

ITEM NO.301

COURT NO.2

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 691/2009

(Arising out of impugned final judgment and order dated 19-12-2008
in ASWP No. 6257/2006 passed by the High Court Of Bombay)

ANIMAL WELFARE BOARD OF INDIA

Petitioner(s)

VERSUS

PEOPLE FOR ELIMINATION OF STRAY TROUBLES. & ORS.

Respondent(s)

WITH

SLP (C) No. 1627/2009 (IX)
SLP (C) No. 1740/2009 (IX)
SLP (C) No. 4453/2013 (IV-A)
SLP (C) No. 11467/2009 (IX)
SLP (C) No. 5899/2013 (IV-A)
SLP (C) No. 5900/2013 (IV-A)
SLP (C) No. 13004/2009 (IX)
SLP (C) No. 13772/2012 (IX)
SLP (C) No. 17112/2013 (XIV)
S.L.P. (C) ...CC No. 15931/2016 (XI -A)
W.P. (C) No. 599/2015 (PIL-W)
S.L.P. (C) ...CC No. 16880/2015 (XI -A)
S.L.P. (C) ...CC No. 17084/2016 (XI -A)
S.L.P. (C) ...CC No. 17078/2016 (XI -A)
S.L.P. (C) ...CC No. 17292/2016 (XI -A)
S.L.P. (C) ...CC No. 17110/2016 (XI -A)
S.L.P. (C) ...CC No. 17146/2016 (XI -A)
S.L.P. (C) ...CC No. 17153/2016 (XI -A)
S.L.P. (C) ...CC No. 17289/2016 (XI -A)
S.L.P. (C) ...CC No. 16985/2016 (XI -A)
S.L.P. (C) ...CC No. 17271/2016 (XI -A)
W.P. (C) No. 805/2015 (PIL-W)
W.P. (C) No. 808/2015 (PIL-W)

Date : 10-07-2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

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Mr. Praveen Swarup, Adv.

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Mr. Ghufuran Ahmad, Adv.

UPON hearing the counsel the Court made the following
O R D E R

On 3.3.2017, the learned counsel for the State of Kerala had assured this Court that the report submitted by Justice Sri Jagan Committee (for short, 'the Committee') with regard to victim compensation that has been caused due to bite of stray dogs shall be implemented within four weeks. It is submitted by Mr. Gaurav Agarwal, learned counsel appearing for the Committee that though the concerned Committee has so far submitted nine reports, yet in actuality effectively there are eight reports, for one report relates to an area situated within the Union Territory of Puducherry and, therefore, the same should be ignored. Learned counsel would further submit that 752 claims have been lodged before the Committee out of which 154 had been adjudicated and in some of them compensation has been granted and some have been rejected.

Mr. V. Giri, learned senior counsel appearing for the

State of Kerala submits that so far 18 claims have been made good and compensation has been paid. In respect of one claim, he would contend, that the High Court has intervened and passed an order of stay because of the quantum and the determination of the liability. As far as the other claims are concerned which have been finalised by the Committee, we would like Mr. V. Giri to file a response to the same within four weeks hence. The reports of the Committee be supplied to all the parties.

Another aspect has arisen for consideration. On the earlier occasion, it was submitted by Mr. Sabu Steephen, the petitioner appearing in-person in Writ Petition 805 of 2015 that there should be construction of shelter homes for stray dogs. Learned counsel for the State had taken time to obtain instructions in the matter.

Today, Mr. Giri, learned senior counsel has filed an affidavit on behalf of the competent authority of the State that steps have been taken to have a 'dog zoo' in each of the district panchayats. The said affidavit is contested by Mr. Anand Grover and Mr. Gonsalves learned senior counsel and Ms. Pinky Anand, learned Additional Solicitor General appearing for the Union of India stating that there cannot be a concept of 'zoo' for stray dogs under the Animal Birth Control (Dogs) Rules, 2001 (for brevity 'the Rules') which have been framed under Section 38 of the Prevention of Cruelty to Animals Act, 1960 (For brevity, 'the 1960 Act'). They have drawn our

attention to Section 11(3) of the 1960 Act which reads as follows :-

- "(3) Nothing in this section shall apply to -
- (a) the dehorning of cattle, or the castration or branding or noserooping of any animal in the prescribed manner, or
 - (b) the destruction of stray dogs in lethal chambers 20 [by such other methods as may be prescribed] or
 - (c) the extermination or destruction of any animal under the authority of any law for the time being in force; or
 - (d) any matter dealt with in Chapter IV; or
 - (e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering."

According to them, Section 3(b) specifically deals with destruction of stray dogs in a particular manner and therein Rules 9 and 10 of the Rules would come into play. Rules 9 and 10 of the aforesaid Rules read as under :-

"9. Euthanasia of Street Dogs: Incurably ill and mortally wounded dogs as diagnosed by a qualified veterinarian appointed by the committee shall be euthanised during specified hours in a humane manner by administering sodium pentathol for adult dogs and Thiopental Introperitoneal for puppies by a qualified veterinarian or euthanised in any other humane manner approved by Animal Welfare Board of India. No dog shall be euthanised in the presence of another dog. The person responsible for euthanising shall make sure that the animal is dead, before disposal.

10. Furious or dumb rabid dogs: (1) On the receipt of complaints from the public to the Dog Control Cell of the Local Authority or on its own, the dog squad of the Local Authority would catch such dogs, suspected to be rabid.

(2) The caught dog would then be taken to the pound where it would be isolated in an isolation ward.

(3) The suspected rabid dog would then be subjected to inspection by a panel of two persons i.e.

(i) a veterinary surgeon appointed by the Local Authority; and

(ii) a representative from an Animal Welfare Organisation.

(4) If the dog is found to have a high probability of having rabies it would be isolated till it dies a natural death. Death normally occurs within 10 days of contracting rabies. Premature killings of suspected rabid dogs therefore prevents the true incidence of rabies from being known and appropriate action being taken.

(5) If the dog is found not to have rabies but some other disease it would be handed over to the AWOs who will take the necessary action to cure and rehabilitate the dog."

Mr. Giri, learned senior counsel appearing for the State of Kerala and Mr. Chitale learned senior counsel appearing for the Municipal Corporation of Greater Mumbai, in their turn, would submit that Section 11(3)(c) protects the State Laws and the State has power to frame laws in this regard and, therefore, the Rules have no place. It is also highlighted before us that various High courts have taken divergent views and the special leave petitions have been filed and they are listed today.

Keeping in view the aforesaid, it is directed that the State of Kerala shall peruse the report of the Committee where compensation has been granted and pay the same unless there is interdiction by any court of law and where they have no objection. If they have any serious objection to any aspect, that can only be raised before this Court and nowhere else. By the next date, a chart shall be filed indicating the claims settled, the compensation paid and the objection, if any, by the State. A copy thereof shall be supplied to Mr. Gaurav Agarwal. In the meantime, if the Committee further adjudicates the claim, the same shall be supplied to the State which shall be appositely dealt with.

The principal issue of law, that is, whether the State law shall prevail or the Birth Control Rules of 2001 would prevail shall be decided first.

For the aforesaid purpose, let the matter be listed at 2.00 p.m. on 15.9.2017.

In the meantime, it shall be the obligation of the State to see that the bites by the stray dogs are properly taken care of and appropriate legal steps are taken in that regard.

Mr. Gaurav Agarwal has filed a report which is taken on record. It relates to providing the expenses for Sri Jagan Committee on various heads. The State of Kerala is directed to meet the said claims as this Court has constituted the

Committee. Needless to say, the enhancement of honourarium that has been put forth deserves to be accepted and accordingly it is so directed.

In pursuance of our earlier order Mr. Jose Mavelly, is personally present in the Court. He tenders unconditional apology for what he has done and undertakes that he shall not involve himself in any kind of activities which will offend the law. The personal presence of Mr. Jose Mavelly stands dispensed with. We are passing this order as there is a different kind of contempt proceeding is pending against him which shall be dealt with independently.

Call the matter on the date fixed.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master