 dated 24th May, 2010 formulating a policy for grant of license under Section 417 of the Delhi Municipal Corporation (DMC) Act, 1957 for running of dairies (cows/buffalos) within rural villages/areas and prohibition on keeping of cows/she

buffalos in urban areas/limits;

(xi) that Section 417 (supra) empowers the respondents to grant or refuse license for keeping animals for transportation, sale or hire or for the sale of produce thereof only and does not prohibit the use of any premises for the purpose of keeping cows for worship and religious purposes in temples and ashram which are not run for any commercial purpose; therefore, the respondents are not empowered to prohibit or regulate the use of temples/ashrams for the purpose of keeping cows and their progeny for religious purposes;

(xii) that the actions of the respondents are violative of the fundamental rights of the petitioners to practice their religion and are also violative of Section 417 of the DMC Act.

3. The relevant part of Section 417 of the DMC Act is as under:

“417. Premises not to be used for certain purposes without licence—(1) No person shall use or permit to be used any premises for any of the following purposes without or otherwise than in conformity with the terms of a licence granted by the Commissioner in this behalf, namely:-

(a) any of the purposes specified in Part I of the Eleventh Schedule;

(b) any purpose which is, in the opinion of the Commissioner dangerous to life, health or property or likely to create a nuisance;

(c) keeping horses, cattle or other quadruped animals or birds for transportation, sale or hire or for sale of the produce

thereof; or

(d) storing any of the articles specified in Part II of the Eleventh Schedule except for domestic use of any those articles: Provided that [a Corporation] may declare that premises in which the aggregate quantity of articles stored for sale does not exceed such quantity as may be prescribed by bye-laws in respect of any such articles shall be exempted from the operation of clause (d).

4. Section 418 (1) provides that if any horses, cattle or other quadruped animals or birds are kept in any premises in contravention of the provisions of Section 417, or are found abandoned and roaming or tethered on any street or public place or on any land belonging to the municipality, the municipality and its officers would be empowered to seize and impound the same. Sub-section (2) thereof also empowers the Commissioner to, if of the opinion that the user of any premises for the purposes referred to in Section 417(1) is causing a nuisance which needs to be stopped, to order the owner or occupier of the premises to stop such nuisance.

5. Section 419 (1) empowers the Commissioner to, after giving public notice, declare that in any area specified in the notice no person shall use any premises for any of the purpose referred to in Sub-section (1) of Section 417. Sub-section (5) thereof bars all persons in the area with respect to which the Commissioner has exercised powers under Section 419 (1) from using the premises for any of the purpose referred to in Section 417.

6. The contention of the counsel for the petitioners is that the prohibition contained in Section 417(1)(c) is only against keeping horses, cattle or other quadruped animals or birds for transportation, sale or hire or for sale of the produce thereof and is not an absolute prohibition to keeping of such animals if kept for the purposes other than of transportation, sale or hire or for the sale of the produce thereof. It is argued that since the petitioners are keeping the cows and their progeny in their temple/gaushala, not for the purpose of transportation, sale or hire or for the sale of produce thereof but for religious or other purposes, the Commissioner cannot in exercise of powers under Section 417 prohibit the petitioners from so keeping cows for religious and worship purpose and cannot limit the number thereof to four as has been done by Clause 'F' of the impugned resolution.

7. The argument, though attractive on the face, is however in the light of the history in this regard, not deserving of even issuance of notice of or entertaining of this petition.

8. The Legislature, conscious of the tradition and practice of households keeping cows, not for the purposes of sale of the produce thereof, had in Section 137 of the DMC Act providing for taxation for keeping animals within the city of Delhi provided for an exemption for a cow or a she buffalo

kept for milking for domestic use if the cow or she buffalo is the only cow or she buffalo kept by the owner or the person having possession or control thereof for such milking and is registered in accordance with bye-laws made in this behalf. Delhi Municipal Corporation Registration of Cow and She-Buffalo Bye-Laws, 1965 were framed in this regard and which provided for registration of such cow or she buffalo subject to a declaration being made, (a) that the owner or person having possession or control of such animal has only one cow or she buffalo kept for milking for domestic use; (b) that he has no other cow or she buffalo owned by him or under his possession or control; and, (c) that there is no other cow or she buffalo owned by him or in the possession or control of any other person constituting a family of which he is a member. Such registration was further subject to certain conditions relating to maintenance of hygienic conditions at the place where the cow or she buffalo was to be kept.

9. In or about the year 2000, a public interest litigation titled as ***Common Cause (Regd.) Society Vs. Union of India*** came to be filed in this Court with respect to the serious menace posed by stray cattle, cows, bulls buffalos on the roads. It was highlighted, that such stray cattle squat on the roads and hamper free flow of traffic, sometimes leading to accidents and

loss of human lives; that presence of cattle on roads also causes filth and stench because of their excreta. Guidelines were issued in the judgment reported in (2003) 102 DLT 259 in the said public interest litigation, directing the municipalities to take steps to re-locate the dairies operating in the municipal zones to outskirts of Delhi and for cancellation of licences of dairies in case the cattle and other bovine animals belonging to it stray out of the premises in which the dairy is being run. Directions were also issued for establishment of the dairy colonies on the outskirts of Delhi. A subsequent order dated 31st May, 2007 in the said public interest litigation also directed that all dairies, including those operating from dairy colonies established some 25 years ago were meant to be re-located on the outskirts of Delhi and not just those that were operating unauthorizedly. It was further held that running of dairies in an urbanized city like Delhi puts considerable stress on its civic amenities and the existence of dairies in the midst of a growing metropolis was considered incomprehensible.

10. It was in the aforesaid background that the Resolution, Clause 'F' whereof is challenged, was passed formulating a policy for grant of licence under Section 417 for running of dairies (cows/buffalos) within rural village areas and imposing prohibition on keeping of cow/she buffalos in urban area

limits. The Municipal Corporation by the said Resolution resolved/decided:-

- A. That when everybody is short of living spaces, these domestic animals cannot be allowed in urban areas.
- B. That the presence of these domestic animals causes unsanitary conditions.
- C. That even urban villages have become congested and practically no space is left for dairy activities and allowing dairy activity in these villages is likely to create unsanitary conditions, water and air pollution and spread of zoonotic diseases in the densely populated regions where human beings are likely to come in contact with the diseased animals through their secretions, excretions and also their products.
- D. That keeping of a cow or she buffalo in a family for domestic purposes, under the Registration of Cow and She-Buffalo Bye-laws, 1965 also cannot be allowed as these animals are left on the roads, streets by their owners. Accordingly, the Resolution repeals the said Bye-laws.
- E. That to ban use of any premises in urban areas for keeping cows / buffalos, a public notice under Section 419(1) supra had been

issued on 20.06.2008.

- F. The Resolution thus bans / prohibits keeping of cows / buffalos in urban areas of Delhi and permits the said activity only in authorized colonies therefor.
- G. However, noticing that some temples/ashrams were keeping cows not only for the purpose of getting milk but also for worship, taking into account the traditional and religious sentiments of a large section of society, the Resolution permits licencing of maximum four cows or its progeny in a temple/ashram subject to fulfillment of certain conditions.

11. It is not in dispute that the premises of the petitioners are in an urban area of Delhi. Under the Resolution aforesaid, there is a complete bar to using any premises in the urban area for keeping cows / buffalos / oxen, save for religious purposes but subject to maximum of four.

12. The contention of the petitioners, on the basis of Section 417(1)(c) supra that the Municipal Corporation is empowered to regulate use of premises for keeping cattle, only if cattle is kept for transportation, sale or hire or for sale of the produce thereof and not if kept for religious purposes, presupposes that the only power of the Municipal Corporation in this regard

is under Section 417 (1)(c).

13. Under Section 41 of the DMC Act, the municipal government of the city of Delhi vests in the Municipal Corporation, with abatement of all nuisances and taking of measures for preventing and checking spread of dangerous diseases, regulation and abatement of offensive or dangerous trade or practices being *inter alia* the obligatory functions of the Municipal Corporation under Section 42 of the Act and promotion of public safety, health, convenience and general welfare being a discretionary functions of the Municipal Corporation under Section 43 of the Act. Section 397 of the Act prohibits all persons from letting loose any animal so as to cause, or negligently allow any animal to cause injury, danger, alarm or annoyance to any other person or from storing or using cow dung or any other substance emitting an offensive smell and the owner or keeper of any animal from allowing it to stray in a public street or public place without a keeper.

14. The counsel for the petitioners is taking a myopic view of Section 417 also and ignoring other clauses thereof. Section 417 (1) (b) prohibits use of the premises for any purpose which in the opinion of the Commissioner is dangerous to life, health or property or likely to create a nuisance.

15. The Municipal Corporation, which as aforesaid is vested with

municipal governance, in the Resolution supra has concluded/decided that in the urban areas of the city, owing to dearth of space, the cows/buffalos etc. cannot be permitted to be kept and their keeping poses a nuisance and is likely to lead to spread of diseases. The said opinion formed by the Municipal Corporation has not been challenged in the petition. I am even otherwise satisfied that there is no ground to interfere with the said opinion and which in fact has been formulated in pursuance to the guidelines issued by the Division Bench of this Court in the public interest litigation aforesaid.

16. Reference in this regard may also be made to ***Milkmen Colony Vikas Samiti Vs. State of Rajasthan*** (2007) 2 SCC 413, also a public interest litigation, where the High Court had directed the milk dairies located in city of Jodhpur to be shifted to alternate sites. The Supreme Court, relying on its earlier judgment in ***Virender Gaur Vs. State of Haryana*** (1995) 2 SCC 577 held that right to have living atmosphere congenial to human existence is a right to life; it was further held that the State has a duty in that behalf and to forge a policy to maintain ecological balance and hygienic environment; that the hazard to health and environment of the entire town has to be taken into consideration; that activities such as dairies put extra load on the infrastructure. With respect to the Fundamental Rights of dairy owners, it

was held that a balance has to be struck between Fundamental Rights and the larger interest of the society; that individual interest yield to the interest of the general public or the community.

17. The Municipal Corporation in the present case, though as aforesaid fully empowered to impose such ban, has still permitted keeping of maximum four cows for religious purpose. I fail to see, as to how and why for religious purpose the petitioners can demand to keep more. The reason for the ban / prohibition as aforesaid is the nuisance and hazard from co-existence of such animals in the congested city. The nuisance and the hazard remains the same, whether such animals are kept for commercial or for non commercial / religious purposes. The respondent Municipal Corporation is thus fully justified in prohibiting keeping of more than four cows for religious purposes also. I even otherwise fail to see as to how, to a believer / faith keeper it makes a difference, whether he feeds one cow or more.

18. I, therefore, do not find any merit in the petition which is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 02, 2013/bs