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MILKMEN COLONY VIKAS SAMITI

v.

STATE OF RAJASTHAN & ORS.

JANUARY 17, 2007

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[S.B. SINHA AND DALVEER BHANDARI, JJ.]

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Constitution of India, 1950—Articles 21 & 226—Unhygienic conditions and nuisance caused by stray cattle of milk dairies in city—Public Interest Litigation Writ Petition before High Court—Directions to State by High Court to remove cattle and relocate milk dairies out of the city—Alternative lands allotted by State of dairies—Undertakings given by dairy owners to shift their cattle and relocate their dairies—High Court directing District Magistrate to comply with its directions when undertakings are not complied with by dairy owners—Correctness of—Held, menace of stray cattle cannot be allowed at the cost of health and decent living of residents of the city—Milk dairies cannot question the decision of High Court after giving undertakings—Hence, various interim directions issued.

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Milkmen were allotted plots concessionally in a city about fifty years back. Due to expansion of the city over the years, the milkmen colony now came to be situated in the heart of the city. The milkmen, after milching, used to allow their cattle to stray around the city. A Public Interest Litigation Writ Petition was filed before High Court by aggrieved residents of the city contending that the stray cattle were causing danger to human life and were creating a traffic hazard; that the entire city was full of cattle and excreta of the stray cattle leading to stinking; that the excreta became a breeding ground for various diseases; that, as a result, the drains not clogged and sewerage water was getting mixed up with drinking water; that these unhygienic and unhealthy conditions were adversely affecting their quality of life and thereby impinging upon their constitutional rights enshrined under Article 21 of the Constitution of India. A direction was sought from the High Court to relocate the milk dairies out of the city.

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The High Court, entertaining the Writ Petition, issued various interim directions to the State and its functionaries for removal of stray cattle from the city and relocation of the dairies outside the city. The State accordingly allotted lands for purpose of relocation and earmarked funds

to meet necessary expenses to carry out the directions of the High Court. Appellant-milkmen societies, got impleaded before the High Court and contended that the alternative sites allotted by the State was a hilly area and not suitable for their dairies. They undertook to shift their dairies once suitable sites are given and make arrangements for preventing their cattle from straying. When the milkmen failed to comply with the directions despite given several opportunities, the High Court directed District Magistrate to remove stray cattle from the city and shift them outside the city limits and to file a compliance report.

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In appeal to this Court, the appellants contended that the eviction from their existing land, which were allotted by State after accepting allotment charges should be under law; that the alternative land allotted by the State was in a hilly area and that their cattle would not be able to survive in that area; and that no rehabilitation facilities were provided by the State to facilitate shifting of their cattle. The appellants, however, contended that they are ready to shift to some other suitable area where the land was not rocky and water was sufficiently available for their cattle.

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The State contended that they had complied with the orders of the High Court by issuing necessary notifications, allotting alternative land and earmarking funds for the purpose; that sufficient opportunities were granted by the High Court to the appellants to shift their dairies and cattle from the city; that the appellants had given an undertaking to the High Court to shift from the city within a specific period; and that the appellants neither shifted their dairies and cattle nor deposited requisite amount with the State despite giving their undertakings.

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The respondent, who filed Writ Petition, contended that the High Court had to issue directions to the appellants when they were found resiling from their undertakings given to the Court; and that the High Court only directed to shift their dairies out of the city and did not give any direction affecting ownership of the plots of the Milkmen.

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Issuing interim directions, the Court

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HELD : 1.1. The menace by stray cattle has grown without any check from the authorities in the city. The law-abiders are sufferers. All this has happened at the cost of the health and decent living of the residents of the city violating their constitutional rights enshrined under Article 21 of the

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A Constitution. The Government and its agencies have been negligent in discharging of their functions and obligations. [Para 22] [1071-C-E]

Virender Gaur & Ors. v. State of Haryana & Ors., [1995] 2 SCC 577; *Administrator, Nagar Palika v. Bharat & Ors.*, [2001] 9 SCC 232; *M.C. Mehta v. Union of India & Ors.*, [2004] 6 SCC 588; *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat & Ors.*, [2005] 8 SCC 534; *Milk Producers Association, Orissa & Ors. v. State of Orissa & Ors.*, [2006] 3 SCC 229 and *Friends Colony Development Committee v. State of Orissa*, [2004] 8 SCC 753, referred to.

C 1.2. It is the dire need of the city to relocate the milk dairies which were creating nuisance for the citizens of the city. There is no illegality in the directions of the High Court particularly when the High Court did not give any directions affecting their ownership of the existing plots though these plots of land were allotted to them on a highly concession rate for a definite purpose and majority of the milkmen did not use the land for the purpose it was allotted to them. [Para 25] [1072-F-G]

D 1.3. The appellants had already undertaken before the High Court to shift at the place earmarked by the State and have sought more time for the said purpose. Even the extended period for shifting has lapsed a long time ago. Therefore, the decision of the State of relocating the milkmen to a new site cannot be questioned at this belated stage particularly when the State has taken the decision based on expert's advice in the larger public interest. [Para 26] [1073-A-C]

E *Ramji Patel & Ors. v. Nagrik Upbhokta Marg Darshak Manch & Ors.*, [2000] 3 SCC 29, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 246 of 2007.

G From the Judgment and Final Order dated 12.7.2004 of the High Court of Judicature of Rajasthan at Jodhpur in D.B. Civil Writ Petition No. 4409/1994

WITH

H C.A. No. 247 of 2007.

Kailash Vasudev, A.M. Singhvi, Rajeev Dhawan, Mukul Rohtagi, Aruneshwar Gupta, Addl. Adv. Genl., Surya Kant, Sushil Kumar Jain, H.D. Thanvi, Sarad Singhania, Puneet Jain (for Pratibha Jain), Dr. Manish Singhvi (for P.V. Yogeshwaran), A. Mariarputham, Mrs. Aruna Mathur, Ms. Mini N. Nari (for M/s. Arputham Aruna & Co.), Naveen Kumar Singh, Mukul Sood, N.M. Sharma, R.P. Singh, Manu Mridul and Anant Kumar Vatsya (for T.V. Ratnam) for the appearing parties.

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The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. Leave granted.

2. In a public interest litigation instituted under Article 226 of the Constitution, the High Court of Rajasthan at Jodhpur, by the impugned judgment, has directed that the milk dairies located in the city of Jodhpur be shifted from their present location to alternative sites. These appeals by grant of special leave are preferred against the said judgment and order dated 12th July, 2004 of the High Court passed in D.B. Civil Misc. Writ Petition No.4409 of 1994.

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3. Both these appeals are inter-connected and are arising out of a common judgment, therefore, we would refer to the facts as mentioned in Civil Appeal No. 246 of 2007 arising out of SLP (C) No.16751 of 2004.

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4. The appellant-Milkmen Colony Vikas Samiti is an association of milkmen engaged in the business of selling milk and milk products in the city of Jodhpur (Rajasthan) for the last 44 years. The Government of Rajasthan vide Notification No.F.1 LSG/56 dated 5.11.1956 introduced a scheme, namely, 'Masuriya Colony Scheme', under which the members of the appellant Samiti and other milkmen, who were carrying on business of selling milk and milk products, were allotted plots of land in the city of Jodhpur @ Rs.2 per sq. yards. In all, 332 plots were allotted by the Government under the said scheme to different milkmen for developing dairies. Since 1956, the said milkmen have been carrying their business of selling milk and milk products in the above colony. The said colony was duly conceived and planned as a milkmen colony by the Urban Improvement Trust, Jodhpur with the approval of the State Government.

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5. It is stated that the owners of the bovine animals, in the city of Jodhpur, after milching the bovine animals were turning them out of dairies so that they could eat whatever was available on the roads. The stray cattle

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A including the cows, bulls, dogs etc. freely roam in the city of Jodhpur and in the porch of the Mahatma Gandhi Hospital, the principal government hospital in the city. It is further stated that the excreta of these animals was also visible all over, even in the corridors of the High Court. This totally unhygienic, unhealthy and injurious practice was creating considerable nuisance to the citizens of the city of Jodhpur.

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6. The citizens of the City, being aggrieved by the said nuisance caused by the stray cattle and dogs, filed a petition in public interest in the High Court of Rajasthan at Jodhpur through the Rajasthan Chapter of Indian Association of Lawyers, respondent no.4 herein, associated with the International Association of Democratic Lawyers established in 1946 and in consultative status with UN Economic and Social Council, UNESCO and UNICEF.

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7. In the instant petition, it was stated that stray animals, such as, bulls, dogs and cattle were roaming all around inside and outside the city freely. Cattle were found loitering and squatting on the roads of Jodhpur City and that they were causing danger to human life and were creating a traffic hazard. It is stated in the petition that the entire city was full of dirt, refuse and was stinking beyond all limits and that the excreta of stray cattle was a breeding ground for various diseases. Drains were clogged and sewerage water was getting mixed up with the drinking water spreading many diseases. These unhygienic and unhealthy prevalent conditions are adversely affecting the quality of life of the residents living in the city of Jodhpur and thereby impinging upon their constitutional rights enshrined under Article 21 of the Constitution of India. In the writ petition, following reliefs were prayed:

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1. To direct the respondent Jodhpur Municipal Corporation and the Urban Improvement Trust to take steps to ensure that animals and cattle do not inhabit roads and public places and make proper arrangement in this behalf;

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2. In order to oversee that all this is done, to appoint a Committee constituting of eminent citizens authorizing such Committee to see:

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(i) that the direction aforesaid are given effect to;

(ii) to receive complaints from the people; and

- (iii) make appropriate directions to meet genuine grievances; and A
- (iv) the respondents be directed to comply with the direction of the aforesaid committee in this behalf;
- (v) to take immediate steps to make city clean, revamp sewerage system; B
- (vi) For above purposes, if necessary, the State Government be directed to make funds available to respondent Municipal Corporation. C

It was stated before the High Court that with the passage of time, Jodhpur City became very dense and, therefore, it was necessary to eliminate the menace of stray animals from the roads of the city of Jodhpur. It was also urged before the High Court that the milkmen colony when devised was more or less outside the city but now it is in the heart of the city because of expansion of the City. The main cause of expansion has been unchecked growth in the population. Therefore, a direction was sought to relocate the dairies out of the city of Jodhpur. D

8. The High Court entertained the writ petition and, looking to the seriousness of the matter, issued certain directions, vide its order dated 23.1.2003, which are reproduced hereinbelow: E

- (i) The Municipal Corporation, Jodhpur shall make every endeavour to shift dairies from the city and have them relocated with the assistance of the State to the outskirts and periphery of the city or beyond the city limits. F
- (ii) The Municipal Corporation shall relocate stray cattle from the roads to Gaushalas or institutions made for providing shelter to stray cattle including the institutions at Pawapuri.
- (iii) For the removal of stray cattle, bulls and dogs from the roads and for their relocation to shelter etc. the Municipal Corporation shall press into service sufficient number of persons and vehicles for impounding and relocating animals. G
- (iv) Cattle and animals located in Jodhpur City shall have a tag number tied around their necks. The tag numbers should be H

- A indicative of the name and address of the person to whom the animal belongs so that there will be no difficulty in tracing their owners. This direction shall be carried out by the person(s) owning the cattle and animal(s). The enforcement of the condition shall be made by the civil authorities.
- B (v) Prosecutions should be launched under the various penal provisions against the owners of such cattle and animals which are found on the streets and roads unattended.
- C (vi) The Municipal Corporation shall employ sufficient number of persons to catch stray cattle and animals found on the roads and streets. Once they are caught, they shall be impounded and may be released to owners on pay of fine of Rs.500 each and subject to other directions mentioned herein.
- D (vii) The vehicles which are used for carrying impounded cattle and animals shall be fitted with ramps in order to avoid the chances of injury to them.
- E (viii) The transit and handling of the stray cattle and animals will be in conformity with the laws providing for their safety and prevention of injuries to them including Prevention of Cruelty to Animals Act, 1960.
- F (ix) Electric supply to unauthorized dairies which are operating in the city shall be disconnected with immediate effect.
- G (x) The direction of serial No. (ix) above shall also be applicable to the organized and unauthorized dairies located within the city in the event of their failure to shift out of the city within the time allowed to them by this order. The place to which such dairies are to be shifted shall be earmarked by the competent authority within three weeks.
- H (xi) The Municipal Corporation, Jodhpur shall file statements detailing the fine(s) collected by it in terms of directions given at serial no. (vi) above.

(xii) The roads of Jodhpur City shall be made free of stray cattle bulls and roaming animals by 31st March 2003.

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(xiii) Periodical progress report shall be submitted by the Municipal Corporation by 15th of each calendar month.

(xiv) The State Government shall assist the Municipal Corporation, Jodhpur in securing the implementation of the aforesaid directions. This will include financial assistance, which would be required by the Municipal Corporation of Jodhpur to carry out the directions contained in this order effectively.

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(xv) The Chief Execution Officer of the Municipal Corporation, Jodhpur shall nominate two officers, who shall be responsible for carrying out the directions of this Court.

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The aforesaid directions will not only bind the Municipal Corporation of Jodhpur, its functionaries and officers nominated by the Chief Executive Officer, Municipal Corporation, but it shall also be equally binding on the State Government and its functionaries and electric supply companies. Needless to say that failure on the part of the concerned authorities and functionaries shall be actionable under Article 215 of the Constitution and the Contempt of Courts Act, 1971.”

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9. The aforesaid petition again came for consideration before the High Court on 06.1.2004. On that day, the Court found that the Collector, Jodhpur had complied with the orders and allotted 2500 bighas of land to the Urban Improvement Trust for the purpose of shifting dairies from the city of Jodhpur. The State Government had also made a sum of Rs.50,00,000 available to the Municipal Corporation to meet the expenses of (i) catching the stray cattle; (ii) for their transportation; and (iii) for purchase of fodder for the stray cattle. The Collector further made 500 bighas of land available to the Municipal Corporation in Kali Beri, Soor Sagar, Jodhpur for creation of a pond. The Court further issued the following directions:

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“We direct that dairy owners/operators who were allotted the land in the Milkmen Colony at Pal Road or who are now operating within the city limits should be shifted to the new area which has been

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A made available by the Collector to the Urban Improvement Trust.
For this purpose, the Urban Improvement Trust shall provide 30
B days to the dairy operators to apply for allotment of lands in the
new area. The dairy operators shall deposit the requisite amount
with the Urban Improvement Trust for allotment of lands in the new
area. In case, the dairy operators do not deposit the amount within
the aforesaid 30 days, their dairies will be sealed by the Municipal
Corporation and the bovine animals shall be impounded.

C The Municipal Corporation is also directed to develop the
pond in Kali Beri, Soor Sagar, Jodhpur within a period of two
months from today. 75% of the requisite funds for development of
the pond shall be allocated by the State Government.”

D 10. On 10.2.2004, the High Court again heard the above matter when
the appellant Samiti herein was allowed to intervene in the matter being a
necessary party. The learned counsel for the Samiti stated that the milkmen
colony was being shifted to Barli, which was a hilly area and which was not
a suitable place for bovine animals. However, the High Court rejected this
contention of the learned counsel for the Samiti by observing as under:

E *“We are told by the counsel for the respondents that the area in
question has been selected after the experts had opined that the
land is suitable for the purpose of establishing the milkmen
colony. In the circumstances, therefore, we will not permit attempts
on the part of certain persons to stifle our order. The milkmen and
dairy owners must shift to Barli and subsequently in case, it is
F found that there are some practical difficulties for them only in
that event the Collector can be asked to allot some other land to
them. It appears that there are a large number of milkmen and they
are entrenched in city. It is surprising that after milching the bovine
animals, the dairy owners turn them out so that they can eat
G whatsoever is available on the roads. Bovine animals in order to
satisfy their hunger even consume plastics. Once plastic goes in
their systems, it causes severe harm to them and some of them even
die. But this is not the concern of the dairy owners. Though people
consider cow as mother yet the treatment which is meted out to it
is extremely harsh and cruel. There is no justification whatsoever*

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for the diary owners not to shift from the city to the designate area.”

(Emphasis supplied)

11. After passing the above order, the High Court adjourned the matter to 11th March, 2004, on which date, the learned counsel appearing for Municipal Corporation and the learned counsel appearing for milkmen made their statements. The order dated 11th March, 2004 reads thus:

“Learned counsel appearing for the Municipal Corporation says that pond is being created at Kali Beri within a period of six weeks. Learned counsel appearing for the Milkmen says that the entire Milkmen community will shift on their own to another site. He says that his clients undertake to comply with the order passed by this Court and shift from the present site within two weeks. In case, the Milkmen do not comply with the undertaking, the Municipal Corporation shall in compliance of the order seize the dairies.”

12. The aforesaid matter once again came for hearing before the High Court on 14.5.2004. On that day, the learned counsel appearing for the respondents sought some time so as to enable them to make arrangement for preventing the cattle and bulls from moving on roads. They undertook to do the following exercise:

- (i) all the bovine animals in Jodhpur shall have the tags in consonance with the directions issued by the Court;
- (ii) the work for construction of wall around the milkmen colony shall be started in right earnest;
- (iii) that no bovine animals including bulls shall be seen on the roads as the same shall be caught by the milkmen and handed over to the Municipal Corporation.”

13. Having regard to the submissions of the learned counsel, the High Court granted 10 days time to the milkmen for doing the needful. The High Court constituted a monitoring committee to evaluate the progress made by the milkmen in preventing the animals from moving on the roads.

14. Finally, the aforesaid matter came up for hearing before the High

A Court on 12th July 2004, when the High Court passed the impugned order:

B “We find that the order dated 14th May, 2004 has not been complied with. The milkmen were provided sufficient opportunity to shift from the city area as the bovine animals are creating nuisance in the city.

C The District Magistrate is directed to see that the public nuisance caused by the stray animals is removed and the bovine animals are shifted outside the city limits in consonance with the order dated 6.1.2004. The District Magistrate shall file a compliance report within two weeks. The Municipal Corporation shall assist the District Magistrate in effecting the compliance of the order.

D The Municipal Corporation and the U.I.T. shall be duty bound to construct a pond and provide necessary facilities to the milkmen shifting to Barli.”

15. Being aggrieved by the aforesaid order, these appeals have been preferred before this Court.

E 16. In the appeals before this Court, certain issues have been raised. The learned counsel appearing for the appellant urged that the High Court was not justified in issuing directions to evict milkmen from the land, which was allotted to them by the Government for the purpose of milk dairies after accepting allotment charges; that, the High Court was not justified in passing an order of eviction of milkmen from the land, without following the procedure established by law i.e. under the Land Acquisition Act or Public Premises Act; that, the High Court was not justified in not appreciating the fact that the land allotted for shifting of cattle and bulls of the milkmen was located in a hilly area and no rehabilitation facilities were provided by the authorities to facilitate the shifting of the cattle; and that, the High Court erred in not considering the fact that the Committee set up for monitoring the progress made by the milkmen for preventing their cattle from coming to the roads had failed to appreciate the genuine problems of shifting the animals, especially in terms of the report of the specialist that Barli was a hilly area and cows and other animals would not be able to survive. It was further argued that the milkmen were ready to shift out of milkmen colony

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if some suitable area was earmarked for them, where the land was not rocky and water was sufficiently available for their cattle. If such suitable site was allotted to them, they would move to that place within such reasonable time as may be granted by this Court. They would also deposit the amount as per the directions of this Court. The learned counsel for the appellants urged that that the State Government may be directed to allot suitable land located at some other place in Jodhpur City like in Salawas, Old Pali Road in place of Barli.

17. The learned counsel appearing on behalf of the State of Rajasthan stated that the order passed by the High Court was just and fair and the same had been passed after carefully appreciating all the circumstances and interest of all sections of the residents of Jodhpur. The milkmen were provided sufficient opportunity to shift from the city of Jodhpur. It was stated that the members of the appellant Samiti were allotted plots at nominal rates for construction of milk dairies way back in 1956. There was a condition in the letter of allotment that the allottees shall carry out constructions according to the type design issued to them. However, no construction in accordance with the type design was carried out by the milkmen. Most of the milkmen had constructed houses and shops in the plots meant for milk dairies. The milkmen were leaving their cattle stray on the roads, which were leading to public nuisance, accidents etc. It was further argued that a bare perusal of the various orders passed by the High Court would make it clear that sufficient opportunities were granted to the milkmen to shift from the city of Jodhpur and a specific undertaking was also given on their behalf before the High Court that they would shift from the city of Jodhpur within a specific period. However, they neither shifted from the area nor deposited the requisite amount with the Government. On the other hand, the Government had already developed a pond at the site as per directions of the High Court. The plea of the appellant Samiti was without any basis that the land could not be developed so far.

18. The learned counsel for the State further drew our attention towards the public notice dated 20.7.2004 issued by the Office of Municipal Corporation, Jodhpur and notification dated 23.7.2004 issued by Urban Improvement Trust, Jodhpur, which read as under:

“Office of Municipal Corporation, Jodhpur. No. Writ/Stray Cattle/
04/S.P.3

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Dated: 20.7.2004

PUBLIC NOTICE

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In the Hon'ble High Court of Rajasthan at Jodhpur, a Writ Petition No. 4409/94 relating to stray cattle is pending for consideration. In this writ petition, the Hon'ble High Court has passed the orders from time to time in which it has found that in Jodhpur city on roads, ways in colonies, bastis etc., the cattle wander in stray condition. In this connection, the Hon'ble High Court has given orders to the Town Development Trust that in the city for cattle dairies in Barli area plots should be allotted in which the cattle dairies which are at present in city should be shifted in that area. For this purpose, the owner of the cattle should get the certificate of owner of the cattle/guardian of the cattle and then an application should be submitted for allotment of plot by these persons in the Town Development Trust. Some persons have given such applications for allotment of plot and out of them the plots have been allotted by the trust on 6.1.2004. The Hon'ble High Court has passed the orders to shift the dairy owners who are in the city at present and also to apply for allotment of plots by giving application to the Town Development Trust. This order has been issued to the corporation that those cattle owners who are not shifting their dairies out of the city should be sealed. The Hon'ble High Court on 12.7.2004 has passed the order that all the owners of the animal husbandry should be transferred out of the city. Therefore, it is requested to all the cattle owners that they should transfer/shift their animals within 7 days from the receipt of this notice out of the boundary of Municipal Corporation failing which the proceedings with the help of District Administration to transfer/shift their animals outside the boundary of corporation and expenses to be recovered from the owners of the animals. The proceedings for contempt of court order shall also be started against them.

Sd/- Chief Executive Officer
Municipal Corporation, Jodhpur"

"Office of Urban Improvement Trust, Jodhpur.

No. 1348

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Dated: 23.7.2004

NOTIFICATION

It is informed to all the animal husbandry holders that in the implementation of the Hon'ble High Court order the scheme has been prepared by the trust which is in New/Nai Milkmen colony at village Barli in Kharas No.88, for which the application form should be filled after obtaining from the trust office within 7 days. These forms should be submitted in the office of the trust for which the proceedings of the distribution of plots shall be started for the animal husbandry holders. The terms and conditions of the allotment of the plots are given as below.

1. The certificate of animal husbandry of the applicant, which should be certified by the corporation of Jodhpur and it is necessary that this certificate should be attached with the application form.
2. The demand draft of Rs.1000 (One Thousand Rupees) as an earnest money should be attached in the name of Secretary, Town Development Trust, Jodhpur.
3. The whole amount should be deposited after obtaining the order of the allotment of the plot within 30 days. An allotment will be done at the reserved rate.
4. In this scheme, the cancellation of the corner plots will not be done. The execution rules of 1974 of Rajasthan Town Development will be applied on the allotments.
5. The use of the allotted plot will be done only for animal husbandry and the work regarding transferring the animal husbandry should be started as early as possible in his allotted plot by the allottee.

Sd/- Secretary
Town Development Trust, Jodhpur"

In the background of the above notifications, the learned counsel appearing for the State stated that the respondent State Government had

A complied with the orders of the High Court. The members of the appellant Samiti were not complying with the orders of the High Court and, therefore, no interference was called for in the impugned orders of the High Court.

B 19. Respondent No.4, Rajasthan Chapter of Indian Association of
C Lawyers, who filed the writ petition in the High Court, also sought dismissal
D of the present appeals on the ground that the appellant Samiti itself chose
E to undertake before the High Court that the milkmen were willing to shift
F their dairies from the milkmen colony and that for this purpose, the milkmen
G repeatedly sought time from the High Court. The High Court found the
H milkmen resiling from their undertakings that they were ready to shift from
the city of Jodhpur and thereafter the High Court issued certain directions
to the Government to comply with its earlier orders regarding shifting of milk
dairies from the city of Jodhpur. It was only after these directions that the
milkmen have come to this Court. It was further argued that the High Court
had nowhere said that the milkmen would be deprived of the plots allotted
to them. Only the dairies had been directed to be shifted out of the city of
Jodhpur. The High Court never gave any direction affecting ownership of
the plots of the milkmen in the milkmen colony, which now fall in the heart
of the city after expansion. The High Court's directions are based on larger
public interest and protection of clean and healthy environment.

E 20. In *Virender Gaur & Others v. State of Haryana & Others* reported
in [1995] 2 SCC 577, referring to principle No.1 of Stockholm Declaration of
United Nations on Human Environment, 1972, this Court observed that right
to have living atmosphere congenial to human existence is a right to life. The
State has a duty in that behalf and to shed its extravagant unbridled
F sovereign power and to forge in its policy to maintain ecological balance and
hygienic environment. Where in the Zonal plan, a land is marked out and
reserved for park or recreational purpose, it cannot be allotted for building
purpose though housing is a public purpose. Further, it was observed that
though the Government has power to give directions, that power should be
used only to effectuate and further goals of the approved scheme, Zonal
G plans etc. and the land vested under the Scheme or reserved under the plan
would not be directed to be used for any other public purposes within the
area envisaged thereunder.

H 21. While it is true that the High Court has directed the relocation of
the milk dairies from the city of Jodhpur on the grounds mentioned above

and the same may cause some inconvenience to a set of people of the Society but the sole aim, object and spirit of the order was to meet the community need. Clean surroundings lead to healthy body and healthy mind. The public interest has to be understood and interpreted in the light of the entire scheme, purpose and object of the enactment. The hazard to health and environment of not only the persons residing in the illegal colonization area but of the entire town as well as the provision and scheme of the Act have to be taken into consideration. [See: *Administrator, Nagar Palika v. Bharat & Others* reported in [2001] 9 SCC 232.]

22. From the facts set out above and on hearing the rival contentions of the parties, avowedly, the menace by stray cattle has grown without any check from the authorities in the city of Jodhpur. The plots meant for developing milk dairies have become large commercial houses. The manner in which such large-scale violations continue leaves no doubt that it was not possible without the connivance of those who are required to ensure compliance with law and the reasons are obvious. Such activities result in putting extra load on the infrastructure. The entire planning has gone haywire. The law-abiders are sufferers. All this has happened at the cost of the health and decent living of the residents of the city violating their constitutional rights enshrined under Article 21 of the Constitution. The Government and its agencies have been negligent in discharging of their functions and obligations. Inaction by the Government amounts to indirectly permitting unauthorized use which amounts to the amendment of the master plan without following due procedure. [See: *M.C. Mehta v. Union of India & Others* reported in [2004] 6 SCC 588].

23. In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat & Others* reported in [2005] 8 SCC 534, this Court held as under:

“176. ...The court should guard zealously Fundamental Rights guaranteed to the citizens of the society, but at the same time strike a balance between the Fundamental Rights and the larger interests of the society. But when such right clashes with the larger interest of the country it must yield to the latter. Therefore, wherever any enactment is made for advancement of Directive Principles and it runs counter to the Fundamental Rights an attempt should be made to harmonise the same if it promotes larger public interest.”

24. In *Milk Producers Association, Orissa & Others v. State of Orissa*

A & Others reported in [2006] 3 SCC 229, this Court considered the question of town planning and removal of encroachment by the milk dairies. In that case, this Court considered the law as laid down by this Court in its earlier decisions. The relevant para is quoted as under:

B “17. The question came up for consideration, in *Friends Colony Development Committee v. State of Orissa* reported in [2004] 8 SCC 733, wherein this Court observed:

C “...The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimised from the point of view of the control of community development, the prevention of overcrowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.”

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F 25. On careful consideration of the arguments advanced on behalf of the parties and the case law as discussed above, we are of the opinion that the High Court was fully justified in entertaining the writ petition filed in public interest. The High Court rightly opined that it is the dire need of the city of Jodhpur to relocate the milk dairies which were creating nuisance for the citizens of the city of Jodhpur. We do not find any illegality in the directions of the High Court particularly when the High Court did not give any directions affecting their ownership of the existing plots though these plots of land were allotted to them on a highly concession rate (Rs.2 per square yard) for a definite purpose and majority of the milkmen did not use the land for the purpose it was allotted to them.

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H 26. Now what remains to be dealt with is the plea raised by the appellants regarding relocation of the milk dairies on any site other than Barli. We are of

the opinion that the appellant Samiti cannot take this plea at a belated stage. The milkmen have already undertaken before the High Court to shift at the place earmarked by the Government of Rajasthan and have sought more time for the said purpose. Even the extended period for shifting has lapsed a long time ago. The Government of Rajasthan has earmarked and allotted the land on experts' advice. In view of the directions of the High Court, the Government of Rajasthan has already provided basic amenities at the New Milkmen Colony. The plots have been allotted to a number of milkmen in view of the notification issued by the State Government. The Government is the best judge of what is good for the community. Therefore, the decision of the Government of relocating the milkmen to a new site can not be questioned at this stage particularly when the State Government has taken the decision based on expert's advice in the larger public interest.

27. It has been submitted on behalf of the State Government that the State has taken all steps in pursuance to the directions of the High Court and has made available 2500 bighas of land to the Urban Improvement Trust, Jodhpur for the purpose of shifting dairies from the city of Jodhpur. The State Government has also made available a sum of Rs.50,00,000 to the Municipal Corporation to meet the expenses-

- (i) catching the stray cattle;
- (ii) for their transportation; and
- (iii) for purchase of fodder for the stray cattle.

The Collector, Jodhpur has further made 500 bighas of land available to the Municipal Corporation in Kali Beri, Soor Sagar, Jodhpur for creation of a pond. The land and the money made available by the respondent State should be meticulously used for the same purpose.

28. In *Ramji Patel & Others v. Nagrik Upbhokta Marg Darshak Manch & Others* reported in [2000] 3 SCC 29, this Court has laid down that in a situation where the interest of the community is involved, the individual interest must yield to the interest of the community or the general public.

29. We have heard the learned counsel for the parties at length and carefully perused the orders passed by the High Court from time to time.

A In our considered view, no interference is called for in the impugned judgment.

30. On consideration of the totality of the facts and circumstances of the case, in the larger interest of the citizens of Jodhpur, we issue the following directions:

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1. We direct the dairy owners/operators who were allotted land in the milkmen colony at Pal Road, but are still continuing to operate within the city limit to shift to a new colony which has been made available to them by the respondent State as expeditiously as possible and in any event on or before 31st March, 2007;

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2. The other milk dairy owners/operators who are running the dairies and keeping their cattle in the city of Jodhpur but have not been allotted land shall also shift their dairies and their cattle outside the city of Jodhpur on or before 30th April, 2007. The respondent State of Rajasthan and the Municipal Corporation at Jodhpur are directed to ensure that necessary facilities and infrastructure as directed by the Division Bench to the dairy owners/operators are provided, if not already provided;

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3. The Municipal Corporation of Jodhpur is directed to remove unattended stray animals, such as, stray cattle, bulls, dogs, pigs etc. from the city of Jodhpur as expeditiously as possible and in any event on or before 30th April, 2007;

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4. The respondent State Government is directed to frame guidelines regarding proper use of plastic bags in the State because number of deaths of cattle on account of consuming of plastic bags have been reported. The State Government is directed to frame necessary guidelines on or before 31st March, 2007;

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5. The Municipal Corporation is directed to ensure that used plastic bags and other plastic materials must be separated from other garbage and destroyed to prevent their consumption by cattle, bulls and other animals;

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6. The respondent State Government and the Corporation are directed to ensure that the basic infrastructure is made available to the milk

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dairy owners/operators as expeditiously as possible and in any event on or before 25th March, 2007;

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7. In order to ensure meticulous compliance of the directions of this Court and that of the High Court and to ensure relocation of the milk dairies, we direct the Committee appointed by the High Court to submit compliance report on or before 7th May, 2007.

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31. These appeals to be listed for further directions on 14th May, 2007.

B.S.

Appeals adjourned for 14.5.2007.