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Court : Delhi

Decided On : Mar-30-2012

Judge : The Honourable Ms. Justice Hima Kohli

Appeal No. : W.P. (C) 1184 of 2011

Appellant : Daya Ram

Respondent : Commissioner, Mcd and Another

Judgement :

HIMA KOHLI, J.

1. The present petition is filed by the petitioner praying inter alia for directions to the respondents/MCD to hand over possession of plot No.A-141 at Ghogha Dairy Colony, allotted to him to carry on his Dairy business by demanding the cost of the plot @ ` 2,500 per sq. meter. The petitioner has also prayed for setting aside the impugned letter dated 14.12.2010 issued by the respondents/MCD wherein, he was informed that as his dairy was being run on a Govt. land/ encroachment land, the plots for the said purpose will be allotted @ `7,000/- per sq.mtr.

2. The brief facts of the case as set out in the writ petition are that, the petitioner has been residing at the address, SE-64-65A, Singhalpur village, Shalimar Bagh, Delhi much prior to the year 1998. In or around the year 2004, the respondent/MCD had invited applications for rehabilitation of dairy owners running unauthorized dairies in the Delhi Urban areas so as to allot them plots at Ghogha

Dairy Colony for running their dairy businesses from there. The cost of the developed plot was mentioned as `2,500 per sq. mtr. On 11.09.2004, the petitioner had submitted an application for allotment of three plots by giving the aforesaid address as his dairy farm address. On 09.02.2005, the petitioner had deposited an amount of `1,20,000/- with the respondent/MCD, which was 50% of the earnest money calculated @ `2,500 per sq.mtr.

3. It is averred by the petitioner that while issuing the receipt, the respondent/MCD had mentioned two of his addresses, one being "SE-64-65A, Singhalpur village, Shalimar Bagh, Delhi-88" and the other being "Behind Ram Bagh, near Haryana Canal, Delhi". On 23.05.2005, the respondent/MCD issued an allotment letter to the petitioner, allotting him a plot measuring 96 sq. mtr. in Ghogha Dairy Colony. The address mentioned in the allotment letter was "SE-64/65, Singhalpur village, Shalimar Bagh, Delhi". However, possession of the aforesaid plot was to be handed over to the petitioner only on receipt of the remaining 50% of the cost of the plot.

4. On 05.05.2010, the respondent/MCD had issued a letter to the petitioner informing him that the plot would be allotted to him @ `7,000/- per sq. meter instead of `2,500/- per sq.mtr. On repeated representations made by the petitioner, requesting the respondent/MCD to consider his request for allotment of the plot @ `2,500/- per sq.mtr, he was informed on 14.12.2010, that he would be allotted the plot @ `7,000/- per sq.mtr. for the reason that his dairy farm was found to be running on Govt. land as the address mentioned in the receipt was " Behind Ram Bagh, near Haryana Canal, Delhi", which is Govt. land. Aggrieved by the aforesaid letter dated 14.12.2010, the petitioner filed the present petition in February 2011.

5. Notice was issued on the present petition on 23.02.2011. On 19.07.2011, counsel for respondent/ MCD had stated that on a perusal of the documents pertaining to the applications submitted by the petitioner, it had transpired that he had intentionally concealed from the court the fact that he had applied twice over for allotment of the dairy plot. It was submitted that while the first application of the petitioner was submitted by him in the year 2004, the second one was submitted by him in the year 2010. In view of the above statement, the respondent/MCD was

directed to file a counter affidavit placing on record the relevant details of the applications and the allotments made to the petitioner, as also the justification for the rate at which the allotment had been made in terms of the impugned letter dated 14.12.2010 issued by the respondent/MCD.

6. A short counter affidavit was filed by the respondent/MCD on 20.8.2011, wherein it was stated that in terms of the judgment dated 16.12.2002 and the subsequent directions issued by the High Court in WP(C) No.3791/2000, entitled "Common Cause Society Vs. UOI and Ors.", the respondent/MCD had decided to develop a modern Dairy Colony at Ghogha, Narela, Delhi for the purpose of relocation of eligible illegal dairies from the urban limits of Delhi. In the year 2004, applications were invited from interested eligible illegal dairy owners from the urban limits of Delhi for booking/allotment of dairy plots under the name, Ghogha Dairy Colony Project. In response to the aforesaid advertisement, in the early phase, a total number of 1373 applicants had booked dairy plots against 50% advance payment @ `1,250/- per sq.mtr. and accordingly, MCD had allotted dairy plots to them and issued letters in this regard. Subsequent to the allotment of dairy plots, complaints were received of alleged irregularities committed in the allotment of dairies. As a result, vide order dated 30.8.2006, the High Court had directed that running of dairy business would be the sole criteria to allot the plots and give possession.

7. On 8.3.2007, the High Court appointed a six member Stray Cattle Committee to implement its directions and conduct a physical verification of sites of illegal dairies mentioned by the applicants. Pursuant to the verification report submitted by the Zonal Verification Team, 535 applicants were found eligible for consideration of allotment of dairy plots, whereas the bookings/allotments of 838 applicants, who were found to be not running any illegal dairies at their given sites/addresses, were cancelled, with intimation conveyed through a public notice in leading newspapers.

8. As regards the petitioner herein, respondent/MCD stated that on 11.09.2004, he had submitted an application for allotment of three dairy plots measuring 96 sq. mtr. each in Ghogha Dairy Colony Project and in the said application, the

petitioner had left the column of his dairy address blank, but, on 09.02.2005, at the time of depositing the advance payment, he had given his dairy address as "Behind Ram Bagh, near Haryana Canal, Delhi" which was duly recorded in the receipt issued by the respondent/MCD (**Annexure R-1**). Vide letter dated 23.5.2005, the petitioner was allotted Plot No.A-141 in Ghogha Dairy Project. On 4.12.2007, when a physical verification of the petitioner's dairy was conducted by the officers of the respondent/MCD at the aforesaid address in the presence of the petitioner, an illegal dairy was found to be running with 16 buffaloes and the verification report was signed by the petitioner himself (**Annexure R-3**). On 02.02.2008, an allotment of one dairy plot measuring 96 sq.mtr. was recommended in favour of the petitioner on the basis of his dairy having been verified on encroached Government land situated "Behind Ram Bagh, near Haryana Canal, Delhi".

9. However, in the year 2010, when the respondent/MCD issued an advertisement dated 30.03.2010, the petitioner once again applied for allotment of two dairy plots measuring 96 sq.mtr. each. In his application form dated 19.04.2010, the petitioner had indicated the location of his dairy as "64-65 A, village Singhalpur, Shalimar Bagh, Delhi". As per the verification report of the respondent/MCD dated 18.5.2010, sixteen buffaloes and two cows were found in the dairy of the petitioner (**Annexure R-8**). Accordingly, the Allotment Committee of the respondent/MCD recommended allotment of two dairy plots of 96 sq. mtr. each to the petitioner. Consequently, the earlier allotment of one plot of 96 sq.mtr. made in favour of the petitioner was cancelled. Thereafter, a demand-cum-allotment letter dated 24.09.2010 was issued to the petitioner calling upon him to deposit the cost of the plots @ `7,000 per sq.mtr., so that the possession letter could be issued to him. The petitioner had yet to complete the documentation when he preferred the present petition seeking there lief that the allotment of Plot No.A-141 be made by the respondent/MCD at the notified rate of `2,500 per sq.mtr. and not @ `7,000/- per sq.mtr.

10. Counsel for the respondent/MCD had contended that the petitioner has not approached this court with clean hands and has intentionally suppressed the fact that he had applied twice over for the allotment of a dairy plot. It was submitted

that on this ground alone, the petition is liable to be dismissed. On merits, she had submitted that the Commissioner, MCD had approved conducting of manual draw of lots for allotment of 204 plots to 152 applicants on 29.7.2010. However, during the course of processing the documents, it was observed that the petitioner herein(at S.No.132) was allotted one plot of 96 sq.mtr. and another applicant, namely, Mr.Vikram Singh (at S.No.15)was allotted a plot of 60 sq.mtr. in the first draw of lots. The Stray Cattle Committee decided not to take action on the result of the first draw till the modalities for allotment of plots were decided by it. The modalities were finally decided by the Committee on 17.7.2008 and 17.10.2008. As per the said modalities, it was decided that the applicants having dairies on encroached land would be allotted plots at the market rate of the area. As per the decision of the Stray Cattle Committee taken on 30.07.2009, it was decided that allotment letters would be issued to such applicants who were found running dairies onthe premises belonging to them and were entitled for one plot at the MCD notified rates.

11. Accordingly, demand-cum-allotment letters were issued only to those successful applicants who were entitled for one plot and were maintaining dairies on premises belonging to them. All other applicants having dairies on encroached land including the petitioner herein and Mr. Vikram Singh were not issued allotment letters as the information about the location of their dairies was not clear. Pursuant to the second advertisement issued by the MCD on 30.3.2010, the petitioner as also Mr. Vikram Singh re-applied for booking of dairy plots as per their current requirement. At that time, the Allotment Committee recommended that Mr.Vikram Singh be allotted fourteen plots of 96 sq.mtr. each, and the petitioner be allotted two plots of 96 sq.mtr. each, in terms of their requirement. As a result, it was decided by the respondent/MCD that the earlier allotment made in favour of the petitioner would stand cancelled.

12. Vide Resolution No.78 dated 24.5.2010, the respondent/MCD decided to revise the rate applicable for allotment of dairy plots in the Ghogha Dairy Colony Project as per the requirements of the applicants who were running dairies on encroached land, by fixing the revised rate as `7,000/- per sq.mtr. The said decision was challenged by some of the allottees who filed writ petitions in the

High Court, wherein it was contended that there was a binding contract between them and the MCD for allotment of land @ `2,500 per sq.mtr. and the said contract could not have been breached by MCD in the year 2010 by unilaterally demanding the price @ `7,000/- per sq.mtr. and/or threatening to cancel the allotments for non-payment thereof. The aforesaid issue was finally thrashed out in the judgment dated 24.12.2010 in WP(C) No.12334/2009, entitled "Rishi Pal Vs. Municipal Corporation of Delhi and Ors.", whereby all the said petitions were dismissed. The operative paras of the aforesaid judgment are reproduced herein below:-

"23. The petitions therefore fail. The petitioners are not entitled to bind the respondent MCD to the rate of `2,500/- per sq.mtr. The respondent MCD is found entitled to the rate now demanded of `7,000/- per sq.mtr. Even if the respondent MCD has given any concession to those displacing their unauthorized dairies from their own land/property, the same would still not entitle them and others to contend that additional plots should be given with the same concession. The respondent MCD while developing the Scheme is fully entitled to grant the said concession. The respondent MCD is thus entitled to demand the price of `7,000/- per sq.mtr. To avoid any hardships to the petitioners, they are given an opportunity to now pay the differential price within four weeks hereof together with interest at the rate of 10% per annum from the last date prescribed of payment till the date of payment failing which respondent MCD shall be entitled to cancel the allotment or take other such coercive action as maybe deemed fit. I may record that the counsel for the respondent MCD during the hearing had offered that if any of the petitioners are not willing to pay the price of `7,000/- per sq.mtr., the respondent MCD will refund the amount deposited by them together with interest.

24. The respondent MCD having been awarded interest to compensate it for the delay and equities flowing from the interim order having been balanced, no order as to costs."

13. It is the stand of the respondent/MCD that it had already allotted two dairy plots of 96 sq.mtr. each to the petitioner in the fourth draw of lots conducted on 29.7.2010 and it had also issued a demand-cum-allotment letter on 24.9.2010(Annexure R-12), calling upon him to complete the requisite formalities

within one month to take over possession of the dairy plots. Learned counsel submitted that the process of allotment of dairy plots under the Ghogha Dairy Colony Project was concluded in the month of May 2011 with the disposal of all pending applications and that all the allotments made prior to the year 2007, without verification of dairies of applicants, stood cancelled, which decision was duly intimated to the public at large vide public notice inserted in the press on 19.9.2009(Annexure R-13). It is thus submitted that the petitioner herein is not entitled to allotment of a dairy plot @ `2,500/- per sq. mtr. as claimed by him.

14. The Court has heard the counsels for the parties and gone through the pleadings, apart from perusing the records of the Department, as summoned.

15. The issue of the revised price of the developed plots at `7,000/- per sq.mtr. as demanded by the respondent/MCD is no longer *res integra*. The said issue has attained finality in view of the judgment dated 24.12.2010 in the case of Rishi Pal (supra) wherein, it was held that the aforesaid rate as demanded by the respondent/MCD had been fixed in accordance with the procedure prescribed under the Delhi Municipal Corporation Act, 1957. Thus, there is no scope for reopening the same in the present proceedings, and the claim of the petitioner that the respondent/MCD be directed to allot him a dairy plot @ `2,500/- per sq.mtr. is found to be untenable and is turned down.

16. As regards the second relief sought by the petitioner which is for quashing of the impugned letter dated 14.12.2010 issued by the respondent/MCD informing him about the Resolution No.78 dated 24.5.2010 passed by MCD, a perusal of which document reveals that the Standing Committee of the Corporation had decided that the rate of `7,000/- per sq.mtr. would be applicable for allotment of dairy plots in Ghogha as per the requirement of applicants found running dairies on encroached land and further, the rate of `7,000/- per sq.mtr. would be applicable to fresh applicants uniformly for the allotment of the remaining dairy plots as per requirement/eligibility in Ghogha irrespective of whether their dairies were being run from premises belonging to them or on encroached land. In view of the fact that the aforesaid Resolution of the MCD has been scrutinized in the judgment dated 24.12.2010 in Rishi Ram(supra) and upheld, the petitioner cannot insist that

the respondent/MCD be called upon to allot him a plot @ `2,500/- per sq.mtr. as fixed earlier. Therefore, the issue of determination of the rate of the plots allotted in the Ghogha Dairy Colony Project cannot be re-agitated by the petitioner in the present proceedings.

17. The hub and core of the argument of the learned Senior Advocate for the petitioner was that the petitioner was running his dairy on private land and not by way of encroachment on government land and therefore the demand raised on him by the respondent/MCD towards the payment of the allotted plot ought to have been at the rate applicable to such applicants whose dairies were being run from premises belonging to them.

18. It is relevant to note that nowhere in the petition did the petitioner mention the fact that he had applied to the respondent/MCD twice for allotment of the plots, first time in the year 2004 and for the second time in the year 2010. Rather, the manner in which the averments have been made in the writ petition shows that the petitioner has suppressed the fact that he had submitted a second application to the respondent in the year 2010. Interestingly, the sequence of events as narrated in the writ petition gives an impression as if the correspondence exchanged between the petitioner and the respondent/MCD in the year 2010 related to the first application submitted by him in the year 2004, for an alternate allotment, which is contrary to the record.

19. Further, much emphasis was laid by learned Senior Advocate for the petitioner on the fact that the correct address of the dairy of the petitioner was "SE-64-65, Singhal Pur Village, Shalimar Bagh, Delhi" and not "Behind Ram Bagh, near Haryana Canal, Delhi", as mentioned in the receipt issued by the respondent/MCD. The aforesaid submission loses significance in view of the fact that in super session of his earlier application submitted to the MCD in the year 2004 for allotments of three plots, the petitioner had applied to the respondent/MCD afresh in the year 2010 for allotment of two plots and it was pursuant to the latter application that the respondent/MCD had processed his case for allotment of two alternate plots in the Ghogha Dairy Colony Project. It is also pertinent to note that while submitting the said application in the year 2010, the

petitioner had affirmed the fact that he had not been allotted a dairy plot in any authorized dairy colony by DDA/MCD/Govt. of NCT of Delhi and that he had not concealed anything while submitting the application. The aforesaid declaration submitted by the petitioner alongwith his application was false to his knowledge as admittedly, vide letter dated 23.5.2005, the respondent/MCD had already allotted to the petitioner, one plot bearing No.A-141, measuring 96 sq.mtr. under the same project.

20. The dispute with regard to the location of the dairy address of the petitioner was sought to be urged by the learned Senior Advocate for the petitioner by questioning the correctness of the survey report dated 4.12.2007 prepared by the Committee constituted by the respondent/MCD. In the said report, the residential address of the petitioner was undoubtedly mentioned as "SE-64-65, Singhalpur Village, Shalimar Bagh, Delhi", in column No.III, but in column IV, the location of his dairy address was mentioned as "Behind Ram Bagh Haryana Canal" . In the second last column of the aforesaid survey report, the signature of the petitioner duly finds mention (Annexure R-3). Similarly, a perusal of the survey report submitted by the Zonal Committee to verify as to whether the dairy of the petitioner was constructed on a government encroached land or on his own premises also reveals that he was running the dairy on encroached government land behind Haryana canal (Annexure R-4) and not on a premises belonging to him. As a result of the above, on 2.2.2008, the Allotment Committee had made a recommendation for allotting one dairy plot measuring 96 sq.mtr. to the petitioner in the Ghogha Dairy Colony Project.

21. All the aforesaid exercise was however brought to nought by the petitioner himself when he applied to the respondent/MCD afresh in the year 2010 and requested for allotment of two plots, each measuring 96 sq.mtr. The said application clearly indicated that the cost of each plot would be charged @ `7,000/- per sq.mtr. Having applied afresh pursuant to the second advertisement invited by the respondent/MCD in the year 2010 and having failed to reveal the fact that earlier thereto allotment of a plot had been made in his favour vide allotment letter dated 23.5.2005, the petitioner has forfeited his right to seek entitlement to the earlier allotted plot bearing No.A-141, measuring 96 sq.mtr. in the Ghogha Dairy

Colony Project. Now, the petitioner would have to abide by his latest application dated 19.4.2010 submitted to the respondent/MCD, pursuant to which he had received a demand-cum-allotment letter dated 24.9.2010 from the respondent/MCD approving allotment of two plots to him, each measuring 96 sq.mtr. bearing No.K-34 and K-35 @ `7,000/- sq. mtr., which document the petitioner has not even bothered to place on record, much less mention in his petition.

22. In view of the above discussion, the present petition, therefore fails and is dismissed as being devoid of merits. As the time fixed by the respondent/MCD for completion of formalities indicated in its letter dated 14.12.2010 has long since expired, it is deemed appropriate to grant the petitioner a period of four weeks from today to complete the requisite formalities. If the petitioner approaches the respondent/MCD within the stipulated time and submits all the requisite documents as indicated in the demand-cum-allotment letter dated 24.9.2010 and completes the formalities, including deposit of the demanded amount, along with interest @ 10% p.a. from the last date prescribed for payment, till the date of payment, after adjusting the amounts, if any, already deposited by him, the respondent/MCD shall process his application for handing over to him the possession of the allotted plots. However, if the petitioner fails to make compliances as noted above, the respondent/MCD shall be at liberty to cancel the allotments or take such other action as it may deem fit. The parties are left to bear their own costs.

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