

Sunayana Sibal & Ors vs Government Of Nct Of Delhi & Ors on 27 May, 2024

Author: Manmeet Pritam Singh Arora

Bench: Manmeet Pritam Singh Arora

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 13236/2022, CM APPL. 56064/2023
60825/2023
SUNAYANA SIBAL & ORS.

GOVERNMENT OF NCT OF DELHI & ORS.

This is a digitally signed order. W.P.(C) 13236/2022

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The Order is downloaded from the DHC Server on 03/06/2024 at 20:30:11

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA
ORDER

% 27.05.2024

1. In pursuance to the last order, Chief Secretary, GNCTD has filed a short affidavit dated 24th May, 2024 to indicate the road map proposed to be adopted to making the nine authorised dairies compliant with the law and to stop the misuse of land in these colonies. The Chief Secretary, GNCTD and other high-ranking officials of the Delhi Government have also joined the proceedings by way of audio-video link.

2. Learned counsel for GNCTD has addressed submissions on the contents of the short affidavit and states that the most significant decision taken by GNCTD after the last date of hearing is nomination of the Additional Chief Secretary, Urban Development Department, GNCTD as the Nodal Officer in this matter, who has been entrusted with the responsibility of compiling the Action Taken Reports ('ATRs') from all the concerned departments responsible for ensuring that the dairies operating in the nine colonies are made compliant with law. He states that the said Nodal Officer shall place the ATRs before the Chief Secretary for onward submission before this Court in compliance with the order dated 8th May, 2024.

2.1. He states that in the interregnum, the verification of status of licences issued to existing dairies in these colonies revealed that none of the dairies has the four statutory licences enlisted in paragraph '7' of the Minutes of Meeting ('MoM') dated 19th August, 2019 chaired by Director, Animal Annexure P-3 to the petition.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/06/2024 at 20:30:11 Husbandry Unit, GNCTD. He, in fact, fairly concedes that no licence has been issued till date by the Animal Husbandry Unit, GNCTD in accordance with Rule 3 of the Prevention of Cruelty to Animals (Registration of Cattle Premises) Rules, 1978 ('Rules 1978'). He states that however, the GNCTD is considering to seek approval of the Competent Authority for delegating this power to local authority i.e., MCD. He states that GNCTD is also of the view that there is an overlap in the issue of licence(s) under the Rules of 1978 and Section 417 of the Delhi Municipal Corporation Act, 1957 ('DMC Act').

2.2. He states that a joint inspection was carried out of the current position of the 'use' of dairy plots in Ghogha Dairy colony. He states that only 139 plots were found to be in use for a dairy as against 2082 developed plots. He states that about 1081 plots though allotted are lying vacant and unutilised. He states, on instructions, that no action has been initiated against the allottees of these 1081 plots for not setting up dairies. He states separately, there are 75 dairy plots that are constructed but lying vacant and unused. He states that similarly, no action has been taken against the allottees of these 75 plots for not commencing dairy work from these plots. He states that 773 plots in Ghogha Dairy colony have not been allotted to any person for want of applications.

2.3. He states that 14 plots in Ghogha Dairy colony are being misused for residential or commercial purposes. He states that show-cause notices have been issued to these allottees and action will be initiated against the misuse. He admits that these dairy plots have been allotted at controlled rates to the allottees and they cannot misuse these plots.

2.4. He states that despite the availability of these unallotted 773 plots and The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/06/2024 at 20:30:11 unutilised 1081 plots, due to the long distance involved there is no proposal/consensus to shift Bhalswa Dairy colony or Gazipur Dairy colony to Ghoga Dairy colony as directed by this Court vide order dated 08th May, 2024 . He states that instead there is a proposal by GNCTD to ask MCD to raise a barbed wire around the Bhalswa Dairy colony and Gazipur Dairy colony so as to prevent the cattle from grazing on the garbage at the adjacent Sanitary Landfill ('SLF').

2.5. He states that with respect to the Veterinary hospital at Ghogha Dairy colony, the Principal Secretary, Animal Husbandry Department, GNCTD has been directed to undertake ground visits of all the Veterinary hospitals in the State and submit a plan for the augmentation of facilities at the hospitals by 30th June, 2024.

2.6. He states that GNCTD has addressed a communication to FSSAI that the Dairy owners, who are not members of Dairy Cooperative Society and who sell milk directly to consumers from their dairy farms or through home-to-home distribution be considered as Food Business Operators under the Food Safety and Standards Act, 2006 ('FSS Act') and such dairy owners be brought within the purview of the FSS Act accordingly. He admits that none of the dairy owners has a licence from the Food Safety Authority under the FSS Act despite a direction to this effect forming part of the MoM dated 19th March, 2019.

3. Learned counsel for the MCD as well confirms that no licence has been issued by MCD to any of the dairies in the nine dairy colonies after the MoM dated 19th August, 2019 under Section 417 of the DMC Act. He states that there is indeed an overlap in the issuance of licence under Section 417 of the DMC Act and the Rule 3 of the Rules of 1978, though as a matter of The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/06/2024 at 20:30:11 fact licence has not been issued under either regime to the existing dairies.

4. Learned Standing counsel for DUSIB states that with respect to the dairies falling under its jurisdiction, it has initiated action against the plot owners, who are misusing the plots. He states that the dairy plots cannot be used for any other purpose including residential or commercial, by the allottee. He states that recently DUSIB has initiated action against illegal commercial use and encroachment in Ghazipur Dairy Farm. He states that however, an alleged representative body i.e., Ghazipur Dairy Farm Mandir Sewadar Samiti approached the Civil Court in Civil Suit No. 171/2024 and obtained an ad-interim stay order dated 29th February, 2024 against the demolition action and the same is continuing. He states that similarly, for the demolition action proposed against misuse and encroachment in Masoodpur Dairy colony, an association has approached the High Court in a

writ petition wherein an interim order is operating in favour of the Petitioner therein. He states that in these circumstances, DUSIB has been unable to take action against the misuse and encroachment in Ghazipur Dairy colony and Masoodpur Dairy colony.

5. Learned counsel appearing for Respondent No. 7 i.e., Delhi Police states that he has filed an affidavit dated 27th May, 2024 earlier today. He states that action has been taken by the Special Branch in coordination with the District Police. He states that however, the intelligence inputs indicate that Oxytocin injections were being brought in from places outside Delhi or at U.P. border. He states that therefore, in view of the cross-border implications, to make this exercise effective, it would be necessary to involve central teams of the Drugs Controller General of India, Central Drugs Standard Control Organization, working under the Directorate The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/06/2024 at 20:30:11 General of Health Services, Ministry of Health and Family Welfare, Government of India to overcome the issues of jurisdiction during enforcement. He states that the concerned Department of the Union of India be impleaded in the present proceedings.

6. The OSD (Rules and Litigation) appointed by this Court vide order dated 08th May, 2024 to implement the directions as regards the pilot project at Madanpur Khadar Dairy Colony has submitted a report dated 24th May, 2024, wherein it is reported that Animal Husbandry Department, GNCTD has informed her that Tags for tagging of the cattle are provided by Government of India under its Scheme known as INAPH and GNCTD does not have Tags to provide. It is, therefore, stated that it would be appropriate that Ministry of Fisheries, Animal Husbandry and Dairying, Government of India through its Secretary be impleaded so that the Tags can be provided to the DSLSA.

7. Learned counsel for FSSAI has handed over a Note. He states that in pursuance to the directives issued by this Court vide order dated 08th May, 2024 a sampling drive was carried out. He states that 500 samples were collected by FSSAI and sent for testing. He states that report has been received for 58 samples of which 26 are non-conforming. He states that the reasons for non-conformity is the presence of Aflatoxin M-1. He states that since the dairies fall within the jurisdiction of GNCTD, legal proceedings and punitive measures for the non-conforming samples will have to be undertaken by the Food and Drug Administration Department, GNCTD. 7.1. Learned senior counsel for the Petitioner and learned standing counsel GNCTD state that Aflatoxin, as per the information available on the internet, is poisonous carcinogens and mutagens that are produced by certain molds, The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/06/2024 at 20:30:12 particularly Aspergillus species mainly by Aspergillus flavus and Aspergillus parasiticus. Learned counsel state that parasiticus grows in soil, hay, decaying vegetation and grains. He states that thus, the effect of the cattle grazing on the garbage/SLF has a direct nexus with the presence of Aflatoxin in the milk. He states that the dietary exposure to Aflatoxins is harmful to both humans and animals.

7.2. Ms. Neha Bansal, Commissioner, Food and Safety Department, GNCTD who joined the meeting through audio-video link states that the State Department (separate from FSSAI) collected 177 samples of milk and milk products, and sent them for testing. She states that as per reports received, only one sample out of 177 has tested positive for the presence of Oxytocin. However, in this regard, we have perused the Note submitted by FSSAI which records that out of the 177 samples collected by the State only 39 samples collected by State Department were tested for Oxytocin; and not 7.3. In view of the mismatch in the submissions of the State Department and FSSAI respectively, Ms. Neha Bansal is directed to file an affidavit with respect to the accurate number of samples sent for testing of Oxytocin and the report of the samples.

8. Learned senior counsel for the Petitioner has handed over photographs taken at Bhalswa Dairy colony on 26th May, 2024. He states that these pictures clearly show that the cattle are grazing at the base of the SLF and sitting in and/or eating garbage. He states that the dairies in the picture are operating at a close distance from the SLF. He states that the pitiable and unhygienic conditions in which the cattle are kept and used for commercial milk production will be evident to any State official who The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/06/2024 at 20:30:12 chooses to visit these dairies. He states that however, GNCTD has clearly decided to turn a blind eye to the horrific conditions existing at the Bhalswa and Ghazipur Dairy colony. He states that the stand taken by GNCTD in its affidavit dated 24th May, 2024 of refusing to shift the dairies from their existing location is abdication of its obligation towards public health, in addition to its indifference to the abject cruelty to the animals concerned, which is in violation of the State's obligations under Prevention of Cruelty to Animals Act, 1960. He states that the submissions of GNCTD that licence to be issued by the MCD under Section 417 of the DMC Act is an overlap with the jurisdiction under Rule 3 of the Rules of 1978 evidences lack of understanding an appreciation about the scope and intent of the Rules of 1978.

9. At this stage, learned counsel for GNCTD and MCD reiterate that the State and Department be given an opportunity until 30th June, 2024 to take steps for regularizing the dairies and ensuring that they are in compliance with the law.

10. Having heard the learned counsel for the parties and having perused the affidavits filed by the Respondents after the last date of hearing, this Court gets a distinct impression that there is a lack of will in the State functionaries to stop the rampant violation of laws by the dairy owners in the nine dairy colonies. These violations not only affect the public health of the citizens and residents who are consuming the milk being produced in these dairies but are also wrapped in extreme cruelty to the animals housed in these dairies.

11. More particularly, the abject dereliction of duties by the Animal Husbandry Unit of GNCTD in the existing unlawful status of the dairies has The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/06/2024 at 20:30:12 come forth during the proceedings. This Unit of GNCTD has, prima facie, not only failed in discharging its primary function under the Rules of 1978 of granting and regulating the licences to these dairies but it has also failed to provide for functional

and stocked Veterinary Hospitals in these nine dairy colonies. With this being the state of affairs in the authorized nine dairy colonies this Court is unable to fathom the state of affairs in the illegal dairies, which as per the Petitioner also exist in Delhi.

12. In our considered opinion, the State's lack of will to shift Ghazipur and Bhalswa Dairy colony to an alternate site despite its proximity to the SLFs and its undeniable adverse effect on public health, shows that the decisions are being taken by the administration for considerations other than relevant and germane to public health.

13. It also appears to this Court that alternate land within Delhi or outside would be required for shifting the Ghazipur and Bhalswa dairies, and therefore, it may be necessary to have the presence of Ministry of Housing and Urban Affairs, Government of India through its Secretary.

14. In view of the submissions recorded above, we deem it appropriate to implead Drugs Controller General of India, Central Drugs Standard Control Organization, working under the Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India, Ministry of Fisheries, Animal Husbandry and Dairying, Government of India through its Secretary and Ministry of Housing and Urban Affairs, Government of India through its Secretary. Issue notice, without process fees, to the newly impleaded respondents through Mr. Kirtiman Singh, Standing counsel for UOI. The Petitioner is directed to file an amended memo of parties before the next date of hearing..

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15. DUSIB is directed to file an application within one week in Civil Suit 171/2024 for the vacation of order dated 29th February, 2024. It is directed that the application, when filed, shall be heard and disposed of by the learned Civil Judge preferably within one week in accordance with the law. Similarly, DUSIB is directed to file an application for vacation of the interim order in the writ petition pending before this Court. It is directed that the application, when filed, will be heard and disposed of by the learned Single Judge expeditiously and preferably within one week in accordance with law.

16. The matter will be treated as part heard.

17. List on 12th July, 2024 at 02:30 PM.

ACTING CHIEF JUSTICE MANMEET PRITAM SINGH ARORA, J MAY 27, 2024/hp The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/06/2024 at 20:30:12