



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11652 OF 2023
WITH
INTERIM APPLICATION NO. 18918 OF 2024

Seawoods Estates Ltd. & Ors.

...Petitioners

Vs.

Union of India & Ors.

...Respondents

Mr. Yash Agarwal i/b. Mr. Sattyendra Mule for the Petitioners.

Mr. S. V. Sonawane for Applicant in IA.

Mr. D. P. Singh for Respondent No.1.

Mr. Kedar Dighe, Addl. GP with Mr. M. M. Pable, AGP for State.

Mr. R. P. Ojha with Mr. R. K. Dubey for Respondent No.3.

Mr. Tejesh Dande for Respondent No.6 (NMMC).

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
DATED: 21 JANUARY 2025

P.C.

1. Today's board listing this case was notified four days back (i.e. on 17 January 2025). It is informed to us that the arguing counsel for the petitioners has not filed a leave note, however an application for adjournment is made, which in the fact situation ought not to be entertained. The respondents are all represented who have contentions to advance on the issues as involved.

2. We have perused paragraphs 2.1 and 2.2 of the petition, we have a serious doubt on the locus of the petitioners and more particularly of

petitioner nos.2 to 7 to pursue the present proceedings. Let the petitioners address the Court on their locus. Also the verification to the petition which is by one Mr. Anil Dattatray Karnik does not bring about any clarity in regard to petitioner nos.2 to 7, being in any manner concerned with petitioner no.1-Seawoods Estates Ltd. This more particularly that petitioner nos.2 to 7 are not residents of Seawoods Estates Ltd. in respect of which a grievance as sought to be made.

3. Today by an order passed by this Court on Interim Application No. 10251 of 2024, we had permitted intervention of Ms. Leela Varma, who is now the added respondent in the writ petition.

4. Ms. Sonawane, learned counsel for the added respondent submits that substantive orders were passed by a co-ordinate Bench of this Court in an earlier writ petition filed by petitioner no.1-Seawoods Estates Ltd. (Writ Petition No. 9513 of 2021) which came to be disposed of along with the companion matters by a judgment dated 20 March 2023. She states that the Court had considered the issues of feeding of the dogs in the petitioner no.1's premises and that there is nothing illegal in the added respondent doing so. She submits that even Rule 20 of the impugned Rules provides for "Feeding of Community Animals" was subject matter of consideration

in the Court passing such orders. In such context, the Court in paragraph 13 had made the following observations:-

“13. There is at least some law in this country that the fundamental constitutional safeguards guaranteed by the Constitution must be held to vest even in non-human. See: Karnail Singh & Ors v State of Haryana,¹ in the context of a cow-smuggling case expressly recognizing that the entire animal kingdom has a distinct legal persona with corresponding rights of a living person. In Animal Welfare Board of India v A Nagaraja & Ors,² the Supreme Court considered inter alia the ambit of the PCA and the Constitutional mandate. It held:

“72. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word “life” has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, “life” means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity. Animals’ well-being and welfare have been statutorily recognised under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51-A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. The right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. The right, not to be beaten, kicked, overridden, overloaded is also a right recognised by Section 11 read with Section 3 of the PCA Act. Animals also have a right against human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity

defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act.

((Emphasis added))

14. Every species, the Supreme Court in Nagaraja said, has an inherent right to live and to protection under law, subject to narrow exceptions of necessity. As the PCA is a 'welfare' legislation regarding a sentient being over which human beings have dominance, the applicable standard is always the 'best interest of the species' (subject to just exceptions). There is international recognition of these rights too, as the Nagaraja decision highlights. There is the UNEP Biodiversity Convention of 1992. The World Charter for Nature says that "every form of life is unique, warranting respect regardless of its worth to man". German law was amended in 2002 to obligate the State under that constitution to respect animal dignity. Germany also has Animal Welfare legislation. Other countries like Switzerland, Austria and Slovenia have legislations to include animal welfare in their respective constitutions. Paragraphs 62, 63, 64, 66 and 67 of the Nagaraja judgment read:

"62. The Universal Declaration of Animal Welfare (UDAW) is a campaign led by World Society for the Protection of Animals (WSPA) in an attempt to secure international recognition for the principles of animal welfare. UDAW has had considerable support from various countries, including India. WSPA believes that the world should look to the success of the Universal Declaration of Human Rights (UDHR) to set out what UDAW can achieve for animals. Five freedoms referred to in UDAW, which we will deal with in the latter part of the judgment, find support in the PCA Act and the Rules framed thereunder to a great extent.

63. World Health Organisation of Animal Health (OIE), of which India is a member, acts as the international reference organisation for animal health and animal welfare. OIE has been recognised as a reference organisation by World Trade Organisation (WTO) and, in the year 2013, it had a total of 178 member countries. On animal welfare, OIE says that an animal is in good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour and if it is not suffering from unpleasant states such as pain, fear and distress.

Freedom

64. Chapter 7.1.2 of the Guidelines of OIE, recognises five internationally recognised freedoms for animals, such as:

- (i) freedom from hunger, thirst and malnutrition;
- (ii) freedom from fear and distress;
- (iii) freedom from physical and thermal discomfort;
- (iv) freedom from pain, injury and disease; and
- (v) freedom to express normal patterns of behaviour.

Food and Agricultural Organisation (FAO) in its “Legislative and Regulatory Options for Animal Welfare” indicated that these five freedoms found their place in Farm Welfare Council 2009 UK and is also called “Brambell’s Five Freedoms”. These five freedoms, as already indicated, are considered to be the fundamental principles of animal welfare and we can say that these freedoms find a place in Sections 3 and 11 of the PCA Act and they are for animals like the rights guaranteed to the citizens of this country under Part III of the Constitution of India.

66. Rights guaranteed to the animals under Sections 3, 11, etc. are only statutory rights. The same have to be elevated to the status of fundamental rights, as has been done by few countries around the world, so as to secure their honour and dignity. Rights and freedoms guaranteed to the animals under Sections 3 and 11 have to be read along with Articles 51-A(g) and (h) of the Constitution, which is the magna carta of animal rights.

Compassion

67. Article 51-A(g) states that it shall be the duty of citizens to have compassion for living creatures. In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat* [(2005) 8 SCC 534], this Court held that by enacting Article 51-A(g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of Articles 48 and 48-A are honoured as a fundamental duty of every citizen.

Article 51-A(g), therefore, enjoins that it was a fundamental duty of every citizen “to have compassion for living creatures”, which means concern for suffering, sympathy, kindness, etc., which has to be read along with Sections 3, 11(1)(a) and (m), 22, etc. of the PCA Act.

(Emphasis added)

15. We must also note that the recognition of animal rights also speaks to the concept of standing or locus, thus permitting representative actions on behalf of other non human living creatures. A recent trend even in this country in some High Courts has been to recognise the vesting of such rights.

16. We are mentioning this only to emphasise that the present 2023 Rules cannot be said to have been enacted in a vacuum. They have a factual matrix. But there is, more importantly, a constitutional and legislative context as well. In an appropriate case, these dimensions may need to be examined further along with any international obligations by way of treaties to which India may be a party and which may also be binding on the State in such matters.

18. If this is the architecture of the 2023 Rules, then clearly there is no issue for us to decide or which remains to be decided. There is now a legislative framework that occupies the field. These disputes about where feeding stations should be and what is most optimally required are addressed. So is perhaps the more vexed question of whether a residents welfare association can be obligated to provide a feeding station or a feeding area. Until these Rules, that was undefined by legislation. We could not ourselves have entered into the arena of legislation and would have had to examine whether there were any extant laws that permitted it. Now that these Rules are in place, that question will no longer arise. The question therefore now is of management rather than of rights. This issue of management is also taken care of by the Rules because there is a defined procedure.”

5. We may also observe that the Division Bench of this Court in **Paromita Purthan vs. Municipal Corporation of Gr. Mumbai & Ors.** (Writ Petition No. 702 of 2023) was concerned with a similar issue on feeding of dogs. The grievance of the petitioners in such proceedings was of cruelty being caused to the dogs, on account of the management of the Society, not permitting the petitioner to feed these dogs and to care for their requirements including providing water. In such context, referring to Rule 21 as also referring to the decision in **Sharmila Sankar & Ors. Vs. Union of India & Ors.**¹ the Court made the following observations:-

“2. Grievance of the petitioner is of cruelty being caused to the dogs, on account of the management of the

¹ Writ Petition No.9513 of 2021 decided on 20 March 2023

Society, not permitting the petitioner to feed these dogs and to care for their requirements including providing water. The grievance is, also, that a designated area for feeding the dogs is not being provided by the society. It is stated that the Petitioner is compelled to feed the dogs at the gate of the society making these animals vulnerable to road accidents in which the animals are likely to die. It is submitted that a designated feeding place is required to be provided inside the premises of the society, when the land including that of the neighbouring societies is about 15 acres, although Respondent/ Society has only 3 buildings.

5. Learned Counsel for the petitioner has also drawn our attention to the recent Rules notified by the Central Government namely, "The Animal Birth Control Rules, 2023" (for short '2023 Rules'), framed in exercise of powers conferred under Section 38 (1) and (2) and Clause (ea) of the Prevention of Cruelty to Animals Act, 1960, to submit that Rule 20 of such Rules, specifically provides for feeding of community animals. This rule inter alia provides that it shall be the responsibility of the 'Resident Welfare Association' or 'Apartment Owner Association' of the area to make necessary arrangement for feeding of the community animals residing in the premises or the area involving the person residing in that area or premises, who feed those animals or intend to feed those animals and provide care to street animals as a compassionate gesture. The rule also provides to designate feed spots which are mutually agreed upon, keeping in mind the number of the dog population and their respective territories, and that the feeding spots shall be far from children play areas, entry and exit points, staircase or in an area which is likely to be least frequented by children and senior citizen. It also provides to designate the feeding time depending on the movement of children, senior citizens, sports which are likely to be least frequented by children and senior citizens and that designated feeders are allowed to volunteer for the vaccination, catching and release of dogs to assist with the Animal Birth Control Program.

6. For convenience, it would be appropriate to note the said Rule which reads thus:

20. Feeding of Community Animals :-

(1) It shall be responsibility of the Resident Welfare Association or Apartment Owner Association or Local Body's representative of that area to make necessary arrangement for feeding of community animals residing in the premises or that area involving the person residing in that area or premises, who feeds those animals or intends to feed

those animals and provides care to street animals as a compassionate gesture.

(i) to designate feed spots which are mutually agreed upon, keeping in mind the number of dog population and their respective territories and the feeding spots shall be far from children play areas, entry and exit points, staircase or in an area which is likely to be least frequented by children and senior citizen.

(ii) to designate feeding time depending on the movement of children, senior citizens, sports which is likely to be least frequented by children and senior citizen.

(iii) designated feeder shall ensure that there is no littering at the feeding location or violation of guidelines framed by the Resident Welfare Association or Apartment Owner Association or that areas.

(iv) designated feeders are allowed to volunteer for the vaccination, catching and release of dogs to assist with the Animal Birth Control Program.

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7. Learned Counsel for the petitioner has placed reliance on the decision of the coordinate Bench of this Court in the case “Sharmila Sankar & Ors. Vs. Union of India & Ors.”¹ In such case, the Division Bench referring to Clause 20 of the 2023 Rules has held that the society in question in the said proceedings would fall within the definition of “Apartment Owner Association” and would be required to comply with the provisions of sub-clauses (i) to (iv) of sub-clause 1 of Clause 20 of providing feeding spots and

defining of food spots for community animals i.e. the stray dogs. The Division Bench has also observed that there are constitutional

safeguards even for non-humans. In such context the Division Bench referring to the decision of the Supreme Court in Animal Welfare Board of India Vs. A. Nagraja & Ors.² has observed that every species has an inherent right to live and protection under law.

8. We are thus of the clear opinion that the mandate of the Rules need to be strictly adhered by the Society so that the rights of these animals are recognized and they are not

subjected to any cruelty, and appropriate steps are taken to provide the stray dogs of their basic needs of food and water, as also permit the persons like the petitioner to take care of their health issues.

10. In our opinion, considering the object and intention of the statutory Rules read with all the provisions of Prevention of Cruelty to Animals Act, 1960, it would be an obligation of all the members of the Society to follow the mandate of law and to prevent themselves from causing any cruelty and harassment to the animals, as also to those, who intend to take care for these animals. We, accordingly, expect that a sense of belonging and responsibility on such issue needs to prevail between the members of the society so as to cordially resolve these issues, and no confrontation in this regard ought to happen. Also in the event if there is any fear or any inconvenience or danger from any of the stray dogs, being caused to children, senior citizens and/or the members of the society, it is appropriate that proper measures in that regard in consultation with experts, animal lovers, NGOs and the municipal officers can be discussed and implemented.

12. We also intend to sound a word of caution to the members of the managing committee and the other members of the society that to hate the stray dogs and/or treat them with cruelty can never be an acceptable approach, from persons of civil society, as an act of cruelty to such animals would be against the Constitutional ethos and the statutory provisions.”

6. It is thus clear from the aforesaid observations of the Court that it would not be appropriate for petitioner no.1 to take a position contrary to the rules and cause any hindrance to the person like added respondent who is intending to take care of these animals. The Division Bench of this Court has sounded a word of caution to the members of the managing committee and the other members of the society in the said case, that to hate the stray dogs and/or treat them with cruelty can never be an

acceptable approach, from persons of civil society, as an act of cruelty to such animals would be against the Constitutional ethos and the statutory provisions.

7. Ms. Sonawane referring to the aforesaid observations, would submit that when her client had taken steps to feed the animals at the designated place, there could not have been any objection as the petitioners as also her client was party to the said proceedings and the said orders passed by this Court were binding. Ms. Sonawane would also submit that although a challenge is raised by the petitioners to the validity of the Animal Birth Control Rules, 2023 inter alia Rule 20, however, merely for the reason that her client is taking care and is feeding the dogs which belong to the area of petitioner no.1, she has been victimized in as much as there is breach of her fundamental rights guaranteed under Articles 14, 21 read with Article 300A of the Constitution of India. This for the reason that the assistance the added respondent is entitled in her apartment by appointing staff who work at her residence, including the maid servants have been prevented by petitioner no.1 from entering the premises and to visit her apartment, which is causing harassment to her and she is rendered without any assistance in most difficult times. Ms. Sonawane, learned counsel for the added respondent submits that petitioner no.1 is entitled to pursue its

cause, but at the same time, the fundamental rights guaranteed to her client are also required to be respected and not breached by petitioner no.1.

8. If what is contended by Ms. Sonawane is true, then certainly as a Constitutional Court we cannot overlook that the fundamental rights or the basic human rights guaranteed by the Constitution to the citizens and/or members of petitioner no.1 are not breached on such causes and is required to be protected. We may observe that the petitioners cannot resort to and/or not respect and/or breach the fundamental rights guaranteed to the added respondent as also to the other residents of the buildings merely because they are feeding the dogs, who belong to the said area or have territorial affinity.

9. If there is any grievance of petitioner no.1 on any issue of feeding the dogs or any place of feeding, it is available to petitioner no.1 to take recourse to appropriate proceedings before the designated authority, which can be defended by the added respondent in finding out the suitable mechanism for feeding of the dogs, that is the object in which the rules in question as also the substantive law on protection of animal rights would be required to be considered and implemented by the authorities.

10. In the aforesaid circumstances, we direct petitioner no.1 not to prevent any of the staff members/maid servants visiting the apartment of the added respondent-Leela Varma to discharge their regular duties.
11. In the meantime, reply affidavit to the petition, if any, be placed on record by the other respondents. Till we hear the parties and pass further appropriate orders, we also direct petitioner no.1 not to obstruct municipal authorities in taking lawful steps in exercise of their powers under the Maharashtra Municipal Corporation Act, 1949 as also the added respondent to feed the street dogs at the designated places.
12. Stand over to **4 February 2025. HOB.**

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)