
(2012) 05 DEL CK 0364
In the Delhi High Court
Case No : LPA No. 524 of 2010

Municipal Corp. of Delhi

APPELLANT

Vs

Dilip Kumar Budhiraja

RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0364

Hon'ble Judges : Rajiv Sahai Endlaw, J;D. Murugesan, J

Bench : Division Bench

Advocate : Madhu Tewatia with Ms. Sidhi Arora, for the Appellant; Nitin Narang, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Sahai Endlaw, J.—This Intra-Court appeal impugns the order dated 6th May, 2010 of the learned Single Judge allowing W.P.(C) No. 11959/2009 preferred by the respondent, by directing the appellant MCD to allot a plot in Ghogha Dairy Project, "based on the first inspection report". Notice of the appeal was issued and the operation of the order of the learned Single Judge stayed. We have heard the counsels for the parties finally at this stage. The respondent was an applicant for a dairy plot in the Ghogha Dairy Project and claims to have deposited a sum of Rs. 1,20,000 with the appellant MCD at the time of making application in the year 2005. He filed the writ petition claiming that no plot was allotted to him, though he was challaned for running a illegal dairy at his existing site. He thus sought a direction for allotment of plot ad measuring 96 sq. mtr. applied for by him.

2. The appellant MCD filed a counter affidavit to the writ petition pleading that the Ghogha Dairy colony was developed pursuant to the directions in Public Interest Litigation (PIL) being W.P.(C) No. 3791/2000 titled Common Cause Vs. Union of India, highlighting menace of stray cattle on Delhi roads. It was further pleaded that though in the first phase 1373 persons had booked the plots in the proposed colony but there were complaints of irregularities in allotment of plots

and which led this Court, in the PIL supra to appoint a Committee to physically verify the dairies which the applicants claimed to be operating, in as much as running of dairy business was to be the sole criteria for allotment of plots in the proposed Ghogha Dairy Colony. It was further pleaded that upon such verification, only 535 out of the 1373 applicants were found eligible for allotment and accordingly the allotments earlier made in favour of the remaining 838 applicants who were not found running dairies, were cancelled and intimation thereof given including by public notices. It was further pleaded that during the said verification, the respondent was not found running any dairy. Dispute was also raised as to the challans claimed by the respondent.

3. The learned Single Judge, in the order impugned in this appeal, has merely observed that there was no reason to disbelieve the report of the first inspection pursuant to which allotment was made in favour of the respondent and accordingly issued direction for allotment of plot.

4. We are however unable to agree with the course adopted by the learned Single Judge. As aforesaid, the entire Ghogha Dairy Colony/Project was developed pursuant to the directions in the PIL aforesaid. It is evident that, after the allotment of the plot in favour of the respondent in pursuance to the inspection, the Division Bench of this Court had directed a fresh physical verification and allotments already made, of only those to be confirmed, who on such physical verification were found to be running dairies. During the said physical verification, according to the appellant MCD the respondent was not found running a dairy and accordingly the allotment in his favour was cancelled as far back as in the year 2007. The said aspect of the matter has not been considered at all by the learned Single Judge. In view thereof the impugned order cannot be sustained and has to be necessarily set aside.

5. The counsel for the respondent has however invited our attention to para 2.14 of the memorandum of appeal where under the heading "Verification done consequent to court orders" it is mentioned, "Respondent was not amongst the bogus allottee". On the basis thereof it is argued that if the respondent was not amongst the bogus allottees, the allotment in his favour could not have been cancelled and the learned Single Judge has rightly allowed the writ petition.

6. The counsel for the appellant MCD is unable to explain the aforesaid.

7. We have minutely combed the counter affidavit filed by the appellant MCD to the writ petition, where it is categorically stated that during the physical verification by the Committee constituted by the PIL Bench of this Court, the respondent was not found running a dairy and was thus found to be not fulfilling the criteria for allotment. We do not find any admission in the said counter affidavit that the respondent was not amongst the bogus allottees. However in view of the ambiguity aforesaid, while setting aside the order of the learned Single Judge, we dispose of the writ petition filed by the respondent and this appeal by directing the appellant MCD to again assess the claim of the

respondent for a dairy plot, within two months of today and if find the respondent to be eligible for allotment of a dairy plot, to allot such a plot to him within further two months thereafter, on compliance of all the formalities including payment of charges in accordance with the current rate by the respondent. We have directed payment at current rate to the respondent because of the long delay by the respondent in approaching this Court. As aforesaid, the applicants found genuine by the Committee aforesaid were made allotment in the year 2007 itself and the respondent filed the writ petition only in the year 2010. However if the respondent is not found eligible, the appellant MCD shall pass a reasoned speaking order and also refund the money deposited by the respondent together with interest if any, in accordance with the policy in this regard. The respondent to, within 15 days hereof appear before the concerned officers of the appellant MCD with all his documents.

No order as to costs.