

Gujarat High Court

Gujarat High Court

Mahisagar vs State on 12 March, 2012

Author: Mr.Bhaskar Bhattacharya, J.B.Pardiwala,

Gujarat High Court Case Information System BODY { SCROLLBAR-FACE-COLOR: #d4d0c8; SCROLLBAR-HIGHLIGHT-COLOR: #808080; SCROLLBAR-SHADOW-COLOR: #d4d0c8; SCROLLBAR-ARROW-COLOR: #ffffff; scrollbar-dark-shadow-color: #ffffff} SPAN.searchword { background-color:yellow; } function loadSearchHighlight() {

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WPPIL/173/2011 19/ 19 JUDGMENT

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD

WRIT

PETITION (PIL) No. 173 of 2011

For

Approval and Signature: HONOURABLE

THE ACTING CHIEF JUSTICE MR.BHASKAR BHATTACHARYA

HONOURABLE

M R . J U S T I C E J . B . P A R D I W A L A
=====

1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To be

referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

=====

MAHISAGAR

MATAJI SAMAJ SEVA TRUST THRO' PRESIDENT - PETITIONER

Versus

STATE

OF GUJARAT THRO SECRETARY & 2 - RESPONDENT

===== Appearance

:

MR

VIJAY H NANGESH for PETITIONER : 1,

MS SHRUTI PATHAK, AGP for RESPONDENT : 1, MR

NILESH A PANDYA for RESPONDENT : 2, None for RESPONDENT : 3,

=====

CORAM

:

HONOURABLE

THE ACTING CHIEF JUSTICE MR.BHASKAR BHATTACHARYA

and

HONOURABLE

MR.JUSTICE J.B.PARDIWALA

Date

: 12/03/2012

CAV

JUDGMENT

(Per

: HONOURABLE MR.JUSTICE J.B.PARDIWALA)

This

writ petition under Article 226 of the Constitution of India in the nature of a Public Interest Litigation has been preferred by a public charitable trust with the following prayers :-

"(A) Your

Lordships be pleased to issue writ of mandamus or any other appropriate writ, order or direction to respondent-authority to release cattle from cattle-pound on payment of fine and/or penalty by owner as per the Bombay Police Act or Cattle Trespass Act or other relevant law or notification by the State Government in the interest of justice.

(B) Pending

admission and final hearing of this petition Your Lordships may be pleased to direct respondent authority to release cattle from cattle-pound on payment of penalty and/or fine by owner in the interest of justice.

(C) Your

Lordships be pleased to issue writ of mandamus or any other appropriate writ, order or direction to respondent authority not to harass the cattle owner in the interest of justice.

(D) Your

Lordships be pleased to grant such other and further relief(s) as deemed fit in the interest of justice."

Facts

shortly stated are as under :

The

petitioner, a public charitable trust registered under the Bombay Trusts Act, at Vadodara has redressed a very serious grievance on behalf of the Maldharis (cattle owners) as regards a very highhanded and

arbitrary action on the part of the respondents-authorities in not releasing a cattle impounded under the provisions of the Cattle Trespass Act, 1871 (for short, 'the Act').

According

to the petitioner, the only source of livelihood for the Maldhari community is the income derived from sale of milk and milk products. For this purpose, each and every family has cattle. Each of the family is holding valid permit issued by the Health Department of Vadodara Municipal Corporation for keeping cattle. As per the data provided, there are approximately 2000 families within the revenue limits of Vadodara settled at different places and the total number of cattle reared by these 2000 families are more than 10000 in number.

The

petitioner has come out with a case that they are ready and willing to abide by the provisions of law as provided under the Act or any other law in this regard. However, the concerned authorities cannot be permitted to contravene the statutory provisions of the Act. The main grievance which has been redressed in this petition is that as and when the authority concerned seizes any cattle found straying on public roads, such a cattle is sent to the nearest cattle pounds which are being managed by the Corporation as provided under the Act. It is the case of the petitioner that when the cattle owner approaches the authority for release of their cattle on payment of fine, the cattle is not being released on the premise that an important festival is on the way and they would be released only after the festival is over. The authorities try to justify the detention of such cattle beyond the time prescribed under the Act on the ground that during the period of important festival such cattle would cause lot of inconvenience and nuisance to the general public at large.

In

order to appreciate the issue in question, it would be profitable to look into the provisions of the Cattle Trespass Act, 1871. The Act came to be enacted with the primary object to consolidate the law relating to cattle trespass. Section 11 empowers the authority concerned to seize cattle found straying on public roads, etc. Section 11 reads as under :

"11.

Cattle damaging public roads, canals and embankments. - Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like and officers of police, may seize or cause to be seized any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments or found straying thereon, and shall send them or cause them to be sent within twenty-four hours to the nearest pound."

After

a cattle is seized under Section 11 of the Act, such a cattle is sent to a cattle pound. Section 4 of the Act provides for establishment of pounds. Section 4 reads as under :

"4.

Establishment of pounds.- Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the State Government, from time to time directs.

The village by

which every pound is to be used shall be determined by the Magistrate of the District."

Section 5

provides for control of pounds, which reads as under :

"5.

Control of pounds. Rate of charge for feeding impounded cattle.- The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time alter the rates of charge for feeding and watering impounded cattle."

Section 6

provides for appointment of pound-keepers, which reads as under :

"6.

Appointment of pound-keepers.- The State Government shall appoint a pound-keeper for every pound."

The duties of

pound-keepers have been prescribed under Sections 7, 8 and 9 of the Act, which read as under :

"7. To

keep registers and furnish returns.- Every pound-keeper shall keep such registers and furnish such returns as the State Government from time to time directs.

8. To register

seizures.- When cattle are brought to a pound, the pound-keeper shall enter in his registers,-

(a) the number

and description of the animals,

(b) the day and

hour on and at which they were so bought,

(c) the name

and residence of the seizer, and

(d) the name

and residence of the owner, if known, and shall give the seizer or his agent a copy of the entry.

9. To take

charge of and feed cattle.- The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed."

Section 12 of the

Act provides for recovery of fine for cattle impounded. Section 12 reads as under :

"12.

Fines for cattle impounded.- For every head of cattle impounded as aforesaid, the pound-keepers shall levy a fine in accordance with the scale for the time being prescribed by the State Government in this behalf by notification in the Official Gazette. Different scales may be prescribed for different local areas. All fines so levied shall be sent to the Magistrate of the District through such officer as the State Government may direct.

List of fines

and charges for feeding.- A list of the fines and of the rates of charge for feeding and watering cattle shall be posted in a conspicuous place on or near to every pound."

So

far as the present case is concerned, the fine which is being imposed is as per the notification issued by the Home Department of the State Government dated 15th October 2003, which reads as under :

"Government

of Gujarat

Home

Department

2,

Sardar Patel Bhavan

Sachivalaya,

Gandhinagar.

Dt.

15th

October 2003

NOTIFICATION

No.GG/03/90CTA/1002/OD.1/M : In exercise of the powers conferred by the section 12 of the Cattle Trespass Act 1871 (1 of 1871); in its application to the State of Gujarat, the Government hereby amends the rates of fine fixed for stray animals on the streets and roads of Municipal Corporations areas of the State under Government in Home Department's Notification No.GG/97/151/CTA/1092/3519/M dated 29th October 1997 as below :

2.

In the aforesaid notification for the existing Schedule, the following Schedule shall be substituted :

S

C H E D U L E

Sr.No.

1.

Name

of Cattle

2.

Fine

as per head of cattle in rupees as per Home Department Notification dt. 29th October 1997

Rates

in Rs.

3.

Revised

Rates in Rs.

4.

1

Elephant

2000

5000

2

Camel

400

1500

3

Buffalo

(Male or Female), Mule, Bull, Bullock, Cow

250

1000

4

Calf

(including suckling ones of Cow or Buffalo)

150

500

5

Horse

250

1000

6

Donkey,

Pig

150

500

7

Sheep,

Goat

100

300

3.

These rates do not include the cost of fodder for the impounded animals for which the corporations may effect recovery as per rules.

4.

The above rates will come into force with immediate effect and will apply to all existing Municipal Corporations of the State.

By

order and in the name of the Governor of Gujarat,

Sd/-

(A.M.Bhavsar)

Under Secretary

to Government

Home

Department"

Chapter IV of the

Act is with regard to delivery or sale of cattle. Section 13 provides for procedure when owner claims the cattle and pays fines and charges. Section 13 reads as under :

"13.

Procedure when owner claims the cattle and pays fines and charges.- If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or

his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper."

Section

14 provides for the procedure if cattle be not claimed within a week. Section 14 reads as under :

"14.

Procedure if cattle be not claimed within a week.- If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer

shall thereupon stick upon in a conspicuous part of his office a notice stating -

(a) the number

and description of the cattle,

(b) the place

where they were seized,

(c) the place

where they are impounded,

and shall cause

proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle

be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as the Magistrate of the District by general or special order from time to time direct:

Provided that,

if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit."

Section 15 is

with regard to delivery of cattle to the owner disputing legality of seizure. Section 15 reads as under :

"15.

Delivery to owner disputing legality of seizure but making deposit.- If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal and that the owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him."

Section 16

provides for procedure when owner refuses or omits to pay the fines and expenses. Section 16 reads as under :

"16.

Procedure when owner refuses or omits to pay the fines and expenses.-

If

the owner or his agent appears and refuses or omits to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer at such place and time, and subject to such conditions, as are referred to in section 14.

Deduction of

finer and expenses.- The fines leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Delivery of

unsold cattle and balance of proceeds.- The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing--

(a) the number

of cattle seized,

(b) the time

during which they have been impounded,

(c) the amount

of fines and charges incurred,

(d) the number

of cattle sold,

(e) the

proceeds of sale, and

(f) the manner

in which those proceeds have been disposed of.

Receipts.- The

owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account."

Chapter

V of the Act is with regard to complaints of illegal seizure or detention. Section 20 of the Act provides for power to make complaints. Section 20 reads as under :

"20.

Power to make complaints.- Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District."

Section

22 of the Act provides for compensation for illegal seizure or detention. Section 22 reads as under :

"22.Compensation

for illegal seizure or detention.- If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle,

Release of

cattle.- And, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle."

Section 27 is with regard to penalty which can be imposed on the pound-keeper who failed to perform his duty under the Act. Section 27 reads as under :

"27.

Penalty on pounds-keeper failing to perform duties.- Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees. Such fines may be recovered by deductions from the pound-keeper's salary."

Lastly, Chapter VII of the Act provides for suits for compensation. Section 29 reads as under in this regard :

"29.

Saving of right to sue for compensation.- Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent court."

In

the present case, it has been brought to our notice by learned counsel appearing for the petitioner that on 22nd July 2011 hundreds of cattle were seized by the concerned department of the Vadodara Municipal Corporation and were sent to cattle pounds. Learned counsel invited our attention to the various applications which were preferred by the respective cattle owners requesting for release of their cattle on accepting the requisite amount of fine. Such applications are part of the paper-book from pp.48-A to 48-V. Our attention has also been drawn to a legal notice issued by an advocate to the Municipal Corporation dated 5th July 2010 in this regard. Representations were also made to the Collector, Vadodara Municipal Corporation. In spite of these, the respondents-authorities refused to release the cattle and kept them at cattle-pounds unauthorisedly.

It

has been vociferously submitted by learned counsel for the petitioner that this action of the authorities in not releasing the cattle even when the respective owner of the cattle showed his willingness to deposit the fine is in contravention with the provisions of the Act and amounts to gross dereliction of duty and abuse of powers. He has submitted that it is a matter of common experience how cattle are dealt with by the authorities and the conditions under which they are kept at cattle-pounds. He has submitted that the cattle-pounds are nothing short of hell for the cattle. Hardly any fodder or water is being provided to them, as a result of which most of the cattle die and this again is nothing short of cruelty to the animals, which is otherwise also an offence under

the provisions of Cruelty to Animals Act. He has submitted that the authorities cannot have an inhumane approach towards animals. If there is a procedure prescribed for seizure of cattle and also for release of such cattle, then the authorities are duty-bound to strictly comply with such procedure of law as prescribed under the Act.

I.

Contentions on behalf of the respondent - Vadodara Municipal Corporation :

Mr.Nilesh Pandya, learned advocate appearing for the Vadodara Municipal Corporation submitted that in the city of Vadodara, number of cattle are found straying on public roads and many cases of accidents have been reported. He has submitted that due to such accidents occurring as a result of such cattle straying on public roads, the Corporation had to take steps for seizure of such cattle on daily basis. He has submitted that a separate independent department is monitoring the seizure of cattle which are found straying on the roads. He also submitted that the Corporation has provided at least three cattle sheds; one is recognised as 'Khaswadi' cattle-shed having a capacity to accommodate around 190 cattle, the other two are recognised as 'Panigate' cattle-shed having a capacity to accommodate around 83 cattle and 'Lalbaug' shed having a capacity to accommodate around 60 animals. He has submitted that for maintaining such cattle-pounds, there is a provision for pure drinking water and fodder.

Mr.Pandya further submitted that on seizure of the cattle by the Corporation, such cattle are handed over to local public charitable trusts after 15 days and such public charitable trusts would take care of such cattle. According to him, such public charitable trusts are running 'Panjrapole' where cattle are being taken care of.

Mr.Pandya further submitted that the Corporation received number of representations from the citizens complaining about the nuisance being caused by straying cattle. However, Mr.Pandya conceded to the fact that due to festival of 'Janmashtmi' many cattle were seized and he also conceded the fact that they were not released inspite of the fact that the owners of the cattle were ready and willing to deposit the fine.

II.

Analysis :

Taking

into consideration the relevant facts of the matter and the various provisions of the Cattle Trespass Act, we are of the view that the respondents-authorities are duty-bound to follow the law which has been prescribed under the Act. The Act undoubtedly empowers the authority concerned to seize or cause to be seized any cattle doing damage to such public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like, but at the same time, Section 13 of the Act also provides that if the owner of the impounded cattle or his agent appears and claims the cattle, the pound-keeper shall deliver such cattle to him on payment of fines and charges incurred in respect of such cattle. Thus, the authority cannot say that due to an important festival on the way, even if the owner of the cattle is ready and willing to pay the fine while claiming the cattle, they can refuse to release the cattle. The mandate of the law is very clear. Once the owner of the cattle is ready and willing to pay the fine for getting his cattle released then the authority is duty-bound to release such cattle. If such cattle is once again found straying on public roads then it is always open for the authority to seize the same.

We are considering this matter from a little wider horizon. Cattle like human-beings possess life in them. Even an animal has a right to say that its liberty cannot be deprived except in accordance with law. We have noticed that there are many enactments which has recognized rights of the animals. Be it a cattle or any other animal. Prevention of Cruelty to Animals Act, 1960 is one such piece of legislation. Section 3 reads as under :

"3.

Duties of persons having charge of any animals: It shall be the duty of every person having the care or charge of any animal to take all responsible measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering."

The act impose obligation upon all persons/authority for caring the animals providing all necessary facilities for its care and life.

In

the above referred provision the words "charge of any animal" are significant. It is the duty of the custodian of animals to take care of

animals including saving of its life.

Article 51-A of the Constitution of India also provides that it shall be the duty of every citizen to have compassion for living creatures. The Constitution has imposed fundamental duties to all citizens to have compassion towards living creatures. The words used here are "living creatures". Section 2(a) of the Prevention of Cruelty to Animals Act, 1960 reads thus, 'animal' means any living creature other than a human being. Hence, all the citizens are required to have compassion towards all living creatures including animals, birds, reptiles and even small insects also.

The Hon'ble Supreme Court has expressed a new dimension to the words "to have compassion for living creatures" of Article 51-A(g). In the case of State of Gujarat Shri Ahimsa Army Manav Kalyan Jeev Daya Charitable Trust, appellant with Akhil Bharat Krishi Goseva Sangh, appellant v/s. Mirzapur Moti Kureshi Kasab Jamat and others, case nos.4937-4940 of 1998, a Constitution Bench of 7 Judges held in paragraph 58 as under :

"In

AIIMS Students' Union v. AIIMS and Ors., (2002) 1 SCC 428, a three-Judge Bench of this Court made it clear that fundamental duties, though not enforceable by writ of the court, yet provide valuable guidance and aid to interpretation and resolution of constitutional and legal issues. In case of doubt, peoples' wish as expressed through Article 51-A can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. The fundamental duties must be given their full meaning as expected by the enactment of the Forty-second Amendment. The Court further held that the State is, in a sense, 'all the citizens placed together' and, therefore, though Article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is, collectively speaking, the duty of the State."

Now as per the

ruling, fundamental duty under Article 51A(g) to have compassion towards living creatures is extended to State Government and Government authority. State is equally responsible for due care and protection of animals.

The universal

declaration of animal rights are as under :

International

League for Animal Rights has finally approved the declaration at London on 21st-23rd September 1977.

Declaration

proclaimed on 15th

October 1978

United

Nations and UNESCO has ratified the declaration

Preamble

"Considering

that all living being possess natural rights and that any animal with a nervous system has specific rights."

Article

1 : All animals are born equal and they have the same rights to existence.

Article

2 : (a) Every animal has the right to be respected; (b) Man, like the animal species, cannot assume the right to exterminate other animals or to exploit them, thereby violating this right. He should use his conscience for the service of the animals; (c) Every animal has the right to consideration, good treatment and the protection of man.

Article

3 : (a) No animal should be submitted to bad treatment or cruel actions; (b) If the death of an animal is necessary, this should be sudden and without fear or pain.

Article

4 : (a) All animals belonging to a wild species have the right to live free in their natural environment, and have the right to reproduce; (b) Each deprivation of freedom, even for educational purposes, is in opposition to this right.

Article

5 : (a) Every animal that usually lives in a domestic environment must live and grow to a rhythm natural to his species; (b) Any change to this rhythm and conditions dictated by man for mercantile purpose, is a contradiction of this law.

Article

6 : (a) All animals selected by man, as companions must have a life corresponding to their natural longevity; (b) To abandon an animal is a cruel and degrading action.

Article

7 : Working animals must only work for a limited period and must not be worked to exhaustion. They must have adequate food and rest.

Article

8 : (a) Experiments on animals that cause physical and mental pain, are incompatible with animal rights, even if it is for medical, scientific, commercial or any other kind of experiment; (b) A substitute technique must be investigated and developed.

Article

9 : In the eventuality of an animal bred for food, it must be fed, managed, transported and killed without it being in fear or pain.

Article

10 : (a) No animal should be used for entertainment; (b) Animal exhibitions and shows that use animals are incompatible with an animal's dignity.

Article

11 : Every action that causes the unnecessary death of an animal, is cruel which is a crime against life.

Article

12 : (a) Every action that causes the death of a lot of wild animals is genocide, that is a crime against the species; (b) Pollution and destruction leads to the extinction of the species.

Article

13 : (a) Dead animals must be treated with respect; (b) Violent scenes, where animals are the victims, must be forbidden at the cinema and on TV, unless they are for the demonstration of animal rights.

Article

14 : (a) Protection and safeguarding associations must be represented at government level; (b) Animal rights must be defended by law as are human rights.

[The

text of the Universal Declaration of Animal Rights has been adopted from the International League of Animal Rights and Affiliated National Leagues in the course of an International Meeting on Animal Rights which took place in London from 21st to 23rd

September 1977]

In the words of

His Lordship Hon'ble Mr. Justice V.R. Krishna Iyer (Former Judge, Supreme Court of India) in an article named "The Rights of our Animal Brethren" :

"The

human species must consider itself an element of the terrestrial habitat and must respect co-existence and symbiosis. Any failure to respect these is an attack on nature, prejudicial to the whole ensemble of inanimate and animate beings."

"The

universality of divinity is a fundamental faith of Indian humanity rooted in the Rig Veda and manifest in the spiritual core of all religions." "The ancients have stated that God sleeps in

the mineral, awakens in the vegetable, walks in the animals and thinks in man". "The unity that runs thro' Creation is thus a basic truth. Nature has thus an integral relation with animalia and homo sapiens is an inseverable part of the evolutionary spirit the highest peak of ecological ascent. These great values are reflected in our constitution, a rare good fortune and a binding recognition. The State and the citizen are duty bound to promote and preserve ecology and environment as mandated by Articles 48A and 51A."

"The

philosophical perspective of Animal Welfare is thus part parcel of our cultural heritage. Every time cruelty is practiced on man or beast or bird or insect, we do violence to the Buddha and Mahavira. Every torture on an animal and every export of animals is a sin to the memory of the founders of Bhartiya Sanskar."

"Government

must be pressurized to do the right thing lest India's image and cultural heritage suffer severe damage. Let us not betray the generations from the Buddha to Gandhi. Our tryst with destiny, made when India awoke to Independence, included an imperative that the nation will wipe every tear from every eye. This applies to our animal brethren, parrots, doves and other birds with broken wings to be sold as pets or for delicate dish, lions and tigers cramped and doped in small cages and even elephants and bears brutally treated to perform impossible feats. Let us begin the crusade for compassion and we must win because our case is just."

We do not want to convey that public nuisance should be overlooked at the expense of animal rights. Public nuisance must be taken care of but the same must be taken care of only in accordance with law and not otherwise. It is always open for the authorities concerned to curb the menace of cattle straying on public roads and causing nuisance, but when it decides to take steps under the law, then at that stage the authorities are expected and are duty-bound to treat such cattle with compassion even while keeping them at cattle-pound or at 'Panjrapole'.

We are constrained to observe this because over a period of time many cases have come to our notice that once cattle goes to a cattle-pound or a 'Panjrapole', it is made to suffer and ultimately dies. Many cases have been reported where out of hundreds of seized cattle, hardly one cattle remains alive. The only reply to this so far has been that the cattle died due to some disease.

The fact as argued by learned counsel Mr.Pandya for the Corporation that the cattle have been released and, therefore, this petition has become infructuous is not the end of the matter. We could have disposed of the petition on the statement being made by learned advocate Mr.Pandya that each and every cattle has been released but, having regard to the importance of the issue, we have thought fit to dwell deep on the issue.

In the above conspectus of the entire matter, we dispose of this writ petition in the nature of Public Interest Litigation, by issuing the following directions :

The authorities

concerned shall strictly abide by the provisions of the Cattle Trespass Act, 1871;

The authorities

concerned shall release the cattle seized under Section 11 of the Act, no sooner the owners of the cattle or their agent appear and claim the cattle, on payment of fines and charges incurred in respect of such cattle. At that stage, the authority shall not refuse release of the cattle on the ground of festival etc.;

The authorities

concerned shall ensure that the pound-keepers appointed under Section 6 of the Act strictly comply with and abide by the provisions of the Act and perform their duty as prescribed under the Act;

The authorities

concerned shall take care to see that if the cattle are not claimed by anyone within 7 days from the date of their being impounded, the authorities concerned shall comply with the provisions of Section 14 of the Act and take care to see that the cattle are kept in a good condition by providing water and fodder;

All District

Magistrates of the State of Gujarat are hereby directed to ensure that the provisions of the Cattle Trespass Act, 1871 are scrupulously complied with and any violation of the same shall be dealt with strictly in accordance with law.

With the above

observations and directions, we dispose of this Public Interest Litigation. However, there shall be no order as to costs.

(Bhaskar

Bhattacharya, Acting C.J.)

(J.B.Pardiwala,

J.)

/moin

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