

Al Faheem Meat Exports Pvt. Ltd. Through Its Director, Shri Imran Son of Haji Yaqoob Qureshi and Mazhar Mehmod Son of Shri Anwar Mahmood Vs. State of U.P. Through Principal Secretary of Nagar Vikas, Govt. of Uttar Pradesh and Nagar Nigam Through Its Municipal Commissioner

Al Faheem Meat Exports Pvt. Ltd. Through Its Director, Shri Imran Son of Haji Yaqoob Qureshi and Mazhar Mehmod Son of Shri Anwar Mahmood Vs. State of U.P. Through Principal Secretary of Nagar Vikas, Govt. of Uttar Pradesh and Nagar Nigam Through Its Municipal Commissioner

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Court : Allahabad

Decided On : Mar-29-2006

Reported in : 2006(4)AWC3486

Judge : A.K. Yog and ;Prakash Krishna, JJ.

Acts : Land Acquisition Act - Sections 4 and 6; Uttar Pradesh Municipal Corporation Act, 1954 - Sections 422; Uttar Pradesh Municipal Corporations (Amendment) Act, 1959 - Sections 2(45B), 2(46), 2(48) and 422; [Constitution of India](#) - Articles 21 and 226

Appeal No. : Civil Misc. Writ Petition No. 53782 of 2004

Appellant : Al Faheem Meat Exports Pvt. Ltd. Through Its Director, Shri Imran Son of Haji Yaqoob Qureshi and Maz

Respondent : State of U.P. Through Principal Secretary of Nagar Vikas, Govt. of Uttar Pradesh and Nagar Nigam Thr

Advocate for Def. : C.P. Gupta, ;V.M. Zaidi, ;Satish Chaturvedi and ;A.K. Mishra, Advs. and ;S.C.

Advocate for Pet/Ap. : S.D. Kautilya, ;Shashi Kant Gupta and ;Rahul Singh, Advs.

Judgement :

A.K. Yog and Prakash Krishna, JJ.

1. AI Fahim Meat Export Private Limited through its Director (Imran Son of Haji Yaqoob Qureshi) along with one Mazhar Mahmood (Son of Anwar Mahmood) of Meerut City U.P., Petitioner No. 1 and 2 respectively, have filed this Writ Petition under Article 226 [Constitution of India](#) with the prayer to issue a Writ of Certiorari to quash impugned Advertisement dated 6-12-2004 published by Respondent No. 2- Nagar Nigam, Meerut (Called- The Nigam) in daily news paper inviting sealed tenders from persons interested to run its existing 'Slaughter House', situate on Hapur Road within the territorial limits of The Nigam after expiry of the term of previous lease, i.e. 30-12-2003, (Annexure-1 to the Writ Petition), to issue a writ of Mandamus directing the Nigam not to proceed in pursuance to the impugned advertisement, to issue as usual a Writ of general nature and to award the costs.

2. To appreciate respective contentions of the parties we may re-recapitulate the pleadings of the parties and undisputed salient facts of the case, which are given hereunder.

CASE OF THE PETITIONER:-

According to the petitioners (which is not disputed by any of the parties to the proceedings) the building of the existing 'Slaughter House' is old, dilapidated and in shambles; it is operated on an old and obsolete pattern causing pollution and foul smell resulting in to public nuisance which has made the lives of the local residents unbearable. This has generated strong resentment in the public and finally culminating into protests against its operation as such. Due to the existing Slaughter House there is indiscreet disposal of Animal -Skin, Hide, Bone/Carcasses, hideous disposal of animal blood, rampant burning of animal -fat in open and thus recklessly perpetuating pollution of 'Air' and 'Environment' while the public is subjected to irreparable sufferance for no fault of theirs as they are forced to live under inhuman conditions and compelled to live under extreme hardship.

3. The Nigam, on the other hand has no funds to 'shift' or 'renovate' the existing Slaughter- House as it and, therefore, helpless and unable to do the needful. The Nigam, faced with the above situation, issued an advertisement inviting proposal from interested persons to submit 'Project Report' to establish a 'modern slaughter- house' on International standards with, latest advanced technology at proposed site proposed to be acquired under Land Acquisition Act. The petitioners, as well as others, submitted 'Project-reports' to the Nigam The Offer, as per Project Report of the petitioners to establish a Modern 'Slaughter House' at new proposed site situate in Village Ghosipur (Meerut), contemplated investment of Rs. 5 Crores within one year subject to the condition that the Petitioner was allowed to run the slaughter house for Ten Years on payment of lease money at par with the preceding year lease money- i.e. Rs. 14 lacs per annum. As compared to the above, on the other hand, one Md. Zaved had submitted proposal to run Slaughter House on payment of Rs. 8 lacs per annum as lease money along with 'project-report' at the estimated cost of Rs. 4 crores while the Project Reports of others i.e. Mazhar Mahmood,/Petitioner No. 2, Md. Yunus Qureshi, Targeeb Ahmad and Md. Ismail were of much less value. (See Writ Paper Book pp34)

4. Petitioners pleaded that a Committee of the Nigam (comprising of its President, Senior Nagar Health Officer and two Corporaters) after examining the above proposals, recommended to the Nigam to accept the proposal/project- report of the petitioners. The Nigam vide its letter dated 5-12-2003/Annexure-2 to the writ petition referred the matter to the State Government for its consideration and no objection. This letter also shows that the Mayor of the Nigam had written letters in the past raising the issue to modernize the 'Slaughter House', steps taken to invite proposals through Advertisements in newspapers; the Mayor had finally required a Committee-with Senior Health Officer of the Nigam as Chairman-to examine the proposals in compliance to the decision of the Nigam dated 4.12.2003 (Annexure -5 to Writ Petition); the said Committee submitted its report to the Nigam (See Annexure SA2 to the Supplementary Affidavit, sworn by Gulam Murtaza) ; the Nigam had passed required resolution and accepted recommendation of the Committee and sought 'No objection' from the State Government (See Annexure- SA4 to the Supplementary Affidavit sworn by Gulam Murtaza) and finally the State Government expressed its No objection vide letter dated 31/-12-2003 (Annexure-3 to the writ petition) which is reproduced below:

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(Underlined by us to lay emphasis)

5. According to the petitioners-on the assurance extended by the Nigam- substantial amount was invested in making advance payments to the Civil Contractor and purchasing raw materials considering public pressure to modernize the slaughter house and to ensure that Slaughter House was established and operated as per Project and the norms prescribed by the U.P, Pollution Control Board (Para-15 of the writ petition).

6. Petitioners further plead that their project report of Rs. 5 Crore, to modernize Slaughter House was adjudged the 'best proposal' and no approval from the State Government was required in view of its approval already extended vide letter dated 31-12-2003 (Annexure-3 to Writ Petition), Petitioner No. 1 also sent letter dated 22.07-2004 addressed to the Minister, Nagar Vikas, Govt. of U.P. for taking up the matter (Annexure-6 to the writ petition) and when nothing was done the petitioner filed Writ Petition No. 37187 of 2004 and this Court was pleased to dispose of the writ petition vide order dated 15-9-2004, relevant extract of which reads:

It is not disputed that Nagar Nigam, Meerut again recommended the matter to the State Government for sanction of modernization of slaughter house. The matter is pending before the State Government.

This petition is disposed of with a direction to respondent No. 3 to decide the matter referred by Nagar Nigam, Meerut within a period of two months from the date a certified copy of this order is produced before respondent No. 3

(Underlined to lay emphasis)

7. Petitioners contend that aforesaid order was duly communicated to the concerned vide their representation dated 19-09-2004 (Annexure- 7 & 7A to the Writ Petition)

8. It is stated in the Writ Petition that an agreement dt. 5/9-12-2004 was executed and signed by the Municipal Commissioner on behalf of The Nigam, (on one side) and Mohd. Imran, Director of Al Faheem Meat Exports Pvt. Limited/petitioner No. 1 as well as Mazhar Mahmood/petitioner No. 2 (on other side). The grievance of the petitioner is that in spite of the above the Nigam and State Government have shown complete apathy and failed to execute the Project and establish a 'Modern Slaughter House' and thus left the public to suffer adversely (See Writ Para 4 to 21).

9. The petitioners apprehend that the Nigam intends to resile and review its stand for no reason or rhyme; the said approach of the Nigam was uncalled for in view of the above-referred State Government order dated 31-12-2003 (Annexure-3 to the writ petition) and hence the present writ petition.

Case of the State Government/Respondent No. 1

10. State of U.P. through Principal Secretary, Urban Development Department, U.P. Shasan, Lucknow/Respondent No. 1, chose to file a Short Counter Affidavit, sworn by Mohinder Singh, Principal Secretary, Urban Development Department, U.P. Shasan, Lucknow. The facts pleaded in the writ-petition,

relating to the existing Slaughter House, sufferance of the people and their consequential grievances over public Nuisance caused by it, the necessity to modernize the existing Slaughter House and the correspondence between the Nigam and the State Government (referred to above) in the matter, have not been disputed as such.

11. Para 6 of this short counter affidavit reads:

It is submitted that the letter No. 1181M/9-8-03-11P/203 dated 31-12-2003 sent by the Department of Urban Development Government of U.P. to Nagar Ayukt, Nagar Nigam, Meerut has only directed the Nagar Ayukt, Nagar Nigam, Meerut to take necessary action as per Section 422 of U.P. Nagar Nigam Adhiniyam 1959. No where in this letter any approval of the so called 'project report dated 5-12-2003' has been accorded by the State Government. Infact, perusal of this so called project report will very clearly establish that it can hardly be called a professionally and technically prepared project report. It is the duty of the Nagar Ayukt, Nagar Nigam, Meerut to get a proper report prepared for constructing a modern slaughter house with latest technology by some professional organization having the requisite expertise and experience in this field. As per the information available with the State Government no such report has been got prepared by Nagar Nigam, Meerut and it has not drawn and approved any specific time bound plan in this regard. The Government vide its letter No. 130/9-8-05-51 Writ/04 dated 20-1-2005 has directed the Nagar Avukt and Mayor Nagar Nigam, Meerut to get such a report prepared and formulate a time bound programme to implement in the overall interest of public. Xerox copies of the letters dated 31-12-2003 and 20-1-2005 are annexed herewith and marked as Annexure CA1 and CA2 to this short counter affidavit.

(Underlined to lay emphasis)

12. Annexure CA-1 to the short Counter affidavit is a copy of Government Letter dt. 31.12.2003 (already filed as Annexure-3 to the writ petition and quoted above) It shows that State Government had no objection over modernizing 'Slaughter House' subject to Section 422 of U.P. Municipal Corporation Act, 1954 and considering urgency of the matter it felt that an early action to establish modern 'Slaughter House' was warranted.

13. Annexure CA-2 is a copy of the letter of K.K. Chaudhary, Joint Secretary, U.P. Shasan, Lucknow dated 20-01-2005 addressed to Nagar Ayukta, Nagar Nigam, Meerut expressing (i) dis-satisfaction of the Government over inaction and failure to modernize the Slaughter House was against public interest, (ii) the issue of construction of modernized Slaughter House at new sight was pending since long, in spite of Notification dt. 8.2.2002 under Section 4 Land Acquisition Act to acquire land for the proposed modern Slaughter House (iii) the balance amount of compensation (Rs. 46,49,840/-) was not paid by the Nigam to the State Government and in the last(iv) certain queries were made and the Nigam was required to come out with its clear policy.

14. Annexure C.A. 3 to the short Counter Affidavit, is 'Office Memo' dt. 7.1.2005 wherein the State Government pointed out that there was no provision to grant Patta for ten years (or part of it) under Section 422 U.P. Nagar Nigam Adhiniyam, 1959 ; that there was no provision in the 'Adhiniyam' to get 'slaughter house' of the Nigam modernized by lessee (Thekedar) and on that reasoning rejecting the recommendation of the Nigam contained in its letter dated 20-10-2004 to accord 'No objection' to the Project.

Case of the Nagar Nigam. Meerut/Respondent No. 2:

15. Respondent No. 2 /Nagar Nigam, Meerut filed Counter affidavit, sworn by S.S. Yadav, Senior Tax Superintendent, Nagar Nigam, Meerut. Para 7, 11 and 36 of the said Counter Affidavit, containing the defence and admissions relevant for our present purposes, are reproduced:

7- Public is put to inconvenience on account of the unauthorized and illegal act of the contractor- petitioner who has occasionally been burning the fat and bones of the slaughtered animals in the slaughter house itself resulting in the foul smell emanating from there....

11. The State Government merely directed the answering respondent to proceed in accordance with the

provisions of Section 422 of the Municipal Corporations Act, 1959, However, till date no action in this regard has been taken by the Corporation nor has any approval for modernization been granted by the Corporation....

36 The entire object of filing the writ petition is to obtain an extension of a contract which is due to expire on 8-1-2005. The same being not permissible under law the writ petition is wholly misconceived and is liable to be dismissed with costs.... The instant Slaughter house is now due to extension of abadi very near residential areas and the intention is to construct a new slaughter house removed from the residential areas.

(Underlined by us to lay emphasis)

16. Pleadings in the above counter affidavits, apart from reflecting sheer apathy of the State Government and the Nigam towards sufferance of the public due to the 'nuisance' caused by the existing Slaughter House, also shows on the face of record, the oscillating and casual approach with no future vision on the part of these Respondents.

17. Contention of the Nigam, has been categorically denied vide para 9 of the rejoinder affidavit (sworn by Imran); wherein it is stated:

The State Government has already given its 'No Objection' on 31-12-2003 and directed to the Municipal Commissioner to proceed with in accordance with the provisions of the Nagar Nigam Adhiniyam. The Project report was duly examined by the Committee duly constituted and as such the excuse taken by the answering respondent in para under reply is absolutely baseless. For kind perusal of this Court, copy of the Project report along with the copy of letter dated 24-11-2003 which were submitted before the State Government are being filed herewith and marked as Annexure-RA1 to this rejoinder affidavit.

(Underlined by us to lay emphasis)

18. Letter dated 24-11-2003 Annexure RA1 (referred to in above quoted Para 9 of Rejoinder affidavit) shows that prior to 2004 present Slaughter House was leased for Rs. 07 lacs per annum but the previous lessee (Thekedar) did not deposit even the said amount with the Nigam; the petitioner, however, offered to pay Rs. 14 lacs per annum Lease money (in advance) besides his offer to invest Rs. 5 Crores to modernize the slaughter house on International standards within one year and in case of his failure to do so, he agreed for cancellation of lease in his favour. The petitioner, however, claimed lease for Ten Years in order to enable him to recover the capital amount spent in modernizing the slaughter house (free from pollution) at new site. This letter dt. 24.11.2003 is signed by Mazhar Mahmood/petitioner No. 2 and Mohd. Imran, Director of the Company, Alfaheem Meats (Pvt.) Export Ltd./petitioner No. 1.

19. Annexure SA1 to the Supplementary Affidavit (sworn by Gulam Murtaza)- filed on behalf of Petitioner No. 1 on 25-1-2005 is the Photocopy of Newspaper Advertisement dated 9-11-2003 issued by the Nigam wherein the Nigam has admitted the presence of Nuisance due to collection of rubbish and foul smell near and around the existing Slaughter House.

20. The above factual matrix, which may be now part of history, still necessary to appreciate the tangled issue of the existing Slaughter House of the Nigam and the public nuisance caused by it.

Development after filing of Writ Petition:

21. When case came up for consideration, this Court passed following order dated 6-01-2005:

We direct S.S. Yadav, Senior Tax Superintendent, Nagar Nigam, Meerut, the deponent of the counter affidavit in the present writ petition on behalf of the respondent No. 2 to explain the statements made on oath in paragraph 7 in the counter affidavit on his personal knowledge. He shall also indicate as to what complaint were received by him from public, whether Nagar Nigam had taken any cognizance on complaints being

made by the Inspector, etc, ensuring maintenance and proper running of a slaughterhouse as contemplated in U.P. Municipal Corporation Act, 1959.

Further the Executive Officer of the Nagar Nigam, Meerut shall be personally present on the date fixed in this case along with the record regarding running of slaughter house at Meerut including the proposal sent to the Government and also the record showing that the Nagar Nigam has decided to shift the slaughter house to the next place. The Chief Health Officer, Meerut is also directed to submit his report forthwith regarding hygiene and condition of slaughter house keeping in mind the public health and hygiene in the vicinity of the slaughter house.

The Principal Secretary, Nagar Vikas, Government of U.P. is also directed to file his own affidavit and not to appear in person indicating the steps or action or cognizance taken by it to ensure that slaughter house is being run as per the provision of law and once when it was brought to the knowledge of the State Government authorities that the slaughter house, Meerut is not in proper condition and requires modernization what steps were taken to ensure that the slaughter house is being run properly because it concerns the public hygiene and public health.

It is made dear that in case Court comes to the conclusion that the slaughter house is not being run on the prescribed parameter and standard required under law, it may direct for closure of slaughter house as such with direction to the Nagar Nigam and State Government to pay damages to the concerned including the Contractor.

List on 21-01-2005.

Let a copy of this order may be issued to learned Counsel appearing for the parties without payment of charges within 24 hours.

(Underlined by us lay emphasis)

22. A Supplementary counter affidavit (sworn by S.S. Yadav, Sr. Tax Supdt. Nagar Nigam, Meerut on 24-1-2005 was filed on behalf of the Nigam before the next date fixed.

23. In para 4, 5 and 6 of the supplementary Counter affidavit (sworn by S.S. Yadav, Sr. Tax Supdt) it is admitted that there several complaints were received in the past from those living in the vicinity of the existing Slaughter House due to the 'Nuisance perpetuated by its presence; he has also suggested to shift present slaughter house to another place Annexure SCA-1 and SCA-2 (to the said Supplementary Counter affidavit) are the copies of one of the complaint in this respect and the complaint lodged by Nagar Swasthya Adhikari at Nauchandi Police Station on September 10, 2002.

24. Relevant Para 4, 5 and 6 of the Supplementary Counter Affidavit (sworn by S.S. Yadav) are reproduced:

4- That in this connection it is stated that several petitions were made by persons residing in the vicinity of the slaughter house through the local members of the legislative assembly to the Vidhan Sabha regarding burning and cooking of bones etc. and the resulting four smell with the prayer that the slaughter house be shifted to some other place. A true copy of one such petition of 2002 is being filed as Annexure- SCA1 to this affidavit.

5. That a report was lodged by the Nagar Swasthya Adhikari at the Nauchandi Police Station on 10-9-2002 praying for action against persons illegally cooking the entails of slaughtered animals to extract fat. A true copy of the same is filed as ANNEXURE SCA-2.

6. That in this back ground, when the contract for operating the slaughter house awarded to the petitioner was being prepared this aspect was also discussed and then a specific condition was added wherein it was specifically provided that the bones and other remains would not be cooked in the slaughter house and if this

condition was violated the contract was liable to be cancelled. This condition is clause 6 of the contract which has been filed as Annexure-4 to the writ petition. No such condition existed in the previous contract awarded for operating the slaughter house.

25. This Court vide its order dated 25-1-2005 noted prevailing acute public problem due to the existing Slaughter House, the shocking attitude of the concerned and the treatment meted by the respondent to the problem in hand.

26. On one pretext or the other, project to establish modernise Slaughter House, has been procrastinated for last 6-7 years. The Respondents seems contend with the correspondence on paper unmindful of their admitted inability to over-come 'Public Nuisance' on the pretext of paucity of funds and/or non availability of new site under Land Acquisition proceedings The endeavour of the Respondents to have modernized Slaughter House in the past has been frustrated which has yielded no positive result and apparently failed. Their attempt for what ever reason, proved an exercise in- futility.

27. The court in its order dated 25-01-2005 (passed more than a year ago) desired to find a way out and noted that the petitioner' was prepared to invest a sum of Rs. 5 crores for modernization of Slaughter House within one year; the Court further noted that in the interest of general public and general health of local residents, when neither 'State Government nor 'Nagar Nigam' have shown any sensitivity or positive imagination to overcome problem, which was statutory obligation, Court intervened to protect fundamental right of those concerned.... If that be so a time bound scheme can be conceived by the Respondents. Funds can be generated from 'auction' bid amount of present Slaughter House. In two years Nagar Nigam shall have at least 50 lacs from auction of Slaughter House. It will not be spent on any other head. Balance land compensation be paid from said 'auction' money.'

(Underlined by us to lay emphasis)

28. Under said order dated 25-01-2005, concerned Authorities were directed to ensure that a Slaughter House on modern pattern (free from pollution and Public Nuisance) is established over the proposed site (after acquiring the land under Land Acquisition Act) in the profound hope that the existing slaughter house shall be closed and abandoned after 18 months. Order dated 25-1-2005 was passed primarily keeping in view the object that public was saved of 'Nuisance' and consequential torture due to existing Slaughter House which was operated on old pattern in flagrant violation of the norms to prevent Pollution.

29. While passing this order, Court was conscious of two things (I) that the Nigam had no funds to acquire land and to establish Modern Plant for establishing and operating Slaughter House at new site and therefore, it may not be compelled to do impossible (Lex Non- Cogit Ad-impossibilia) and (ii) the local residents and the People in general, on the other hand, should not be forced to suffer for no fault of their and Fundamental Rights of these people guaranteed under Article 21 of [Constitution of India](#) (i.e. right to live with human dignity which includes right to have unpolluted Air and Water) ere must be protected on the principle-when there is right, there is remedy ('UBI JES IBI REMEDIUM)', See J.T. (2003) 7 S.C 209 and that the arms of Court are long enough to reach injustice See 1966 (1) SCC 589 para-7.

30. The Nigam then filed another supplementary counter affidavit -sworn by J.P. Trivedi, Municipal Commissioner, Nagar Nigam Meerut, on 23-4-2005), Para 4 to 7 are also quoted for convenience:

4- That thereafter by letter No. 870/Nirman/Hariram/05 dated 11-4-2005, a true copy whereof is filed as ANNEXURE SCA1 to this affidavit, information was sought from the Additional District Magistrate (LA) regarding the as to the current position of the land acquisition proceedings.

5- That the map for construction of the slaughter house is to be provided by the Meerut Development Authority. In this connection two letters have been written to the Vice Chairman, of the Meerut Development Authority on 25-2-2005 and 13-4-2005, true copy whereof are filed as ANNEXURE SCA 3 and SCA3 to this

affidavit. However, till date no communication has been received from the Vice Chairman, Meerut Development Authority.

6- That an application was made on 28-3-2005 by the Nagar Sewasthya Adhikari to the U.P.Pollution Control Board for obtaining no objection certificate for the setting up the new slaughter house.

7- That a reply was received from the U. P. Pollution Control Board specifying that the project report and the detailed maps were also required to be furnished before a no objection certificate could be granted. A true copy of the said letter of 28-3-2005 is filed as ANNEXURE SCA 4 to this affidavit. Efforts are being made to collect all necessary documentation so that the no objection certificate can be obtained expeditiously.

31. Annexure- SCA1 to the above Supplementary Counter Affidavit is letter dated 11-4-2005 written by Nagar Ayukt, Meerut to ADM (LA), Meerut in the matter of acquisition of land for Slaughter House. Annexure- SCA2 is letter dated 25-2-2005 written by Nagar Ayukt, Meerut to Vice Chairman, Meerut Development Authority (MDA) asking to supply a copy of Map of the proposed construction of Slaughter House. Annexure SCA3 is another letter dated 13-4-2005 reminding Meerut Development Authority (MDA) to send Map/project of Slaughter House. Annexure SCA-4 is letter of U.P.Pollution Control Board asking Nagar Swasthya Adhikari of the Nigam to submit application in prescribed form for No Objection.

32. Contents of aforesaid supplementary counter affidavit are more than enough to convince that running of the existing slaughter house (on old pattern) is a continuous source of public nuisance resulting into serious problem of pollution, hygiene and health hazards for the residents living in the vicinity of the said Slaughter House.

33. In the meantime the State Government filed compliance report in the shape of Civil Misc. Application No. 32249 of 2006, (supported by an affidavit of Dinesh Chandra Misra, Secretary, Nagar Vikas Vibhag, U.P. Shasan, Lucknow, dated 16-2-2006) annexing therewith letters dated 16-2-2005(Annexure-1), 28-6- 2005 (Annexure-2), 27-7-2005(Annexure-3), 27-1-2006(Annexure-4) and Government letter dated 31-1-2006 and Land Acquisition Notification 2-2-2006 (Annexure-5 & 6) to bring on record the action taken for acquiring land (measuring 5.260 Hectare in village Ghosipur District Meerut) for the proposed site of new Slaughter House Annexure-5 to this affidavit is copy of letter dated 31-1-2006 written by ADM (LA) Meerut to U.P. Government- which shows that Land Acquisition proceedings were initiated way back on 16-6-2001 Annexure-7 to the said affidavit is the copy of Notification dated 2-02-2006 under Section 6 of Land Acquisition Act to acquire land for the Slaughter House- though such proceedings were initiated about five years ago. (See Annexure CA5 to the affidavit of Dinesh Chandra Mishra)

34. In para 9 and 10 of the said affidavit it is stated that the first Notification under Land Acquisition Act was issued on 8-2-2002 whereas Notification under Section 6, Land Acquisition Act is issued on 2-2-2006 without disclosing plausible causes or good reason for gap of 4 years) and that the Government was prepared to sanction Rs. 22 lacs from its revolving fund on receipt of requisite proposal from the Nigam.

35. An attempt is thus made to demonstrate before the Court that the State Government has acted bonafide and cannot be faulted.

36. Petitioner filed a Counter affidavit sworn by Mohd. Imran on 21-2-2006 (in reply to the aforesaid affidavit of Dinesh Chandra Mishra) wherein he pointed out that the land sought to be compulsorily acquired under Land Acquisition Act for proposed Slaughter house, in due course of time, is surrounded by dense Hindu dominated residential colonies like Shastri Nagar and Jagriti Vihar etc. and several other organizations/institutions, like Krishi Utpan Mandi Samiti, Police Training College, P.A.C. etc., and that the people living in that locality are also protesting and opposed to the proposed establishment of Slaughter House at this place. Along with said Counter affidavit (sworn by Mohd. Imran) the petitioner has filed a copy of the project report titled 'Establishment of Nagar Nigam Modern Slaughter House', (Annexure-2 to the said Counter affidavit.)

37. The Nigam, in order to place its stand, has also filed a compliance report dated 30-1-2006 (supported by Notary Affidavit of Prithivi Singh Chauhan, Additional Municipal Commissioner, Nagar Nigam, Meerut). In Para 4 of the said affidavit it is stated that auction money (Rs. 25 lacs) deposited with it is retained in separate account as per Court order; the auction money for subsequent period 1-10-2005 to 31-3-2006 is yet to be received from Haji Mohd. Imran which shall also be kept in the aforesaid separate account whenever it is received and that Mohd. Imran had filed Writ Petition No. 1315 of 2006 which has been disposed of by this Court vide judgment and order dated 12-1-1-2006 requiring the petitioner to deposit auction money for the period ending on 31-3-2006.

38. Learned Counsel for the parties (the Nigam and the Petitioner No. 1) have stated before this Court that aforesaid amount for subsequent period has been deposited by Petitioner No. 1 (through Mohd. Imran) and it is kept by the Nigam in separate account in compliance to the Court order dated 25-1-2005

39. In para 8 of this Notary affidavit, it is stated that Rs. 52,12,300/- have already been deposited by the Nigam with the Additional District Magistrate (Land Acquisition) Meerut, up to 12-03-2005, that the matter relating to land 'acquisition' is pending at State Government level and as soon as land is made available to, the Nigam, it shall take steps to establish a modern slaughter house as directed by this Court vide order dated 25-1-2005

40. The Nigam also filed Civil Misc. Application No. 16438 of 2005 (along with the affidavit of Nagar Swasthya Adhikari, Meerut dated 31.1.2005) raising issues relating to 'Public Health'; and the measures required to check pollution and other relevant aspects to be addressed in the context of establishing and running Modern slaughter house. The Nagar Swashtya Adhikari submits that 'project report' for modernizing slaughter house should be processed through him so that he may ensure that Slaughter House is operated on Modern pattern- as per International Standards- in accordance with law.

41. There can be no objection to it. We are however, not informed of the academic qualification and competence of the said authority in law.

42. The Nigam again filed Civil Misc. Application No. 53293 of 2006 along with the affidavit of Mohd. Arshi, Legal Assistant, Nagar Nigam, Meerut by Nagar Nigam, Meerut sworn on 5-02-2006. In para 3,4 & 5 of the said affidavit it is stated that in the past an attempt was made to acquire land through proceedings under Land Acquisition Act; that now Notification dated 2-02-2006 under Section 6, Land Acquisition Act has been issued; that the Nigam had filed Civil Misc. Application No. 44236 of 2006 in this case praying for enlargement of time beyond 24-4-2006 (i.e. more than total 18 months time allowed by this Court under its order dated 25-1-2005) and that in the meantime this Court has passed and interim order in Civil Misc. Writ Petition No. 11069 of 2006 (Asif Ali v. State of U.P. and Ors.) staying dispossession of the Land owners/Tenure holders which reads:

In the meantime it has transpired that the Writ Petition No. 11069 of 2006 has been filed by one Sri Asif Ali challenging the land acquisition proceeding and this Hon'ble Court has been pleased to pass the following interim order on 24-2-2006.

Learned Standing Counsel is directed to file counter affidavit within a month. List immediately thereafter, For a period of 2 months dispossession of petitioner from the land in dispute shall remain stayed.

Sd. R.P. Mishra, J.

Sd/- Sabhajeet Yadav, J.

24-2-2006.

(Quoted in Para 4 of the said affidavit)

43. Be that as it may. The situation, which now boils down as on date, is that there has been no tangible

progress in the matter and construction of modern Slaughter House is no where in sight. The authorities/Respondents have failed to make headway in the direction of establishing Modern Slaughter House free of pollution and public Nuisance.

44. We are informed that question was also raised in Vidhan Sabha in view of general public sufferance and resentment particularly because of delay in taking steps to establish Modern Slaughter House in place of the existing old Slaughter House.

45. The Nigam has now filed in this Court yet another affidavit (sworn on 20-3-2006 by Sri Prithvi Singh Chauhan Additional Municipal Commissioner, Nagar Nigam Meerut) stating that the Nigam has received a proposal from Mazhar Mahmood/petitioner No. 2 who has offered to invest Rs. six Crores on modernization of the present Slaughter House and also to deposit Rs. 60 lac per annum as lease money with no mention for the quantum of period for which he wants to run it. Copy of the said proposal/project report is annexed with the said affidavit. It is contended that in view of this offer of Mazhar Mahmood/Petitioner No. 2, the proposal of petitioner No. 1 to modernize slaughter house at the cost of Rs. five crores with a right to operate the slaughter house for a period of ten years is not at all viable. (Para 8 of the affidavit). It may be noted that said Project report lacks relevant details and does not appear to be authentic.

46. Sri Shashi Kant Gupta, Advocate, on instruction (without filing Vakalatnama) on behalf of Petitioner No. 2 Mazhar Mahmood, submits that hearing of the case be adjourned for a few days to enable him to file Vakalatnama and an application permitting said Mazhar Mahmood to be transposed as respondent.

47. Sri S.D. Kautilya, Advocate, representing Petitioner No. 1 on the other hand stated that petitioner No. 2 Mazhar Mahmood is not a tax payer and has been set up to blackmail the Petitioner No. 1. It is asserted that it is a succinct move to keep things in turmoil and drag on the case to exploit petitioner No. 1. It is further stated that Petitioner No. 1 and its Director Md. Imran Khan are tax payers and their Income Tax PAN are AAECA 8125 B and AMPI 3086 L.

48. Shri Shashi Kant Gupta, Advocate, representing Mazhar Mahmood was unable to controvert the aforesaid statement with respect to the Tax status of Petitioner No. 2 in spite of time being given to seek instruction on telephone from his client.

49. It is therefore, more than obvious that Mazhar Mahmood/Petitioner No. 2 has no financial capacity or means to carry out the Project and that the offer at his behest (as claimed by the Nigam) not being a genuine or bonafide proposal, is liable to be ignored.

50. There is another reason, Petitioner No. 2 has jumped in the fray as a surprise competitor of petitioner No. 1 at a very belated stage i.e. when the hearing of the case was virtually going to be over and the Court was to decide the writ petition finally. Court must take guard against any indigenous device to frustrate the scheme mooted by it. We have no doubt that the proposal submitted by Mazhar Mahmood/Petitioner No. 2 is nothing but a device to obstruct the process to modernize and up date the 'Slaughter Mouse' or in any case an attempt to exploit Petitioner No. 1. The request to adjourn the case at the behest of Petitioner No. 2 was, therefore, rejected for two fold reasons.

51. One, that Petitioner No. 2 has been set up with an oblique purpose to forestall the endeavour of the Court to get the Slaughter House modernized. He has been set up by some one (a matter to be guessed only) with ulterior motive. Two, that he is not at all competent to make a bonafide and genuine offer/proposal.

52. We also take note of the latest Tenders received by the Nigam (opened on 24-03-2006), Photocopies of which have been placed before us for perusal by Sh. Satish Chaturvedi, Advocate. Tender of one Navin Arora is for Rs. 1,11,000/-, tender of Haji Ayub is for Rs. 8,50,000/- and the tender of Md.Asif is for Rs. 7,00,000/- for one year. All these offers are of much low value as compared to the offer made before Court by the Petitioner No. 1 besides the fact whether these tenders are valid or not.

53. The Court had undertaken the exercise for obvious reasons and that is to ensure that a 'modern slaughter house'- with latest technology on International Standard- free of pollution and Nuisance-is established at New Site and third party (namely the common man/public) is not forced to live under inhuman conditions and saved from long drawn sufferance to which they have been subjected in the past.

54. Unfortunately the attempt to have Slaughter House at another site is now in doll drum in the given situation and availability of alternative site is in jeopardy. Proceedings under Land

55. Acquisition Act (to acquire alternative site) have already taken 5-6 years before but with no positive result. Further when alternative site shall be available in future, is now a matter of speculation in view of the interim order dated 24-2-2006 in Civil Misc. Writ Petition No. 11069 of 2006 (quoted above) whereby this Court has stayed dispossession of the Land- holders/Tenure holders. It is apart from the fact that the proposed site also now lies in the midst of Hindu dominated population and the local people are opposed to the shifting of the Slaughter House at the proposed site.

56. The Nigam, added to the above, is not financially capable to modernize the slaughter house.

DISCUSSION;

57. In view of what has been noted above, we find that in this case- Back Drop of the events has an unusual setting.

58. Welfare of the people is Supreme Law -SALUS POPULI EJUS SUPREMA LEX' is the old legal maxim which means- Public welfare is the highest law'. Court must come to the rescue of people and save them from living under inhuman conditions.

59. Taking into account the attending circumstances and the relevant factors viz. the welfare of the people, it is abundantly clear that this Court shall fail to discharge its obligation if it fails to protect the people from sufferance for which they are not at fault. Court must, therefore, ensure that there is no causality of public confidence in the judicial system. In this context, we are reminded of what K. Jagannath Shetty, J of the Apex Court in one of his reported judgment observed 'the Court like other insulations also belong to the people, they are much human institutions like any other. The other instruments and institutions of the State may survive by the power of purse or might of the sword. But not the Courts. The Courts have no means or power. The Courts could survive only by the strength of public confidence.

60. The terms ' Municipality' has been defined under Section 2(45-B), Uttar Pradesh municipal Corporations Adhiniyam, 1959 to mean 'an institution of self government...'

61. Section 422 of U.P. Municipal Corporation Adhiniyam deals with the power of Mukhya Nagar Adhikari in respect of, Slaughter Houses, etc. Under different clauses of said Section 422 of Adhiniyam it is statutory obligation of the Corporation/Mukhya Nagar Adhikari, 'to construct, or otherwise acquire any building for the purposes of establishing a Corporation slaughter- house with the prior sanction of the State Government and extend or improve any existing Slaughter House, to build and maintain Corporation Slaughter House as may be deemed necessary for the use of the persons carrying on such slaughter- houses and to dispose of the Corporation Slaughter House; to charge for the occupation or use of Slaughter House and for the right to slaughter animals in any Slaughter House; and ' to put to public auction, or, with the approval of the Executive Committee, dispose of, ...Slaughter House...for such term and on such conditions as he shall think fit.'

62. The respondents have failed to point out any statutory provision under the Adhiniyam or elsewhere which may prohibit a Corporation to take such steps/measures as may be necessary and inevitable to ensure that Slaughter House owned by Corporation is carried on in accordance with relevant Municipal Act, Rules, Regulations or any other law dealing with pollution; Public health etc, to which is the solemn duty and prima aim of the municipal laws. It is statutory obligation of the Corporation to ensure that people living within the limits of a Municipal Corporation are not subjected to nuisance.

63. Section 2(46) of the Adhiniyam defines the expression 'nuisance'- to include - any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing or which is or may be dangerous to life or injurious to health or property.'

64. The failure on the part of the Nigam and the State Government to check public nuisance caused by operating the existing Slaughter House is a crime of its own kind against 'humanity'.

65. Corporation is under statutory mandate and it cannot shirk from its duty to remove rubbish and offensive matter. 'Offensive matter' is defined under Section 2(48) of the Adhiniyam which includes 'animal carcasses, dung, dirt and putrid or putrefying substances other than sewage.'

66. On the other hand, as noted earlier in this judgment, the Nigam is not in a position to establish a modern ' Slaughter House' satisfying requirement of relevant statutory provisions. Therefore, the necessity is to balance the interest of the Nigam as well as the public living within its territory limits.

67. In the given situation, as noted above, there is no option but to achieve the object by ensuring that the existing Slaughter House itself is modernized as early as possible, by taking such steps as may be necessary i.e. to construct new building and provide modern 'Plants and Machineries with latest/advanced technology on International standards on policy basis as also recommended by the Nigam and approved by the Government vide its letter dated 31-12-2003.

68. Petitioner No. 1 and his Counsel (Sh. S.D.Kautilya, Advocate) have categorically stated before us that the Petitioner No. 1 shall construct new building and install latest modern plants, machines fixtures with latest advanced technology on International standards so that one shall not be able to identify it as 'Slaughter House' from outside and offered to invest Rs. 6 Crores to complete the Project in one year besides undertaking to deposit Rs. 60 Lacs per annum at par with the offer of petitioner No. 2. (as per affidavit of Sri Prithvi Singh Chauhan) provided he is allowed to carry on the Slaughter House for Ten Years.

69. Keeping in mind that the interest of the common man at large is para-mount which should not be ignored and to ensure the welfare of the local residents by saving them from facing untold hardships and sufferings (as already recapitulated earlier), we direct the Nigam and other concerned authorities of Meerut, Administration, to assist and co-operate with Petitioner No. 1 to modernize the Slaughter House at its existing site on following 'terms and conditions':

(1) Petitioner No. 1 represented by its Director Mohd. Imran Khan (which includes legal representative, successor, assignee, agent, nominee, servant etc.) shall, on or before 30-4-2006, file an affidavit giving undertaking to the Nigam to comply with the directions given hereunder.

2.

(a) Petitioner No. 1 as per its offer and undertaking given to the Court, shall on or before 15th May 2006 deposit Rs. Three Crores with Nagar Nigam, Meerut.

(b) The Petitioner No. 1 shall also deposit Rs. Two Crores on or before 30th September 2006 with Nagar Nigam, Meerut.

(c) The Nigam shall give written notice to the Petitioner No. 1 to deposit within three weeks of receipt of said Notice or such extended time as the Nigam may grant in writing such additional amount (not exceeding Rs. 50 Lacs at one instance) in case additional amount, exceeding Rs. Five Crores referred in above Clause (a) and (b), is required to complete the project, (as contemplated under this judgment) subject, however, to the condition:

(i) demand of additional amount shall not in total exceed Rs. One Crore and the Petitioner No. 1, therefore, shall not be required to deposit in total more than Rupees Six Crores. And

(ii) Further, in case of any amount being found in excess and un-utilized at the end of completion of Project, the said amount with interest if any shall be repaid to Petitioner No. 1 forthwith.

(d) The above amount and time schedule shall be subject to such further mutual agreement/settlement as the Nigam and Petitioner No. 1 may settle under prior information to each other as well as to the State Government but notwithstanding the quality and the conditions of Project of Slaughter House duly approved/sanctioned by Centre for Integrated Animal Husbandry & Dairy Development, Noida (CIAHDD).

(e) All the aforesaid amounts deposited by petitioner No. 1 shall be kept by the Nigam in a separate Nationalized Bank Account which shall be exclusively appropriated/ utilized for executing modern slaughter house Project as duly approved (as contemplated herein under) at the site of existing Slaughter House.

(3) Petitioner No. 1 shall get the project- report of modern Slaughter House (with all details) duly approved and cleared on or before 15th May 2006 by Centre for Integrated Animal Husbandry and Dairy Development, Noida CIAHDD an Agency/Organisation approved by the Nigam. The project reports shall include plan for Civil electrical and mechanical designs/plans, adequate provision to check pollution of any kind including ' Treatment of Effluents and Pollutants' as per norms prescribed by U.P. Pollution Control Board. Health and Safety Devices, prevention of Fire and other relevant details as may be required by the Nigam, or the State Government under relevant concerned Act, Rules, Regulation, Government Orders etc. as well as bind itself to discharge all obligation otherwise created for operating modern slaughter house on International standards.

(4) The Petitioner No. 1 shall submit on or before 30th May 2006 a copy of the Project Report/Plan duly approved by CIAHDD and other information, if any, to the Nigam, M.D.A. or Pollution Control Board, etc. dealing with the subject in question for information who shall pass appropriate order within ten days of receipt of plan and intimate Petitioner No. 1 accordingly.

(5) Petitioner No. 1 shall be duty bound to remove defect, if any communicated to it by the Nigam, M.D.A. or U.P. Pollution Control Board, within two weeks of receipt of objection and obtain No Objection forthwith but in any case before 15th June, 2006. The Board shall consider the report and pass appropriate order/grant or refuse 'No Objection' within ten days of receipt of submission of papers after removal of such defect.

(6) The Petitioner No. 1 shall also obtain sanction/No Objection from The Nigam, Meerut Development Authority (MDA), and U.P. Control of Pollution Board by submitting amendments in the plans, if any, at appropriate time and then authorities shall within ten days of the receipt of the same pass appropriate orders.

(7) Petitioner No. 1 shall inform Nigam in writing before starting construction/execution of Project work which must be undertaken on or before 15th July, 2006.

(8) Petitioner No. 1 shall co-operate and assist the Nigam (its authorities/officers) to make inspection of the site during course of implementation of the project to satisfy that the work is as per Project Report approved by CIAHDD as well as other directions issued by other authorities viz. the Nigam, Meerut Development Authority, U.P. Pollution Control Board etc.

(9) Petitioner No. 1 shall be entitled to supervise execution of the Project work and shall be entitled to ensure that said work is performed/executed as per Project Report, and all payments in that respect shall be made promptly by the Nigam in accordance with law from the amount so deposited by Petitioner No. 1 under the above sub clauses of Clause-2.

(10) Petitioner No. 1 shall be permitted to operate and slaughter animals at the existing slaughter- house subject to the condition that he shall deposit with the Nigam on or before 15-05-2006 Rs. Sixty lacs in lump sum for the period of 1.4.2006 to 31.3.2007. Such amount can be deposited, if so advised, in four equal instalments; the first instalment of Rs. 15 lacs to be paid to the Nigam on or before 15th May, 2006, the second instalment to be paid to the Nigam on or before 15-08-2006, third instalment to be paid to the Nigam

on or before 15-11-2006 and IVth instalment to be paid to the Nigam on or before 15-02-2007. In case of default in making said deposits within the time stipulated above, this order shall stand automatically vacated in its entirety. Petitioner No. 1 shall likewise continue to deposit amount of Rs. 60 lacs per annum for ten year i.e. for the period ending on 31-03-2016. And there- after slaughter house shall be allowed to be used and operated on the such basis and term and conditions as may be allowed and settled by the Nigam under law.

(11) The petitioner No. 1 shall be free to abandon his claim to run modern slaughter house for a period of 'Ten Years' or for less period as he may be desire but he shall not be, in lieu of it or in connection with, entitled to damages/compensation of any kind.

(12) Slaughter House shall be modernized within a maximum period of one year from today out of the funds referred to in Clause 1(a), (b), (c) (d) and (e) above.

(13) Nagar Nigam Meerut, District Authorities and other concerned authorities shall be duty bound to ensure that all steps are taken to promote expeditious execution of the Project Report referred to above and further hereby directed to extend desired support and full cooperation to the petitioner in establishing 'modern Slaughter House'. Laxity or negligence in any manner, on the part of either party shall be deemed and treated deliberate act of interfering with the compliance of this order of the Court.

(14) The Petitioner No. 1, shall have no claim or interest or subsisting right or charge on the assets, whether movable or immovable in the assets of the slaughter house in question created out of funds referred to in Sub-clause 2(a), (b), (c) (d) (e) and (f) of Clause- 2 after expiry of ten years or in case of the petitioner No. 1 abandoning or relinquishing his right to operate the Slaughter House at any time before expiry of said Ten Years.

(15) The Nagar Nigam, Meerut and all the concerned authorities shall have right to make periodical inspections to ensure that the slaughterhouse is properly maintained and run in accordance with the relevant statutory provisions, viz., the Act, Rules/Regulations and Government Orders, etc. if any for ten years period contemplated above.

(16) The Nigam shall be free to claim refund of Rs. 52,12,300/- deposited with the A.D.M.(Land Acquisition) Meerut deposited under order of this Court

(17) This order shall not, in any manner, be read or interpreted to encroach upon or undermine the power conferred in lieu upon any Officer/Authority of the Corporation etc.

(18) In case of difficulty or doubt the parties are at liberty to approach this Court for appropriate/requisite order by way of clarification.

70. U.P. Government, Nagar Vikas Anubhag Order dt. 7.1.2005 (No. 03 Writ/9-8-2005 -11P/03), Annexure CA-3 to short counter affidavit of respondent No. 1/State of U.P., is hereby set aside.

71. The writ petition is allowed by moulding the reliefs subject to the conditions and to the extent indicated above.

72. No order as to costs.

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