

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3339 OF 2021

M/s. Ashraf Poultry Farm
Through its Partner
Mohd. Ashraf Timol

...Petitioner

Versus

Union of India and Ors.

...Respondents

Mr S.P. Brahme, Advocate holding for
Mr M.S. Shah, Advocate for Petitioner
Mr P.K. Lakhotiya, A.G.P. for Respondent-State

AND

WRIT PETITION NO. 3340 OF 2021

M/s. Pioneer Poultry Farm
Through its Partner
Shri. Saleh Hasim Vhora and ors.

...Petitioners

Versus

Union of India and Ors.

...Respondents

Mr S.P. Brahme, Advocate holding for
Mr M.S. Shah, Advocate for Petitioner
Mr P.K. Lakhotiya, A.G.P. for Respondent-State

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 18th FEBRUARY, 2021

PER COURT :

1. The petitioners are the owners of the poultry farms in Nandurbar District. The petitioners assail the order dated 12th February, 2021 passed by the respondent No. 3 directing the culling of the birds, eggs in their poultry farms.

2. Mr Brahme, the learned counsel for the petitioners submits that the petitioners poultry farms are beyond one kilometer from the poultry farm where the birds were found infected of bird flu (Avin influenza). The learned counsel submits that the birds of the petitioners' poultry farm were tested time and again and the reports were negative of bird flu. In such scenario, the respondents could not have directed culling of the birds in the petitioners poultry farms. The learned counsel referring to section 25 of the Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009 submits that the resorting to the culling of the bird of infectious animals would be the last resort and the culling of the birds is contemplated only for infected animals and not for the other birds. The respondent authorities have not considered the said aspect while passing the impugned order. Declaration of infected area within the periphery 2.5 kilometers of the infected poultry farms would cause loss to the poultry farm owners. The learned counsel submits that the poultry farms of the petitioners are also sealed on 4th February, 2021. As such, no ingress and egress is permissible from the said poultry farm. No question arises of the birds, eggs or other items in the poultry farms to spread infection. The learned counsel relies on the order passed by the Principal Seat at Bombay in Writ Petition No. 2455 of 2021 dated February 3, 2021.

3. Mr Lakhotiya, the learned Assistant Government Pleader submits that authorities have taken conscious decision. The birds in the 21 poultry farms in the vicinity of the petitioners poultry farms were found infected by bird flu. The large scale infection is spreading. The petitioners

claim that their poultry farms distance is beyond one km. from the infected poultry farms. The distance within one km is infected zone and upto 10 kms. is surveillance zone. The learned counsel submits that the authorities after sealing the poultry farms with the consultation of the Central Government has taken the decision to safeguard the life and health of the general public, so also to curtail the spread of infection.

4. It is submitted by the learned counsel for the petitioners that on 17th August, 2020 also, samples were taken for testing from the petitioners poultry farms. The report is awaited.

5. We have considered the submissions.

6. Upon reading the impugned order, it appears that the respondent authorities have taken the emergent steps to arrest the spread of infection. In fact, the steps appear to have been taken earlier also by sealing the petitioners poultry farm on 4th February, 2021. The authorities certainly would have benefit of advise from the experts in the particular field and the authorities would be guided by the advise of the experts. The court cannot substitute its views in place of the experts views. Curtailing the spread of infection of bird flew certainly would be priority and the task to be done at war-footing. We may not interfere in the said process. The bone of contention of Mr. Brahme, the learned counsel for the petitioners is that the poultry farm of the petitioners were already sealed. They are beyond one km. from the infected poultry farms and in such scenario, the possibility of spread of infection would be nil. The birds, eggs and other items from the poultry farms of the petitioners cannot be sold. The

authorities ought not to have taken drastic steps of culling the birds.

7. It would be the decision of the authorities based on the advise of the experts regarding steps to be taken to curtail spread of infection.

8. The authorities may revisit the decision of culling animals and after considering all the aspects of the matter, may proceed with such steps as would appear to be proper for the spread of infection. The decision would solely rest with the authorities.

9. The writ petitions are accordingly disposed of. No costs.

10. Authenticated copy be given.

[SHRIKANT D. KULKARNI, J.]

[S.V. GANGAPURWALA, J.]

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