

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

208

CWP-16214-2017 (O&M).
Date of Decision: 22.02.2024.

AKHIL BHARTIYA GAUSHALA (REGD.)

... Petitioner(s)

Versus

STATE OF HARYANA AND ANOTHER

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

PRESENT Mr. Atul Lakhanpal, Sr. Advocate, with
Mr. Arvinderpal Singh Grover, Advocate, for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Vivek Chauhan, Advocate, for respondent No.2.

VINOD S. BHARDWAJ, J (ORAL).

Prayer in present writ petition is for seeking directions to the respondents to release the amount, as promised vide letter dated 08.07.2016 (Annexure P-1), in lieu of 936 cattle left under the care and custody of the petitioner by respondent No.2-Municipal Corporation, Rohtak.

2 Learned counsel for the petitioner contends that the petitioner is a registered Society under the name of Akhkil Bhartiya Gaushala, District Rohtak, and is running the said Gaushala. The respondent Municipal Corporation issued a communication dated 08.07.2016 wherein it had promised to pay a sum of Rs.13 lakhs per month in lieu of care of the cattle left by the respondent No.2-Municipal Corporation, for a period of 03 months commencing w.e.f. 06.07.2016 upto 05.10.2016. The petitioner was directed to submit bills twice every month for clearance of the said charges.

It is contended that over a period of time, the cattle were taken away by 29.09.2017, however, the cattle remained in the possession and custody of the petitioner from 06.7.2016 to 29.09.2017. The respondent Municipal Corporation has however made only a part payment of Rs.35,90,666/- as against the total bills submitted to the tune of Rs.1,30,00,000/- for the period commencing w.e.f. 07.07.2016 to 05.05.2017.

3 Consequent upon notice issued, a reply has been filed by the respondent No.2-Municipal Corporation by way of affidavit of Pardeep Kumar, Commissioner, Municipal Corporation, Rohtak, wherein it is averred in the preliminary objections that the land underneath the Gaushala is owned by the respondent No.2-Municipal Corporation and that the said land was never allotted to Gaushala and no permission was sought by the petitioner for utilizing the said land for setting up the Gaushala.

4 A counter claim in fact has been raised that the respondent No.2-Municipal Corporation, is entitled to seek charges for occupation and possession of the above said land in an unauthorized manner for running the Gaushala. It is further averred that the petitioner is also not permitting the officials of the respondent No.2-Municipal Corporation to inspect the Gaushala and to count and tag/stamp the cattle and to check the physical condition. It is also stated that the said cattle, in fact, are released in the morning to roam around in the city. In the absence of proper tagging, it is difficult to verify as to whether it is the same cattle that was caught and left under the care and custody of the petitioner or it is a stray cattle. Further, the amount of Rs.13 Lakhs in bi-monthly installments, was to be paid only for 936 cattle and for a period of 03 months alone. Thereafter, there was no

acknowledgement or the obligation under taken by the respondent No.2-Municipal Corporation for disbursement. The above said agreement was for a period of 03 months only and stood determined thereafter and there was no further liability. He further contends that there was paucity of funds on account whereof the respondent No.2-Municipal Corporation was not in a position to pay the remaining amount to the petitioner. A request letter was sent to the Director, Urban Local Bodies, Haryana on 22.11.2016 to release payment @ Rs.50 per cattle per day for disbursing it to the Gaushalas. Further Rs.17,40,325/- was received from the Government along with the communication dated 30.12.2016. Certain other payments were also released, however, as no further grant has been received, it was not in a situation to verify the demand and to remit the payment. He further contends that the cattle left with the petitioner was decided to be shifted to the Gaushala constructed by the respondent No.2-Municipal Corporation and only 566 cattle were available in the Gaushala of the petitioner against the total number 1083 cattle left by the respondent No.2-Municipal Corporation. There was no tag on maximum number of the cattle that had been left in the custody of the petitioner Gaushala and that the petitioner never complied with the directions of the Government as mentioned in the letter dated 30.12.2016.

5 The twin issues which arise for consideration of this Court are:-

- (i) Whether the petitioner is entitled to the charges as undertaken by the respondent Municipal Corporation to be defrayed on

account of the care and custody of the cows left by respondent No.2; and

- (ii) Whether the Gaushala in question had been constructed in an unauthorized manner and without any requisite permission by encroachment on public land.

6 In so far as the objection raised by the respondent No.2-Municipal Corporation that it is not liable to pay expenses beyond the period of 03 months is concerned, the said objection, I find, is apparently dishonest and is an attempt to dishonor the obligation undertaken to be discharged by the respondent No.2-Municipal Corporation. The respondent No.2-Municipal Corporation having not disputed that the requisite number of cattle had been left at the Gaushala, it was bound to take the cattle back on expiry of the said period. Having not performed its obligation of shifting the cattle beyond the period for which it was kept there and having burdened the petitioner with the care and protection of the cattle even beyond the said period, by necessary implication, the obligation shall stand extended for the remaining period as well. The respondent No.2-Municipal Corporation, Rohtak availed of the facility offered by the petitioner Gaushala on an assurance of payment. It was required for the Municipal Corporation to remove the cattle after the period but in not doing so, there is a deemed continuation of the obligation. Having availed the reciprocal service, the Municipal Corporation cannot claim that it has no liability to reimburse. It's own admission of liability and affirmation of entitlement of

petitioner Gaushala to receive the same is established also from the reply where it admits having made payments.

7 In so far as the second aspect as regards the petitioner Gaushala having been constructed in an unauthorized manner (even though the above said claim is seriously disputed by the counsel appearing on behalf of the petitioner by contending that the Gaushala was constructed on a land given by the Gram Panchayat and that the same had never vested with the respondent No.2-Municipal Corporation), it is seen that even though the said reply was filed in the year 2017, however, no documents have been placed on record on the basis of which such an assertion on an affidavit filed by the Commissioner of the respondent No.2-Municipal Corporation can be disputed.

8 Under the given circumstances, it is the own case of the respondent No.2-Municipal Corporation that there has been an unauthorized encroachment on the municipal land and that the Gaushala has been constructed thereupon. There is no explanation as to how and under what circumstances, an encroachment on such a large area of municipal land could have taken place and as to what action had been taken by the competent authority of the respondent No.2-Municipal Corporation/the Department of Urban Local Bodies, Haryana, against the erring officials once the above said irregularity/illegality had come to their notice.

9 Under the given circumstances, while holding the respondents liable to discharge the undisputed obligation for the extended period of cattle being lodged with the petitioner, the present petition is disposed of with a further direction to the Director General of Police, Vigilance,

Haryana, to direct an inquiry into the aspect of unauthorized encroachment on the Corporation land, if any, and to take appropriate action against the erring officials by fixing penal as well as civil liabilities.

10 Needless to submit that the above further direction is not a recording of finding by this Court but is based solely on the statement of respondent No.2-Municipal Corporation itself. It does not preclude the petitioner from establishing its title.

11 Petition is accordingly disposed of.

12 Be listed for compliance after a period of 6 months.

February 22, 2024
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No