

20.

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 12633/2009

MD. JABIR HUSSAIN Petitioner
Through Mr. S.K. Sethi, Advocate for Ms.
Seema Kashyap, Advocate.

versus

MUNICIPAL CORPORATION OF DELHI Respondent
Through Ms. Mansi Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% **05.03.2010**

1. The petitioner herein had applied for five dairy plots measuring 60 square meters in Ghogha dairy scheme vide application dated 17th April, 2006. The petitioner's wife Ms. Khushmuda Khatoon had applied for one dairy plot measuring 60 square meters.

2. On verification, it was found that the petitioner did not have any illegal dairy or cattle and he was not entitled to any allotment. It was also noticed that the petitioner had made a wrong declaration in the application form that he had 30 buffalos. The petitioner has not questioned the findings recorded by the MCD rejecting the application of the petitioner. It is not alleged and stated in the petition that the petitioner in fact had 30 buffalos and was entitled to allotment of five dairy plots.

3. The grievance of the petitioner is that the respondents have deducted Rs.20,000/- for each plot and accordingly refunded the balance amount to the petitioner. The petitioner contends that only Rs.20,000/- should have

been deducted per application and, therefore, the respondent-MCD has erred in deducting Rs.20,000/- for each plot, i.e., Rs.1 lac for five plots.

4. The issue raised in the present writ petition was considered and decided by judgment dated 8th April, 2008 passed in W.P. (C) No. 1590/2008 titled *Chhanga Lal and Others versus MCD and Others*. After examining the contentions raised by the parties, it was directed as under:-

“33. MCD is not entitled to retain the entire sale consideration received and paid by the petitioners. Section 64 of the Contract Act is applicable. The respondent is entitled to deduct the financial expenditure incurred by them on examining the applications, sending Committee members for verification as well as some punitive damages. MCD is entitled to set off the said amount. Keeping in view facts of the present case, I feel that interest of justice would be met if MCD is allowed to set off Rs. 20,000/- for each plot measuring 60 sq. mtrs. and Rs. 30,000/- for each plot measuring 96 sq. mtrs. towards damages, but the balance amount should be refunded to the petitioners. The amount being forfeited is also punitive in nature and in accordance with the provisions of the Contract Act. Respondent/MCD will refund the balance amount to the petitioner within a period of 6 weeks from today by crossed cheques. The respondent MCD will write letters by registered post to the petitioners calling upon them to furnish details of their bank account and personally come and collect the cheques. Payment will be made after properly identifying the person who had made the deposit. In case the MCD does not make payment within 6 weeks from today, it shall be liable to pay interest from the date of the order till payment @ 10% per annum.”

5. Applying Section 64 of the Contract Act, 1872, it was held that interest of justice would be met if MCD is allowed to set off Rs.20,000/- for each plot measuring 60 square meters and Rs.30,000/- for each plot measuring 96 square meters on account of financial expenditure incurred by them on examining the application, sending committee members for verification as well as punitive damages. The direction in the said paragraph is clear. Deduction of Rs.20,000/- has to be made towards each plot measuring 60 square meters and Rs.30,000/- for each plot measuring 96 square meters. As the petitioner had applied for five plots, MCD will deduct Rs.20,000/- for each plot.

6. In view of the above, I do not find any merit in the present writ petition and the same is dismissed.

SANJIV KHANNA, J.

MARCH 05, 2010
VKR