

**Nasiruddin and ors Vs. Mcd and ors**

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**Court :** Delhi

**Decided On :** Sep-29-2011

**Judge :** Hima Kohli, J.

**Appeal No. :** W.P.(C) 7239/2011 and CM 16457/2011

**Appellant :** Nasiruddin and ors

**Respondent :** Mcd and ors

**Advocate for Def. :** Ms. Mansi Gupta; Mr. Arun Birbal, Advs.

**Advocate for Pet/Ap. :** Mr. Sarfaraj Hussein; Mr. Masood Hussein; Mr. M.M. Shukla, Advs.

**Judgement :**

1. The present petition is filed by the petitioners praying inter alia for directions to the respondents to conduct a survey of the dairies of the petitioners as also to consider the applications of the petitioners for allotment of plots in Ghogha Dairy as per law.

2. At the outset, counsel for the petitioners was requested to inform the Court as to the date on which the applications, copies of which have been placed on record at pages-20-31, were submitted to the respondent/MCD. The said query was raised in view of the fact that photocopies of the aforesaid applications placed on record by the petitioners neither bear a date of filing of the applications nor an

endorsement of the respondent/MCD showing receipt of the said applications. Counsel for the petitioner orally submits that though there is no averment in the writ petition as to the exact date on which the aforesaid applications were submitted by the petitioners to the MCD, the said applications were, in fact, submitted sometime in the year 2004.

3. To test the aforesaid submission made on behalf of the petitioners, this Court has perused the averments in the plaint, copy of which is placed on record at page-32-38. The aforesaid suit for permanent and mandatory injunction instituted by the petitioners on 10.12.2009, against the respondent/MCD is pending before the learned Senior Civil Judge. A perusal of the said plaint shows that the petitioners (plaintiffs therein) had applied for the re-settlement and rehabilitation of dairy farms in Delhi under a scheme floated in the year 1997. In para-7 of the plaint, it was mentioned that the petitioners did not file their applications with the respondent/MCD for the Ghogha Dairy project as they were under the impression that since they had already filed applications in the year 1997, for allotment with the prescribed fee, they were not required to do so again in the year 2004. It is, thus, apparent that the averments made in the present petition that the petitioners submitted their applications to the respondent/MCD in the year 2004, are incorrect and contrary to their stand in the suit proceedings. In fact, it appears that the said applications were never submitted by the petitioners to MCD. Counsel for the petitioner is unable to explain the circumstance in which the petitioners have failed to mention the date of their submitting applications under the Ghogha Dairy project floated by the respondent/MCD for relocation of their dairies existing in urbanized areas of NCT of Delhi, more so when the entire relief in the present petition hinges on the said applications. Further, no proof of actual deposit of the said applications with the respondent/MCD has been placed on record by the petitioners.

4. The aforesaid view is fortified by the submission by the counsel for the respondent/MCD that applications under the aforesaid scheme were invited from parties interested in relocating their unauthorized dairies from urbanized areas of NCT of Delhi to Ghogha Dairy project on three occasions, for the first time on 03.09.2004, which were required to be submitted by 20.09.2004; the second time, such applications were invited was on 27.07.2007 to be submitted by 14.08.2007;

and the third time they were invited on 30.03.2010 to be submitted by 29.04.2010.

5. In view of the fact that the petitioners have not been able to establish the factum of their filing the applications with the respondent/MCD for seeking allotment of alternate plots in the Ghogha Dairy project for running their dairies and considering the fact that the petitioners had three opportunities to apply to MCD for relocation of their dairies to the Ghogha Dairy Project, none of which appear to have been availed by the petitioners, the question of issuing any directions to the respondent/MCD for allotment of plots in their favour, does not arise. This Court is not inclined to entertain the present petition.

6. The petition is, therefore, dismissed in limine, along with pending application. However, it is made clear that if and when the respondent/MCD invites further applications from the public for relocation of unauthorized dairies, the petitioners would be at liberty to apply at that time for allotment of plots as per the rules applicable. This will, however, not create any special equities in favour of the petitioners insofar as the removal of their existing dairies is concerned, if they are unauthorized and are required to be removed as per law.

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