

Amit Khera Vs. Mcd

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Court : Delhi

Decided On : Dec-10-2012

Judge : G. S. Sistani

Appellant : Amit Khera

Respondent : Mcd

Judgement :

48 \$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 441/2012 %
Judgment dated 10.12.2012 AMIT KHERA Through: Petitioner Mr.Sanjay Rastogi, Advocate versus MCD Through: Respondent Ms.Shobha Gupta, Advocate CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J (ORAL) 1. Pleadings in the matter are complete. With the consent of counsel for the parties, the present petition is set down for final hearing and disposal.

2. The facts to be noticed for disposal of this writ petition are that father of the petitioner (late Sh.Banarsi Dass) was in the trade of supplying milk in Delhi for more than four decades and was running a dairy from his residential address. It is the case of the petitioner that as per the Government policy it was directed to shift the dairy business from residential colonies. The petitioner's father was allotted a plot free of cost being plot not A-187 Ghauroli Dairy, as per the demand collection register of 1976, his name was recorded at serial No.107 in file No.21. As per the writ petition after the death of late Sh.Banarsi Dass, petitioner stepped into his shoes and took over the family trade and at that time he owned eight buffalos and four cows. It is however, stated that at present it is not allowed to run a dairy from

residential colonies. WP(C)NO.441-2012 petitioner has shifted his dairy to the State of U.P. and is supplying more than 200 liters of milk in Delhi.

3. Counsel for the petitioner submits that in the year 1976, a survey was conducted for the purposes of shifting the dairy business from residential colonies to a developed dairy colony. As per the survey, petitioners father was found eligible and plot being plot not A-187 Ghauroli Dairy, was allotted to him. It is also the case of the petitioner that after the said allotment, no communication was received by the petitioners father, although the petitioners father kept visiting the respondent and enquired about the allotment. It is only in the year 2001 petitioners father was shocked to receive a letter from the respondent with regard to the plot in question, however, the name of the father was wrongly written as Kashi Ram, although the address and parentage was correct. Thereafter the petitioners father approached the respondent personally and asked them to correct his name and issue a fresh demand letter, to enable him to deposit the requisite amount. The respondent did not adhere to the request of the petitioners father, nor a fresh demand notice was issued. It is claimed that the petitioners father sent a register letter and even served a legal notice through his counsel, however, no reply was received. The father of the petitioner was also suffering from acute eye disease and he was substantially blind. On one occasion when he was carrying the complete file of his documents on 06.04.2005 he drooped /lost the file for which an FIR was lodged in the concerned police station and thus no documents are available with the petitioner.

4. Aggrieved by the inaction on the part of the respondents and for not handing over possession of the plot to the father of the petitioner despite an allotment having been made, petitioners father was constrained to file a writ petition WP(C)No.8503/2006 before this court. The writ petition was allowed. The case set up before the Court in WP(C)No.8503/2006 was that an allotment was made to the petitioner which was cancelled, without issuing a show cause notice and without affording opportunity of hearing. On 17.09.2008, this court while disposing of the writ petition had directed the respondent to grant a personal hearing and pass a reasoned speaking order.

5. Thereafter the petitioner was granted an opportunity to file relevant documents and a personal hearing was also granted. Petitioner was also represented during the hearing through his lawyer. A speaking order has since been passed on 16.11.2009, rejecting the case of the petitioner, which has led to the filing of the present writ petition. Counsel for the petitioner contends that the impugned order is illegal, arbitrary and has been passed solely on the ground that as on date the petitioner is not keeping any cattle at his residential address. It is contended that at present no one is allowed to keep cattle at the residential area and the question which was to be determined by the respondent was to verify whether in the year 1976 when the allotment was made in the name of the petitioners father, was he running a dairy from the residential address and the number of cattle in his possession.

6. It is contended that the respondent completely lost track of this fact and the order has been passed on surmises and conjectures, with a view to deprive the petitioner of his legitimate rights. The petitioner prays that a dairy plot may be allotted to the petitioner at Ghauroli Dairy, which has since been granted to the similarly situated persons, as the petitioners father was also eligible to the same at the relevant point of time.

7. Counsel for the respondent has opposed this petition. It is contended by counsel for the respondent that firstly not a single document has been placed on record by the petitioner to show that at any point of time a firm allotment was made in the name of his father. Ms.Gupta, counsel for MCD further submits that even otherwise, there is not a single document to show that from the year 1975-76 at any point of time the petitioner ever pursued the matter with respondent for allotment of a plot.

8. It is next contended that the petitioner has also not placed on record any document to show that he had approached the respondent for change of name in the year 2001 after a show cause notice was received by him, in the name of Kashi Ram from the department. Counsel for the respondent also submits that the submission made with regard to the allotment file having been lost is a self-serving statement and it is not expected that petitioners father would have carried all the

documents to the office of the respondent, including copies of the letters, which he claims to have written to the respondent.

9. On the merits of the matter, counsel for the respondent submits that the impugned order is a speaking order and is a well reasoned order. The petitioner is unable to show any illegality or infirmity in the order dated 16.11.2009. It is contended that at the time of hearing the MCD had made a proper investigation into the matter and the MCD learnt that on an application made by the petitioners father the case of the petitioners father was considered by the respondent for allotment of plot bearing not A-187 Ghauroli Dairy, however, upon an inspection carried out only three animals were found at site and thus the petitioners father did not meet the eligibility for allotment of a dairy plot at Ghauroli Dairy Colony as an applicant must possess minimum of five animals in his dairy. It is submitted that since the animals were only three, he was not found eligible for allotment and hence the provisional allotment was cancelled by the authority and plot not A-187 Ghauroli Dairy, allotted to Sh.Kishan Chand son of Sh.Babu Ram, who had also filed an application No.1713 for allotment of plot in Ghauroli Dairy Colony.

10. Counsel for the respondent while relying on the speaking order submits that in these circumstances the allotment made to the petitioner was rejected and thus there was no question of issuing formal allotment letter to the Sh.Banarsi Dass. Counsel next contends that the show cause notice which led to filing of the earlier writ petition was in fact inadvertently issued to the petitioner on account of the order passed in the writ petition No.3282/1995 in the case Yogesh Kumar Yograj Vs. Lieutenant Governor, Delhi and Ors., where the High Court vide order dated 27.09.2001 had directed the MCD to take immediate action for closing down all commercial activities in the residential colonies and file a status report.

11. Ms.Gupta, counsel for the respondent/MCD also submits that in the anxiety of filing the status report on time, inadvertently the show cause notice was issued at the address of the petitioner, to stop the misuse and close the commercial activities, failing which the allotment would be cancelled. It is submitted that the fact of issuing show cause notice inadvertently is borne out from the fact that no allotment was ever made in the name of the father of the petitioner, nor any formal

allotment letter was issued, nor it is claimed by the petitioner that such a letter was issued to his father. Counsel further submits it has been noticed in the impugned order that no record is available in the office of the respondent, to know as to whether any reply was sent by Sh.Banarsi Dass, after the show cause notice was issued, except a letter of 05.07.2001.

12. I have heard counsel for the parties and considered their rival submissions. From the pleadings of the parties, it emerges that father of the petitioner was carrying on his dairy business from his residential address and based on the scheme he had made an application in the year 1975-76 for allotment of an alternate site. The MCD had considered his application for allotment of the plot bearing not A-187 Ghauroli Dairy, Colony. There is nothing on record to suggest that a final allotment was made in the name of father of the petitioner, as in case any formal allotment was made in the year 1975-76, father of the petitioner would have shifted his dairy from the residence to the plot allotted for carrying on the business. On the contrary there is complete silence on the part of the petitioner from the year 1975-76 to 2001. In case any firm allotment was made in favour of father of the petitioner and possession was not handed over, there would have been no reason for the petitioner to remain silent for all these years, but for the reason that an inspection was carried out by the respondent, in which father of the petitioner was found ineligible as he did not possess the minimum number of animals which was five and there were only three animals at the dairy of the father of the petitioner. It appears that the petitioner was aware about the same and thus, knowingly he did not approach the respondent till the year 2001 when a show cause notice was issued to him. Even from the year 2001 till the earlier writ petition was filed in the year 2006 except for one letter of 05.07.2001 there is nothing on record to show that the father of the petitioner or petitioner was serious in pursuing the matter with respondent or was pursuing the case for a plot which according to the petitioner was allotted to his father. The stand taken by the petitioner that the main reason for rejection of the petitioners case is that at present the petitioner is not carrying out his dairy business from Delhi, is not correct, as this is an observation which has only been made in the concluding portion of the order. In the speaking order the main reason for not making allotment to the petitioners father is on the ground that he was not eligible. Even

otherwise, I find that there is no infirmity, illegality or any perversity in the order dated 16.11.2009, which would call for a judicial review. The petitioner has also not taken remedial measures, at the first opportunity which was available, to him from the year 1975-76 or even soon after 2001. In the absence of documents or any cogent reason for the delay and for the fact that there is no infirmity in the reasoned order, no grounds are made out to entertain this petition and the same is accordingly dismissed.

13. No order as to costs. G.S.SISTANI, J DECEMBER 10 2012 ssn

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