ITEM NO.63 COURT NO.5 SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 599/2015

ANUPAM TRIPATHI Petitioner(s)

VERSUS

UNION OF INDIA & ORS Respondent(s)

Date : 26/10/2015 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s)
In-person

Mr. Dushyant Dave,Sr.Adv.(A.C)

For Respondent(s) Mr. Gopal Subramanium, Sr. Adv.
Mr. Abhinav Mukerji, Adv.
Mrs. Bihu Sharma, Adv.
Mr. Rishikesh, Adv.
Mr. S. Nanda, Adv.
Ms. Purnima Krishna, Adv.

Mr. Basant R., Sr. Adv.
Mr. Karthik Ashok, Adv.
M/s. Liz Mathew, Adv.
Mr. M.F. Philip, Adv.

Mr. V.K. Biju, Adv.
Ms. Savita Devi, Adv.

UPON hearing the counsel the Court made the following

O R D E R

We have been apprised at the Bar that similar matters are coming on 18th November, 2015. It is

submitted by Mr. Anupam Tripathi, petitioner that if the State of Kerala, the local authorities and the Animal Welfare Board of India follows the Animal Birth Control (Dogs) Rules, 2001 (for short 'the Rules') specifically Rule 7 to 12, then much of the problem arising in the State of Kerala

would come to an end. He has specifically laid emphasis on Rule 7, which deals with capturing, sterilisation, immunisation and release of the dogs. Simultaneously, he has also drawn our attention to Rule 9 which deals with euthanasia of street dogs and Rule 10 which deals with furious or dumb rabid dogs. In essence, the submission of Mr. Tripathi is that all street dogs are not to be killed but the dogs who are suffering from diseases are to be identified and some category of dogs are to be captured, sterilised, immunised. It is also to be noted that Rule 10(4) provides that if the dog is found to have a high probability of having rabies, it would be isolated till it dies a natural death for death normally occurs within 10 days of contracting rabies. At

this juncture, we note Section 9(f) of the Prevention of Cruelty to Animals Act, 1960 (for short 'the Act') which is as under:

> "9. Functions of the Board.- The functions of the Board shall be-
>
> xxx xxx xxx
>
> (f) to take all such steps as the Board may think fit to ensure that unwanted animals are destroyed by local authorities, whenever it is necessary to do so, either instantaneously or after being rendered insensible to pain or suffering;"

Accepting notice for the State of Kerala, Mr. Basant R., learned senior counsel drawn our attention to Section 11(3)(b) of the Act. The said provision reads as follows:

> "11. Treating animals cruelly.- (1) If any person-
>
> xxx xxx xxx
>
> (3) Nothing in this section shall apply to -

xxx xxx xxx

(b) the destruction of stray dogs in lethal chambers by such other methods as may be prescribed or"

Application for impleadment, filed by Mr. V.K. Biju, learned counsel, is allowed. He has drawn

4

our attention to Section 438 of the Kerala Municipality Act, 1994. The same reads as follows:

"438. Power to dispose of stray pigs and dogs.-- The Secretary may order for the seizure and destruction of unlicensed pigs or dogs straying in the municipal area shall make such arrangements therefor as he may deem fit."

We find that the arguments/submissions raised by Mr. Tripathi are based on the Act as well as the Rules framed thereunder. Stray dogs, prima facie we find, have not been defined. However, we perceive that the Act as well as the Rules strike a balance by permitting the destruction of certain categories of dogs and also granting protection or taking protective measures. Therefore, we are of the considered view that it will be the duty of the Animal Welfare Board of India, established under Section 5A of the Act, to take appropriate action as per the Act and the Rules. Let the Animal Welfare Board of India be impleaded as a respondent herein. Ms. Anjali Sharma, learned counsel accepts notice for Animal Welfare Board of

5

India.

Both the State of Kerala as well as the Animal Welfare Board of India shall file reply to the interim prayer by 16th November, 2015.

List the matter on 18.11.2015.

(VINOD KUMAR)
COURT MASTER

(H.S. PARASHER)
COURT MASTER