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Case Details
Bench:-Bombay

Lodging No.:- WPL/81686/1995 Filing Date:- 00/00/0000 Reg. No.:- WP/1686/1995 Reg. Date:- 00/00/0000

Petitioner:- PEOPLE FOR ANIMALS & ANR. - Respondent:- ANIMALS WELFARE BOARD & ORS. -
Petn.Adv.:- H.MEHTA & CO. Resp.Adv.:- MRS.S.BHATTACHARYA
District:-

Bench:- SINGLE
Status:- Disposed Category:- WRIT PETITIONS (SINGLE BENCH)
Disp. Date:- 20/08/1996 Disp.Type:- DISPOSED OFF
Disp.By:- HON'BLE SHRI JUSTICE A.P. SHAH
Last Date:- 00/00/0000 Stage:- WRIT PETITION FOR ADMISSION
Last Coram:- HON'BLE SHRI JUSTICE A.P. SHAH

Act :- Bombay Municipal Corporation Act

Office Info. Conn. Matters Appl. cases Subject(s) Objection(s) Paper Index Listing Dates Orders/Judgment

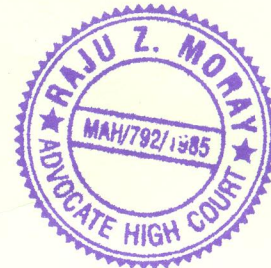
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R. Moray

Advocate 07/07/2013



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1686 OF 1995

People for Animals & Anr. Petitioners

Vs.

Animal Welfare Board & Ors. Respondents

Mr. Anand Grover i/b M/s. H. Mehta
& Co. for the Petitioners.

Mr. R.V. Govilkar with Ms Geeta Shastri
for the Respondent Nos.3 to 5.

Ms A.K. Savla for Respondent No.4.

Mr. V.V. Mishra for Respondent No.6.

Mr. N.Y. Gupte for Intervenor..

CORAM: A.P. SHAH, J.

DATED: JULY 16, 1996

P.C:

1. This writ petition has been placed before me in pursuance of a letter written by the All India Animal Welfare Association to the learned Chief Justice on 17th June, 1996. The association has complained to the learned Chief Justice that inspite of the order passed by this Court dated 16th October, 1995, and the directions issued by the Bench of the Supreme Court, the concerned

authorities have failed to prevent camel joy rides on the beaches in Mumbai. The association has also complained that there is blatant violation of the order passed by the Court by the camel owners. The association alongwith other institutions and individuals have filed a notice of motion praying for allowing them to intervene in the writ petition.

2. Before considering the grievances made by the various associations and individuals, it will be necessary to state briefly the factual background of the case. The writ petition has been filed by a voluntary organisation "People for Animals" sometime in September, 1995. It is the case of the petitioners that for several years herds of camels have been and continue to be transported to Mumbai from the States of Rajasthan and Gujarat. These camels are brought into the city of Mumbai solely for the purpose of "entertainment" and "joy rides" for humans. It is further the case of the petitioners that the humid and saline climate of Mumbai has a detrimental effect on the health and survival of these camels. They develop respiratory disorders and skin diseases due to humidity. Their lungs are prone to be infected due to high level of humidity. It is also the case of the petitioners that camels are biologically adopted to walk on sand which is hot and dry, whereas the sand in Mumbai is wet and cold due to which moisture and

water seeps through the hooves of these camels. Consequently, the hooves get infected. It is also contended by the petitioners that since these camels are used for entertainment and joy rides, they are strapped with heavy metals and leather saddles on their backs which are invariably cheap, old and ill-fitted. Due to the weight of the saddles and added to that the weight of the customers, these camels get galls (sores). The sores are not treated by the camel owners and in order to hide the same from the eye of the public, the galls are covered with plastic materials which aggravates the galls. It is also contended by the petitioners that for the purposes of rides, metal rings to hold the reins are pierced into nostrils or "false nostrils" of these camels. This causes severe bleeding. The cartilages in the nostrils also get torn. The camel owners, who are more concerned about their own survival, leave the camels' wounds unattended and the wounds develop into full-fledged skin diseases or serious injuries. It is also contended by the petitioners that the camels have also become victims of malnutrition as they are not properly fed. The malnutrition further aggravates their injuries and deteriorates their health severely. They are not provided any shelter. They are instead tied to wooden pegs near the beach or marshy swamps. During high tide these swamps get flooded with sea waters and the camels are compelled to stay overnight in such slushy

areas. According to the petitioners, due to these cruelties, lack of care, malnutrition and Mumbai's hostile climate, these camels, in a short period, become physically incapable of sustaining rides. They become liability for their owners who then ruthlessly abandon these ailing camels to die on some remote beaches or streets of Mumbai. The petitioners have therefore prayed for prevention of entry of camels into the city of Mumbai and their user for the purposes of joy rides and entertainment or any other commercial purposes.

3. When the petition was posted for admission before Dhanuka, J. on 25th September, 1995, the learned Judge directed Shri D. Sivanandan, Additional Commissioner of Police to make a report on the conditions of the camels in the city. Accordingly, Shri Sivanandan submitted report dated 7th October, 1995 which reads as follows :

"In pursuance of the directives of the High Court, two representatives, namely, Mrs. Jigeesha Thakur and Mr. Premal Sanghavi of the People for Animals were taken to Juhu Beach to observe the position. During the verification, following facts came to notice:

(1) The camels are being used for joy riding for commercial purpose.

(2) The camels are not healthy enough to carry load of 2/3 persons.

(3) They are exposed to rain as there is no shelter for them.

(4) They are saddled with equipments and metal rings are used in their nostrils.

It is true that certain amount of cruelty is meted out to these animals. However, there are some practical difficulties in taking charge of these animals by the Police. The Police have no expertise in handling these big animals. Similarly, there is no suitable place and trained staff at the Police Station for keeping them and also feeding them. If BMC or SPCA or any other authority undertakes the seizure, necessary police assistance and adequate protection will be provided.

In my opinion, the camels may not be permitted for commercial use in the Greater Bombay limits for joy riding."

4. After receipt of the report, Dhanuka, J. issued certain interim directions under order dated 16th October, 1995. In the said order the learned Judge recorded a positive finding that the petitioners have made out a prima facie case for grant of interim relief in terms of prayer (d). The Learned Judge then proceeded to observe in paragraph 5 as follows :

"5. Interim relief in terms of prayer (d) as against Respondent Nos.3 to 5. The Respondent No.6 and other similarly situate shall be entitled to carry on their business lawfully without committing any breach whatsoever in respect of provisions of law contained in Prevention of Cruelty to Animals Act, 1960 and the Bombay Police Act, 1951. The Respondent No.3 shall be duty bound to take necessary action under section 74 of the Bombay Police Act, 1951, wherever there is a reasonable ground to believe that the offences referred to in the said section appears to have been committed.

If the animals on which the cruelty is suspected to have been committed are required to be seized the Respondent No.3 shall not hesitate to take necessary action in accordance with mandate of law. It shall be the responsibility of Respondent No.5 to provide necessary facility to Respondent No.3 in this behalf. In the event of there being any difficulty, parties shall be at liberty to apply for further directions to the Court."

(emphasis supplied)

Finally the learned Judge, observed in paragraph 6 :

"6. The learned counsel for the petitioner states that the petitioners shall also be rendering their full co-operation to Respondent Nos.3, 4 and 5 in respect of enforcement of Prevention of Cruelty to Camels who are being used for commercial joy riding illegally as set out in the petition."

(emphasis supplied)

5. On reading of the order as a whole, it is clear that the learned Judge has directed to stop the user of camels for commercial joy rides. This is clear from the observations made in paragraph 6 reproduced above. Thus it is not open for the camel owners to use the camels for joy rides even though the learned Judge has permitted the camel owners to carry out their business lawfully without committing any breach of the Prevention of Cruelty to Animals Act, 1960 and the Bombay Police Act, 1951.

6. At this stage, reference may be made to certain directions given by the Supreme Court in respect of the beaches in Mumbai. It appears that a public interest petition was filed before the Supreme Court complaining against the failure of the authorities in maintaining cleanliness on the beaches in Mumbai. The Bench consisting of Mr. Justice Kuldip Singh and Mr. Justice K.S. Paripoornan appointed a committee of two lawyers from Mumbai viz., Dr. Chandrachud and Mr. Seervai to make a report on the conditions of beaches in Mumbai. In its report the committee made various recommendations. One of the recommendations is that joy rides of camels and horses on the beaches in Mumbai should be stopped altogether. Keeping in mind the report of the committee and pursuant to the order passed by Dhanuka, J., the Deputy Commissioner of Police (Operations), Brihan Mumbai, has issued a notification under clause (b) of

sub-section (1) of section 33 read with sub-section (2) of section 10 of the Bombay Police Act, 1951, inter alia giving the following directions :

"(1) No person shall bring into any urban area or park thereof of the city of Mumbai from any place outside such area or part thereof, for the purpose of joy rides and/or entertainment and/or any other commercial purpose.

(2) No person shall bring into any urban area or any part thereof including public places in the city of Mumbai, any camel from any place outside such area or part thereof, for the purpose of joy rides as they result in danger/obstruction/inconvenience to the public.

(3) No person shall use in the area of Brihan Mumbai from the date of this notification any 'CAMEL' for the purpose of joy rides and/or entertainment and/or any other commercial purpose."

It is further recorded in the notification that if any person is found committing breach of Prevention of Cruelty to Animals Act, 1960 in respect of the existing camels in the city of Brihan Mumbai, an action under section 74 of the Bombay Police Act, 1961 will be taken against the offenders, and all or any of the camels in respect of which the offence has been committed, shall be seized forthwith and disposed of according to law. Thus joy rides of camels has also been prohibited by virtue of the notification issued by the Deputy Commissioner of Police.

7. It appears that inspite of categorical directions given by Dhanuka, J. some of the camel owners filed a suit in the City Civil Court joining only municipal authorities as party defendants and applied for injunction permitting the camel owners to allow the joy rides of camels. The learned Advocate of the camel owners appears to have represented to the City Civil Court that the order of Dhanuka, J. does not prevent the camel owners from carrying the joy rides of camels in the city of Mumbai. The representation made by the Advocate was totally incorrect. We have already seen that in the final paragraph Dhanuka, J. has specifically prevented joy rides of camels. In fact, the learned Judge has granted prayer for interim relief in terms of prayer clause (d). But that apart, the learned Judge has made

it clear that the camel owners will be entitled to use animals for lawful business provided such business is not prohibited either by Prevention of Cruelty to Animals Act or by the Bombay Police Act. In view of the notification issued by the Deputy Commissioner of Police there is a clear prohibition against joy rides of camels. Unfortunately, without applying its mind to the order passed by Dhanuka, J., the City Civil Court proceeded to issue interim injunction in favour of the camel owners. Needless to mention that such order cannot supersede the order passed by this Court and, therefore, it is liable to be ignored by the authorities.

8. Coming then to the grievances made by the association and individuals who seek to intervene in the present petition, Mr. Govilkar, learned Government Pleader, assured the Court that the authorities will enforce the orders of this Court and prevent the joy rides of camels completely. Mr. Govilkar also assured the Court that the authorities will take appropriate action under section 74 of the Bombay Police Act since there is already a notification issued prohibiting the joy rides. I am sure that the authorities will keep the promise made to this Court. But that does not solve the problem of the camels. The basic difficulty is that there appears to be no co-ordination between the authorities for taking care of the animals after they are

seized. It seems that after their seizure the camels are taken to the cattle pond maintained by the BMC. However, it has been brought to my notice that the flooring in the cattle pond is of cement concrete which is totally unsustainable for camels. Then there is no co-ordination between the authorities as far as care and treatment to ailing camels is concerned. Fortunately, the association which are involved in the petition have agreed to co-operate with the authorities in order to ensure that the camels are properly looked after right from the date of their seizure till they are released or deported back to Rajasthan as per the order passed under the Bombay Police Act. The petitioner association has agreed to provide dry grass in the cattle pond maintained by the corporation in order to obviate the difficulty created by cement concrete flooring. In order to ensure the safety of the seized camels, it is also directed that as and when camels are seized, either by the police or the BMC, intimation thereof shall be given to the petitioner association. Upon receiving such intimation, the petitioner association and all other associations which are interested in the welfare of the animals will contact the police authorities as well as the BMC authorities for assisting the authorities to provide necessary facilities to the seized camels including medical facility. It is also necessary to clarify that the Magistrate has got ample powers to pass appropriate orders for care and

treatment of the camels as well as their deportation back to Rajasthan or Gujarat from where they are brought to Mumbai. On a plain reading of section 75 it is clear that when an animal is brought before a Magistrate under section 74, he has got power to direct that the animal should be sent for treatment and care to an infirmary or to pass appropriate orders regarding disposal or custody and protection of the animal. It will be open for the Magistrate to seek the help of the voluntary organisations like the petitioner association and the intervenor association in the matter of treatment and care of the camels as well as their deportation to the home State.

9. In case of difficulty, it will be open for the petitioners and all other concerned parties to apply to this Court for appropriate directions.