

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-13817-2021 (O&M)

Date of decision: 04.08.2021

KIRPAL SINGH AND ORS

... Petitioners

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. MS Joshi, Advocate for the petitioners.

Ms. Kanica Sachdeva, AAG, Punjab.

Mr. Sanjeev Soni, Advocate for respondent No.2 and 3.

ANIL KSHETARPAL, J.

This writ petition has been filed by as many as 35 petitioners
claiming the following substantive reliefs:-

- a) a writ or direction especially in the nature of a writ of Mandamus there by directing the respondents to amend/modify the Dairy development Scheme Ablawal Annexure P-1.
- b) It is further prayed for issuance of a writ of certiorari thereby quashing orders/letters dated 23.06.2021 passed by Joint Commissioner Municipal Corporation Patiala vide Annexure P-9 and similar orders sent to all the petitioners to immediately shift their dairy business to dairy development project Ablawal and forcing the petitioner to deposit money at the exorbitant rate of Rs.3500 per sq yard instead of earlier assure Collector

rate.

From the pleadings and facts stated in the annexures, it is apparent that the petitioners are running the business of dairy by keeping milk yielding animals within the area of Municipal Corporation, Patiala. In the year 2002, a complaint was submitted to the Punjab State Human Rights Commission. The Punjab State Human Rights Commission vide an order dated 04.03.2003 directed the Municipal Corporation to take action as envisaged under Section 345(2) of the Municipal Corporation Act, 1976. Thereafter, on a further complaint, a report was sought from the official respondents. The Municipal Corporation issued notice to the dairy owners to shift within a period of one month vide notice dated 05.07.2004. The decision of the Municipal Corporation was challenged by filing CWP No.11594 of 02 which was disposed of by directing the petitioner to approach the authorities. Thereafter, an application was filed before the Punjab State Human Rights Commission which was disposed of vide order dated 09.08.2004 and the operative observations made therein are as under:-

“ It was then submitted by the counsel for the applicants that a grave injustice is going to be done to the applicants as their names are likely to be excluded from the list of the allottees who are likely to be alternative site in lieu of their dairies and in this manner the right of equality of the applicants is likely to be sacrificed and infringed by the Corporation and it will be a serious violation of Human Rights within the meaning of Section 2(d) of the Protection of Human Rights Act, 1993. There is force in the contention raised by the learned counsel

for the applicant. Section 2(d) lays down “Human Rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution. If Karnail Singh and his son Hardip Singh are genuine dairy owners as established by the report of the health authorities, dated 3/13/2003, there should not be any violation of right of equality of the present applicants and their name should also be considered at the time of allocation of an alternative site alongwith other dairy owners as and when the local authorities take exercise.”

Thereafter, the Commissioner of Municipal Corporation, Patiala, submitted a report to the Human Rights Commission.

In order to shift the dairies situated within the city out of the municipal area, a conscious decision was taken. In that process, land measuring 15 acres owned by the Municipal Corporation in village Ablawal was identified. However, since the aforesaid piece of land was not sufficient, additional land measuring 6.25 acres owned by the Forest Department was also requisitioned. Thus, on a total land measuring 21.25 acres, the project was sought to be developed. It appears from the reading of Annexure P-9 that now, after carrying out some development in the area earmarked, the allotment of the plots has been started. The petitioners assailed the correctness of communication dated 23.06.2021 by which the dairy owners have been informed that they have to deposit 5% of the total amount of the plot before 17.06.2021. In case of non-deposit of this 5% amount, the plot allotted in lucky draw shall be deemed to have been

cancelled. The dairy owners have also been directed to shift their dairy out of the limits of the Municipal Corporation before 10.08.2021.

Heard learned counsel for the parties at length and with their able assistance, perused the paper-book.

The learned counsel representing the petitioners contends that the location of dairy project in village Ablowal is not appropriate as all the dairies cannot be allowed to concentrate at one place. It is further contended that the allotment was to be made on Collector rate whereas the respondents have demanded a sum of Rs.3500/- per sq. yard. It is further contended that there is high tension wires going from the area and therefore, the land is not suitable.

It is apparent that way-back in 2003, the Punjab State Human Rights Commission directed the Municipal Corporation to take steps to shift the dairies. Thereafter, the Punjab Government provided 15 acres of land to the Municipal Corporation for the project of resettlement of the dairy owners. An additional land of 6.25 acres was taken from the Forest Department. A look at the photographs show that some development work has been carried out. The streets with paver tiles and electricity lines have been laid and plots have been carved. In this process, 18 years have already elapsed. At this stage, it would not be appropriate for the Writ Court to interfere on the ground that all the dairies are sought to be concentrated at a particular place in the absence of material to show that the land ear-marked is not at all suitable. The petitioners claim that at one point of time they

were planning to shift the dairies at 5 different locations. In the considered view of this Court, at this late stage, it would not be appropriate to go into the aforesaid fact particularly when not only the land has been ear-marked but some development work has also taken place.

The next argument of the learned counsel is with regard to the price which is sought to be charged. In this regard, the petitioners have alleged that vide a communication dated 18.10.2004, the Assistant Municipal Commissioner, Punjab, had indicated that the allotments shall be made on Collector rate which is around Rs.790/- per sq. yard. It may be noted here that for developing the project, a significant part of the land is utilised for providing common facilities like streets, open area etc. The Municipal Corporation is required to charge the amount after taking into consideration various factors. The petitioners have only been called upon to deposit 5% of the amount. The petitioners have not placed on record sufficient material to prove that the price demanded is exorbitant. In these circumstances, this Bench finds that the petitioners have not placed sufficient material to enable the Court to examine this aspect. Hence, without any further deliberation, the matter is kept open.

As regards the arguments of learned counsel that there are high tension electricity wires going over the area, it may be noted that the officials of the Municipal Corporation must have examined all the relevant aspects while identifying and selecting the said area.

As noted above, some development has already taken place.

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From the reading of the Annexure P-5 i.e, allotment letter dated 20.05.2021, it is apparent that in the first phase, the dairies situated along with Jacob drain of the inner city have been allotted the plots. Now, in the second phase, remaining dairies of city are sought to be allotted the plots. The price to be charged from the dairy owners has been determined by a General House of the Municipal Corporation vide resolution No.219 dated 08.01.2020.

Keeping in view the aforesaid facts, this Bench does not find it appropriate to issue the writ as prayed for. Hence, the writ petition is disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

04.08.2021

ashok

Whether speaking/reasoned:
Whether reportable:

(ANIL KSHETARPAL)

JUDGE

Yes / No
Yes / No