

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3791/2000

31.05.2007

Date of Decision: 31st May, 2007

**COMMON CAUSE Petitioner
Through : Ms. Meera Bhatia, Adv.**

versus

**UOI Respondent
Through : Ms. Madhu Tewatia, Adv. for MCD
Mr. Jagmohan Sabharwal, Sr. Adv. with Mr. S.K.
Sabharwal, Adv. for the respondent MCD and DDA
Ms. Geeta Luthra, Mr. H.N. Takkar, Adv. for
Intervening Parties
Mr. Ajay Verma, Standing Counsel for DDA
Mr. Raj Panjwani, Adv. for Respondent No.4
Mr. V.K. Jhanji, Sr. Adv. with Mr. Viraj R. Datar,**

**Mr. Aditya Jhanji, Adv. for the applicant
M/s Everest Enterprises
Mr. Akash Pratap, Adv. for the respondent/UOI
Mr. S.S. Kumar, Mr. M.K. Shukla, Mr. R.N.
Mukherjee, Adv. for the respondent/GNCT
Mr. Rajesh Mahajan, Adv. for NDMC
Mr. Naresh Kaushik, Mr. Satish Dayanandan,
Mr. Parag Goyal, Adv. for applicant in CM12332/06
Mr. L.C. Jain, Chairman, Court Appointed
Committee**

CORAM:

**HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE S.N. AGGARWAL**

- 1. Whether reporters of local papers may be allowed to see the judgment? Yes**
- 2. To be referred to the Reporter or not? Yes**

3. Whether the judgment should be reported in the Digest? Yes

T.S. THAKUR, J

Nearly five years back, a division bench of this Court disposed of WPs No. 3791/2000 and 842/1997 with directions to the GNCT of Delhi, MCD and NDMC to take effective steps for removing the menace of stray cattle from Delhi. The Court examined the genesis of the problem of the cattle straying on the roads and acted in public interest to relieve the citizens of the menace which was found to be hazardous, causing traffic snarls and spreading filth and squalor leading to outbreak of diseases. The Court observed :

?The menace of stray cattle is hazardous and causes traffic snarls. It affects the safety of human beings on the road. It has the potential to cause accidents. Besides, it depicts a very dismal picture of the capital. It is also very cruel on the bovine animals as they are let loose on the road because the owners do not want to feed them. These animals have to fend for themselves. They eat whatever comes in their way including garbage and plastic bags. This affects their health and causes extreme trauma to them. We also find that Gosadans, by and large, have not been able to fulfill the purpose for which they were established. The fact that the animals which were made over to Gosadans have disappeared speaks volumes about their working. The capital city of Delhi should be a show window for the world. The stray cattle on the roads gives a wrong signal. Cattle and other animals which are let loose on the roads by their owners are also responsible for filth, squalor and outbreak of diseases.?

2. The Court held that the State and its agencies were impervious to the menace and had taken no effective steps to prevent the cattle and the bovine animals from taking to the roads thereby affecting the quality of life of the citizens. The following passage is in this regard apposite:

?It appears that the State and its agencies are impervious to the menace of stray cattle. They have not taken any effective steps to prevent the cattle and the bovine animals from taking to the roads. This has affected the quality of life of the citizens. The inaction of the state and its agencies impinges upon the fundamental right of the citizens under Article 21 of the Constitution. Under Article 48 of the Constitution, the State inter alia is required to protect and safeguard the forest and wild life. The State by neglecting to perform its duty in preventing the menace of stray cattle is avoiding implementation of Article 48 of the Constitution. It is the duty of the State to keep in view the directive principles of the State policy which are fundamental in the governance of the country and to apply those principles in

making the laws. No effective law has been made to prevent the owners of bovine animals including cattle and cows from being let loose.?

3. The writ petition was eventually disposed of with the following directions :

?1. The NDMC or the MCD and the Government of NCT of Delhi shall take all possible steps to relocate dairies operating in the municipal zones of Delhi to the outskirts of Delhi.

2. The Delhi Milk Scheme and Mother Dairy should take steps to increase their supply of milk to Delhi and, in doing so, an effort should be made to rope in the unorganized sector so that the distribution is done by the aforesaid tow agencies after collecting milk from the villages on the periphery of Delhi or outside Delhi. This will discourage private parties from opening dairy farms in the city.

3. The MCD and the NDMC shall employ sufficient number of vehicles to ferry the impounded cattle.

4. The MDC, the NDMC and the police department should work together to stop the menace of stray cattle.

5. Co-ordination Committee shall be constituted in each of the Police Districts. Each committee shall consist of the Deputy Commissioner, MCD of the area/Secretary, NDMC, and the Deputy Commissioner of Police of the concerned district. The two-member Committee shall be responsible for eradicating the menace of stray cattle.

6. The MCD/NDMC shall cancel the licence of a dairy in cause the cattle and other bovine animals belonging to it stray out of the premises in which the dairy is being run.

7. Cattle and bovine animals located in Delhi shall have a tag number tied around their necks. The tag number must be indicative of the owner to whom the animal belongs so that there is no difficulty in tracing the owner.

8. Prosecutions should be launched under Section 98 of the Delhi Police Act, 1978 and Section 289 of the Indian Penal Code, 1860 against the owners of any cattle and bovine animals which are found on the streets and roads.

9. The MCD and the NDMC should employ sufficient number of persons to catch stray cattle and bovine animals. Once they are caught, they shall be impounded and may be released only on payment of fine of at least Rs.1,000/- each. The vehicles which are used for carrying impounded cattle and bovine animals ought to be fitted with ramps in order to obviate the chance of injury to them. The

transit and handling of cattle and bovine animals after being impounded shall be in consonance with the provisions of the Prevention of Cruelty to Animals Act, 1960.

10. The electricity generating companies and the electric supply companies shall disconnect electricity to the unauthorized dairies/dairy colonies with immediate effect.?

4. Five years down the line and dozens of interim orders of this Court later, the problem continues to persist with very little headway made in the direction of effective handling of the same. The result is that stray cattle

continue to roam freely on the roads and the citizens continue to suffer official apathy towards the menace. The directions issued by this Court requiring MCD and NDMC to employ sufficient number of vehicles to ferry the impounded cattle, to cancel the licences of the dairy owners in case their cattle and other animals strayed out of the premises in which the dairy is run, to launch prosecution against the defaulting cattle owners and to disconnect electric supply to the unauthorized dairies and dairy colonies with immediate effect have been obeyed more in breach than in compliance. All that the respondents have done is to prepare a resettlement scheme for shifting the unauthorized dairies to Ghogha on the outskirts of Delhi. The Resettlement Scheme, a copy whereof has been produced before us, records:

?A proper scheme is therefore required to re-settle and rehabilitate the dairy farm activity in Delhi in a planned manner by providing suitable facilities and developing it in a manner which is in conformity with the modern standards. Such colonies should have facilities like cattle sheds, internal roads, supply of electricity, supply of water, sewage disposal, disposal of manure through compost pits and bio-gas plants, fodder sheds, veterinary hospital, parks, community centres etc. This should be done in a way so that the relocated dairies can be a model not only in Delhi but for other states also.?

5. Applications were in pursuance of the above scheme invited from those running unauthorized dairies in Delhi for allotment of plots in the dairy colony at Ghogha (Narela). A total of 5857 applications were received in the municipal zones for booking as many as 8344 dairy plots out of which, 2569 applications were for plots measuring 60 Sq.Mtr. while the remaining 5775 were for those measuring 96 Sq.Mtrs. each.

6. This Court in the meantime constituted a committee under the Chairmanship of Sh. J.P. Sharma, Additional District Judge (Retd.) to assist and monitor compliance with the directions issued by this Court. The Committee was

directed to consider ways and means to deal with the stray cattle menace in a planned and scientific manner keeping in mind the socio-economic and health issues involved therein. Mr. Sharma subsequently resigned from the assignment to be replaced by Sh. L.C. Jain.

7. Allegations suggesting fraudulent allotments of plots in Ghogha dairy colony were made by some people which led this Court to pass an order on 4th October, 2006 directing that running of 'dairy business' will be the sole criterion for allotment of the plots and if anyone was found ineligible on that criterion, the possession of the plot shall not be delivered to him. In a connected writ petition titled *Vikas Jain v. Govt. of NCT of Delhi* (WPC 14715/2005), the Court directed that even provisional allotment to dairy owners shall be made only after verification and not otherwise.

8. Allegations were also made by one Sh. Rajender Sharma in CM 12332/2006 that some persons closely related to Sh. L.C. Jain, the Chairman of the Monitoring Committee had secured undeserved allotment of plots in Ghogha dairy colony. Keeping in view all these circumstances, the Court by an order dated 8th March, 2007 reconstituted the Monitoring Committee with the Commissioner, MCD; the Vice Chairman, DDA; Chairperson, NDMC; Secretary, Animal Husbandry; UT Administration; Mr. L.C. Jain and Mr. Raj Panjwani as its Members.

9. On 5th May, 2007, when the matter came up before us, we directed the MCD to file an additional affidavit together with copies of the documents referred to in the said order including a list of unauthorized dairies presently operating in Delhi and documents to support the allegation made by MCD that 67% allotments made in Ghogha dairy complex by Dr. S.K. Yadav, Veterinary Officer, were found to be bogus upon verification. Ms. Tewatia has, pursuant to the said direction, filed an affidavit together with the requisite documents.

10. We have heard at considerable length learned counsel for the parties and perused the record. The present proceedings are, as noticed earlier, only

meant to monitor the compliance of the directions issued by this Court by order dated 16th December, 2002. Those directions proceeded on a clear finding that presence of unauthorized dairies in the urbanized areas of Delhi was the main reason for the stray cattle menace faced by the citizens. The Court had, therefore, adopted a two pronged approach to the problem, one meant to be short term while the other was a long term solution for the problem that had become endemic. The short term solution was in the nature of a direction to the MCD and NDMC to employ sufficient number of vehicles to ferry the impounded cattle. Lack of such vehicles was cited as one of the reasons why the process of lifting the cattle from the streets was not as quick as it ought to be.

11. The long term solution was in the nature of relocation of the dairies operating in municipal zones of Delhi to the outskirts of Delhi. The Court had also directed the cancellation of licenses of the dairy owners and their

prosecution in case their cattle strayed out of the premises in which the dairy was being run. Besides, the electric companies were directed to disconnect electricity to the unauthorized dairies/dairy colonies with immediate effect. The directions of this Court were aimed at making Delhi's roads free from stray cattle by the 1st of February, 2003.

12. The respondents have not during the last five years relocated even a single dairy out of the municipal zones of Delhi. All that they have done is to frame a policy for relocation of unauthorized dairies running in Delhi thereby suggesting that such of the dairies as have been established in the dairy colonies established between 1976-77 to 1981 would continue to stay within the urbanized areas of Delhi, no matter there are no licenses for running such dairies as required under Section 417 of the Delhi Municipal Corporation Act, 1957 and no matter large number of such dairy plots have been converted unauthorizedly to uses other than for running a dairy. A careful reading of the order passed by this Court would show that all dairies including those operating from the dairy colonies established some 25 years ago were meant to be relocated on the outskirts of Delhi and not just those that were operating unauthorizedly. This Court had clearly noted that dairies were operating illegally and without any licenses. The essence of the order passed by this Court was that running of dairies in a urbanized city like Delhi puts considerable stress on its civic amenities. The existence of dairies in the midst of a growing metropolis was considered incomprehensible. There is however no explanation much less a cogent one why the MCD and other authorities concerned with the implementation of the direction of this Court have not taken any steps for relocating dairies operating from the so-called dairy colonies even when such dairies are running without any licenses and have not been saved by the order of this Court from the proposed relocation.

13. In so far as unauthorized dairies are concerned, the authorities have not done much except landing themselves in a state of utter confusion and mess where 67% of the allotments made by one of its officers have been found by them upon verification to be bogus. Mr. Sawhney, learned counsel appearing for Dr. S.K. Yadav who made these allotments argued that the allotments were provisional and subject to verification of the eligibility of the allottee to be carried out by the micro chipping agency employed by the MCD. He submitted that Dr. Yadav had approached a Civil Court and obtained an interim order of stay against his suspension and transfer which according to him prima facie showed that Dr. Yadav was not at fault. We are not in these proceedings called upon to examine the incidental question whether Dr. Yadav was or was not at fault while making allotments without first evaluating the eligibility of the allottee whether himself or through the micro chipping agency. That is a matter which does not directly arise for our consideration and could be examined by the appropriate authority at the appropriate stage. All that we need say is that over a period of five years, the authorities have attempted to evolve a scheme for relocation

of the dairies but when it came to implementing that scheme, it found 67% of

such allotments to be bogus. This does not speak well of the working of the MCD or the commitment of those charged with the duty of implementing the Municipal Laws and bye-laws. Instead of citing bogus allotments as a justification for the delayed implementation of the relocation scheme, the MCD ought to have felt embarrassed and apologetic for being unable to implement the policy in an honest and efficient manner.

14. The allotments are now being considered by a Committee appointed by this Court, which has according to the statement filed by the respondents found 398 applicants to be eligible for allotment upon verification. This still leaves a large number of unauthorized dairies in Delhi. To be precise, there are nearly 1905 dairies who have not applied for the plots in the Ghogha dairy colony project. Learned counsel for the petitioners therefore argued that if 1905 unauthorized dairies continue to remain indifferent to the proposed relocation, there is no reason why they should be given any further indulgence by extending time for making applications or deposit of the price of the plot. They urged that MCD authorities had no will to enforce closure or relocation of such dairies and were in fact interested in such dairies continuing in the urban area in total defiance of the provisions of law and the directions issued by this Court from time to time. They urged that the unauthorized dairies having been given an option to seek allotment which option they have turned down, there is no reason why the process of closure of the dairies should be made dependent upon their relocation. The respondents could, according to the petitioners, be directed to impound the cattle in the dairies and shift them directly to seven Gaushalas which had a large open extent of nearly 200 acres of land available with them to accommodate anything up to 40,000 cattle in the same. The micro chipping of the cattle impounded from the unauthorized dairies could then be undertaken in the Gaushalas who could be directed to take care of the cattle till such time the same were released under proper authorization to be shifted to the Ghogha dairy project.

15. Ms. Tewatia, counsel appearing for the MCD, however, argued that the process of inviting the applications may have to continue because the applications earlier filed were not considered properly and allotments made by Mr. Yadav were found to be bogus resulting in resentment among the applicants. She submitted that MCD could give to the unauthorized dairy owners a final opportunity of submitting their applications afresh and depositing the 50% cost of the plot whereupon the eligibility could be verified and allotments made for an eventual transfer of the dairy to Ghogha dairy project.

16. We have given our careful consideration to the submissions made at the bar. It is true that despite lapse of five years, nothing much have been done so far, but it is equally true that the process of allotment of plots,

construction of sheds and other infrastructure, as also transfer of the cattle to the new place, is no longer a difficult target. The MCD has on affidavit filed by Sh. Ashok Kumar, Commissioner, Municipal Corporation of Delhi stated that it can complete the process of inviting fresh applications, verification of eligibility, and allotment within a time frame proposed in the affidavit, the proposed time frame is as under:

1.

Cancellation letters to be issued to individual applicants who have been found ineligible/fake (non-dairy owners) on verification by the Committee at zonal level.

By 15th June 2007.

2.

Draw of lots for the dairy plots by the committee constituted for making the allotments to the actual dairy owners, of urban areas as per the conditions of advertisement

In first week of July, 2007.

3.

Deposition of balance 50% amount towards cost of dairy plots plus allied charges by the dairy owners.

By 31.08.2007.

4.

Finalization of any agency for identification of cattle through Micro-chips to be relocated to Ghoga dairy colony, by calling tenders

By 31.08.2008

5.

Issuance of Allotment-cum-Possession letters.

By 15.09.2007

6.

Time period to be granted to the allottees for the construction of cattle sheds, etc. in accordance with approved drawings/plans of the MCD.

By 15.12.2007.

7.

Relocation of dairies of the owners who have been found eligible.

By 15.01.2008

8.

Simultaneous identification of cattle through Micro-chipping (from 15.12.2007 to 15.01.2008)

By 15.01.2008.

1.

Inviting of fresh applications at the Zonal level from remaining illegal dairy owners for booking of dairy plots at Ghoga by publishing the notice in the newspapers.

By 31.07.2007

2.

Verification of illegal dairies/applicants.

By 30.09.2007.

3.

Deposition of 50% advance amount towards cost of dairy plots by the applicants/illegal dairy owners, who shall be found eligible after verification.

By 30.11.2007

4.

Draw of lots for the dairy plots.

By 31.12.2007.

5.

Deposition of balance 50% amount towards cost of dairy plots and allied charges.

By 28.02.2008.

6.

Issuance of Allotment-cum-Possession letters to the eligible dairy owners.

By 31.03.2008.

7.

Time period to be granted towards construction of cattle sheds, etc. in accordance with approved drawings/plans of the MCD.

By 30.06.2008.

8.

Relocation of eligible applicants/dairy owners to the Ghoga dairy colony.

By 31.08.2008

9.

Simultaneous identification of cattle through Micro-chipping (From 30.06.2008 to 31.08.2008.)

By 31.08.2008.

17. Relocation of the dairies being a long term solution for the problem of stray cattle, we see no reason to decline to the MCD an opportunity to

finalize the process by strict adherence to the calendar of dates and events proposed by it and extracted above. The committee supervising the process of allotment would, therefore, do well to ensure that all steps necessary for each one of the milestones identified in the list of dates and events are taken by all those concerned with the said process.

18. The long term solution should not, however, prevent the MCD from taking steps for supplementing its fleet of hydraulic trucks for catching the cattle from the roads and transporting them to the Gaushalas. The MCD has

placed on record, a communication dated 21st May, 2007 received from Eicher Company which is making the supply of trucks. The communication states that by 30th June, 2007, twelve full body hydraulic trucks with bodies fabricated on the same for cattle catching activities would be delivered by the company to the MCD by 30th June, 2007. With the introduction of these trucks, the MCD should be in a position to start a drive against the stray cattle on the roads for being shifted and handed over to the Gaushalas directly. Needless to say that the MCD shall have to constitute a task force for catching the cattle and transporting them in the trucks to these Gaushalas. If 12 hydraulic trucks are added to the existing fleet of the MCD, there is no reason why the Delhi roads should not be clear of stray cattle, even when the process of such cattle being left free on the roads by the dairy owners continues.

19. There was some debate at the bar regarding the microchipping of the cattle lifted by the MCD. In the past, these cattle appear to have been microchipped before they were sent to the Gaushalas. This, in our view, delays the entire exercise and at times gives rise to a lot of problems on account of dairy owners attacking the MCD cattle lifting team or attempting to snatch the cattle away from them. The proper course, therefore, would be to shift the cattle directly to the gaushalas which admittedly has a very large capacity to accommodate up to 40,000/- cattle in them. It was not suggested by anyone before us that the Gaushala Managements have refused to take the cattle lifted from the streets. If that be so, there is no reason why the cattle cannot be taken straight to the Gaushalas and the process of microchipping undertaken thereof.

20. CM 6101 and 6102 of 2007 filed by the Everest Company for intervention. Mr. Jhanjhi, learned Senior Counsel appearing for the intervenor, however, pointed out that the company has sought redress in a Civil Suit which is now pending before a Civil Court. If that be so, we are not required to go into the question whether the termination of the contract, if any, entered into between MCD and the said company suffers from any legal infirmity. We leave that issue to be examined suitably in Civil Proceedings pending before the Court below.

21. In the course of hearing before us, the Commissioner of MCD had appeared in person and fairly conceded that the provisions of Section 417 of the Delhi Municipal Corporation Act, 1957 were mandatory inasmuch as no person can keep any cattle without a license from the Commissioner, MCD. Even so the Commissioner, MCD had framed no policy regarding licensing of dairies or keeping of cattle in Delhi. He submitted that the MCD would, within the time allowed by this Court, introduce a proper licensing regime which would inter alia stipulate the conditions subject to which licenses may be granted for keeping of cattle or other quadruped animals or birds for transportation, sale or hire or for sale of the produce thereof. That, in our view, ought to have been done long time back. It is indeed surprising how the MCD could turn a blind eye to section 417 of the Act and allow the activities enumerated therein

to go on without proper licenses granted by the Commissioner in that behalf. The issue of licenses would not only make the dairy/cattle owners accountable but ensure that they conform to the minimum standards of hygiene so very essential for the health of the community and the people living in close proximity to such areas.

22. That leaves us with an application filed by Sh. L.C. Jain complaining that the MCD had withdrawn the facilities extended to him under the orders of the Court to make him ineffective in the discharge of his duty as Chairman of the Monitoring Committee and later as a Member thereof. The Committee, as noticed earlier, was reconstituted by this Court by an order dated 8th March, 2007. Mr. Jain is, therefore, no longer the Chairman of the Monitoring Committee which is now headed by Commissioner, MCD. The emoluments payable to Mr. Jain as Chairman of the Committee would cease to be payable with effect from the date of the said re-constitution. So also, the facilities attached to his position as a Chairman would cease to be available to him from that date. Mr. Jain is, after the reconstitution of the Committee, a simple Member of the Committee. He has been attending the meetings of the Committee like Mr. Raj Panjwani, Advocate who has not been claiming or demanding any remuneration for the services rendered by him. We do not, therefore, think it necessary to make a departure in the case of Sh. Jain who is free to continue as a Member of the Committee and donate time for proper and effective relocation of the dairies but in case he is unable to do so without any monetary gains in the process, he shall be free to quit. We leave it to Mr. Jain to make a choice in this regard. All that we need to clarify is that from the date of the reconstitution of the Committee, Mr. Jain is neither entitled to any emoluments nor any facilities for the discharge of his function as an ordinary Member of the Committee. In the result, we pass following orders:

- 1) The MCD shall adhere to the time schedule set out in para 16 of this order and complete the process of allotment of plots and relocation of the dairies before the date indicated in the said schedule.
- 2) The MCD shall introduce the additional fleet of twelve Hydraulic trucks with effect from 30th June, 2007, constitute proper task force for use of the said trucks to ensure that the roads are free from stray cattle.
- 3) The Commissioner, MCD shall formulate a proper licensing policy and enforce the provisions of section 417 of the Delhi Municipal Corporation, Act, 1957. The licenses issued to the dairy owners whether authorized or unauthorized, shall be without prejudice to the relocation scheme formulated by the MCD.
- 4) CM 1731/2007 is disposed of with liberty to the MCD to cancel all bookings and allotments found to be fraudulent and bogus.
- 5) CMs 6106 of 2007 filed by Daya Ram, Panna Lal, Charan Singh for

addition as parties to these proceedings are also dismissed.

6) CM 6101 and 6102 of 2007 filed by M/s Everest Company are dismissed with liberty to the applicant to seek redress in the ongoing Civil Action filed by it before the Competent Court.

7) CM 5774/2007 in W.P.(C)14175/2005 filed by Sh. L.C. Jain is also dismissed with the observation that he shall have the choice of continuing as a Member without any remuneration and other facilities or quitting the membership of the Monitoring Committee.

8) CM 6065/2007 filed by the MCD for extension of time is also disposed of in terms of the above order.

9) CM 6107/2007 and all other pending CMs not specifically referred to herein above shall also stand disposed of in terms of the present orders.

10) With the above directions, these proceedings shall stand closed. The MCD shall file a compliance report on or before the 31st August, 2008. In case, the directions issued by this Court are not complied with in letter and spirit, the Commissioner of MCD shall remain present in person to explain as to why suitable action for defiance of the orders passed by this Court be not initiated against him

No Costs.

T.S. THAKUR, J

S.N. AGGARWAL, J

MAY 31, 2007

pk/anb