

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.560 of 2019

In

Civil Writ Jurisdiction Case No.15048 of 2018

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1. Madan Kumar Bhakt @ Madan Bhagat, aged about 48 years, male, Son of Sri Kailash Bhagat @ Sri Kailash Bhakt.
 2. Sanjeev Kumar, aged about 28 years, male, Son of Late Bhushan Bhagat.
Both are resident of Village-P.O.- Mathura, P.S.- Biddupur, District- Vaishali.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Forest and Environment Department, Govt. of Bihar, Patna.
2. The District Magistrate-cum-Collector, Vaishali.
3. The Sub-Divisional Officer-cum-Sub-Divisional Magistrate, Hajipur, Vaishali.
4. The District Animal Husbandary Officer, Vaishali.
5. The Block Development Officer, Bidupur Block, District- Vaishali.
6. The Circle Officer, Bidupur Block, District- Vaishali.
7. The S.H.O., Bidupur Police Station, District- Vaishali.
8. The Sub-Inspector of Police, namely Sri Gajendra Kumar Singh, Bidupur Police Station, District- Vaishali.
9. The Panchayat Secretary, Mathurapur Gram Panchayat, Bidupur Block, District- Vaishali.
10. The Chairman, Bihar State Pollution control Board, Privesh Bhawan, Patliputra Industrial Estate, P.S.- Patliputra, District- Patna.
11. The Member Secretary, Privesh Bhawabn, Patliputra Inudtrial Estate, P.S.- Patiliputra, Distt.- Patna.
12. The Regional Officer, Privesh Bhawan, Patliputra Industrial Estate, P.S.- Patliputra, Distt.- Patna.
13. Harendra Kumar, Son of Chandradeep Roy.
14. Harihar Roy, Son of Chandradeep Roy.



Both are resident of Village-P.O.- Mathura, P.S.- Biddupur, District-
Vaishali.

... .. Respondent/s

Appearance :

For the Appellant/s	: Mr. Mrigank Mauli, Sr. Advocate Mr. Amresh Kumar Sinha, Advocate
For the Respondent/Pollution Board	: Mr. Shivendra Kishore, Sr. Advocate Mr. Parijat Saurav, Advocate
For the Respondent Nos. 13 & 14	: Mr. Surendra Kumar Singh, Advocate Ms. Sudha Chandra, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 27-04-2022

Heard Mr. Mrigank Mauli, the learned
Senior Advocate for the petitioners and Mr.
Shivendra Kishore, the learned Senior Advocate for
the respondent/Bihar State Pollution Control Board.
The State is represented by Ms. Sunita Kumari.

2. When the Circle Officer, Bidupur
asked the appellants to close down their poultry
farms on 22.06.2018 after having found the situs of



the farms to be within 300 meters of the population for which measurement was taken under the orders of the Sub-Divisional Magistrate, Hajipur on 14.05.2018 passed in Misc. Case No. M1/1139 of 2017, the appellants approached this Court *vide* C.W.J.C. No. 15048 of 2018 for setting-aside of the aforesaid orders.

3. The learned Single Judge, after hearing the matter, found that the decision of the authorities to direct for closure of the poultry farms on the ground of same being situated within 100 to 150 fts. from the village was justified and refused to interfere with such decision.

4. The aforesaid order passed by the learned Single Judge on 04.04.2019 is under challenge in the present appeal.

5. The only contention on behalf of the appellants is that the requirement of any poultry farm to be at a particular distance from the residential zone has been modified by the Animal



Husbandry Department in consultation with the Bihar State Pollution Control Board, which fact has not been taken into account by the learned Single Judge.

6. It has further been urged that even otherwise, without the determination/demarcation of the residential zone, which is a new criteria fixed in the new guidelines, the poultry farms could not have been directed to be closed on the charge that the location of such farms are not in consonance with the guide-lines in that regard.

7. As opposed to the aforesaid contention, Mr. Shivendra Kishore, the learned Senior Advocate appearing for the Bihar State Pollution Control Board, has submitted that the guidelines issued by the Animal Husbandry Department had never been adopted by the State Board and what is being referred to by the appellants is only a check-list for facilitating inspections, which are carried out under the Act and it serves as a reminder to the inspecting team not to miss out on



particulars which have be verified.

8. It has also been submitted on behalf of the Board that in terms of the provisions contained in Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, "Consent-to-Establish and Consent-to-Operate" is given to industrial units at the time of their establishment, but poultry farms are not included in such category of Industries. However, the State Board, in order to prevent pollution related to poultry farms, thought it best to constitute a Committee comprising the Members from the Department of Forest; Animal Husbandry and Officials of the State Board to formulate situs guidelines for the poultry farms.

9. Based on the recommendation of such Committee so constituted, a decision was taken which was notified on 28.06.2007. According to the aforesaid notification, a poultry farm cannot be set-up or be allowed to operate, if it is within the radius of 500 meters of the residential zone in urban area



or 300 meters of residential zone in rural area. Ever since the coming into effect of the aforesaid notification, those poultry farms which are following the guidelines are given the "Consent-to-Establish and Consent-to-Operate" such farms.

10. After having said that, Mr. Shivendra Kishore has also drawn the attention of this Court to the fact that under the Water (Prevention and Control of Pollution) Act, 1974, poultry farms have been classified in "green" category, which is considered to be least polluting industry/undertaking.

11. The aforesaid classification also appears to have been withdrawn now, but with respect to small poultry farms having less than 25,000/- birds, many other guide-lines are enforced.

12. Be that as it may, since it has been brought to the Board's notice that while seeking consent for opening the poultry farms, the appellants had made wrong representation with respect to the



distance of the poultry farms from the residential zone and in view of several complaints received by the Board with respect to the foul order, emanating from such farms because of non-optimal waste management, an inspection was conducted in which it was found that those poultry farms were located within the prohibited zone of distance from the urban/rural residential areas and habitation.

13. During the course of argument, Mr. Shivendra Kishore, the learned Senior Advocate, however, could not conclusively state whether during the course of inspection, the other conditions which a poultry farm owner is to follow was verified or not. Some of the conditions which would go a long way in preventing pollution related to poultry farms are that the owners shall comply with the requirement of Rule 14 of the Environment Protection Act, 1986 as well as several other provisions of the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008. Many of the provisions of



the manufacture, search and import of Hazardous Chemical Rules, 1989 and Public Liability Insurance Act, 1991 are to be followed strictly, failing which the conditions under the license would be deemed to have been breached.

14. In our considered view, it was incumbent upon the inspecting team to have verified whether the effluents and emissions from those farms conformed to the standard as prescribed by the State Board; whether with the boundary wall, segregating the poultry farms were erected; whether there was any solid and liquid waste management plan in place after the approval of the State Board; whether proper hygiene and safety precautions were being maintained in those poultry farms and whether such farms were compliant of the other conditions, namely, installation of diesel engine D.G. set with ambient noise levels and plantation of trees to develop a green belt around the farms.

15. We are also of the considered view



that apart from measuring the distance of situs of these poultry farms, the inspecting team should have addressed itself to the conditions enumerated above.

16. Not having done that, the inspection appears to be perfunctory and no purpose would otherwise be served with such inspections.

17. True it is that according the State Board's notification, the situs of the poultry farms of the appellants have been found to be within the prohibited zone, though the same has been denied by the appellants, but considering that other aspects of the matter have completely been lost sight of by the inspecting team, we partially sustain the order passed by the learned Single Judge, approving the closure of the poultry farms, but further direct that a fresh inspection be made on all such aspects which have been noted above and a decision be taken whether the poultry farms should be allowed to operate in area and such report be given to the appellants at the earliest.



18. In case the appellants, in any manner, are aggrieved by such report, they can take recourse to the law to which they are entitled under the law.

19. With the aforesaid observation and direction, the appeal stands disposed off.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

Praveen-II/-

AFR/NAFR	AFR
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