

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/3/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR  
AND  
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.7462 of 2019

T.M.Velu

... Petitioner

Vs

1. The Secretary to Government  
Ministry of Housing and Urban Affairs  
The Government of India  
Nirman Bhawan  
Maulana Azad Road  
New Delhi 110 001.
2. The Director (Smart Cities)  
Ministry of Housing and Urban Affairs  
The Government of India  
Nirman Bhawan  
Maulana Azad Road  
New Delhi 110 001.
3. The Secretary to Government  
Ministry of Railways  
The Government of India  
Rail Bhavan  
No.1 Raisina Road  
New Delhi 110 001.
4. The Secretary to Government  
Ministry of Road Transport and Highways  
Government of India  
Transport Bhawan  
1 Parliament Street  
New Delhi 110 001.
5. The Chairman  
Animal Welfare Board of India  
Ministry of Environment, Forest and  
Climate Change

Government of India  
National Institute of Animal Welfare Campus  
P.O.42 KM Stone, Delhi-Agra Highway  
NH 2 Village - Seekri  
Ballabhgarh  
Faridabad  
Haryana 121 004.

6. The Chairman  
National Highways Authority of India  
G 5 & 6 Sector 10, Dwarka  
New Delhi 110 075.
7. The General Manager  
Southern Railway  
Park Town  
Poonamallee High Road  
Chennai 600 003.
8. The Secretary to Government  
Department of Highways and Minor Ports  
Government of Tamil Nadu  
Namakkal Kavignar Maaligai  
Fort St. George  
Chennai 600 009.
9. The Secretary to Government  
Municipal Administration and  
Water Supply Department  
Government of Tamil Nadu  
Secretariat  
Chennai 600 009.
10. The Chairperson  
State Human Rights Commission  
Thiruvarangam  
143 P.S.Kumarasamy Raja Salai  
Greenways Road  
Chennai 600 028.
11. The Special Officer and Commissioner  
Greater Chennai Corporation  
Rippon Building  
Chennai 600 003.
12. The Commissioner of Police  
132 Commissioner Office Building  
EVK Sampath Road  
Vepery , Periyamet  
Chennai 600 007.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct

(i). 1<sup>st</sup> and 2<sup>nd</sup> respondents to make necessary changes in the Smart City Mission including features which are improving animal care and further select city for funding which comes out with the Smart City Proposal which are animal friendly or having the best animal welfare measures in their project within a period prescribed this Hon'ble Court.

(b). 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents to bring regulations with regard to cattle straying on the roads and train tracks causing traffic and dangerous accidents resulting in injuries and death of cattle and public in order to maintain the road and train safety. Further, as a part of regulations, the 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents has to take strict actions such as imprisonment and fine against the cattle owners within a period prescribed by this Hon'ble Court.

(c). 5<sup>th</sup> respondent to advice and suggest ways on the issue of animal cruelty i.e., cattle feeding on plastics and cattle straying on the streets without food and shelter and cattle accidents and protect the cattle within a period prescribed by this Hon'ble Court.

(d). 9<sup>th</sup> respondent to take necessary steps to maintain and improve the quality of life and public health in the city in accordance with the Tamil Nadu Animals and Birds in Urban Areas (Control and Regulation) Act, 1997 by providing funds to the 11<sup>th</sup> respondent for impounding cattle which strays in the city of Chennai and allocate places for shelter for the cattle that are impounded, injured and straying and also appoint sufficient numbers of Veterinary Doctors for treating the cattle. Further, appoint sufficient trained workers or create an animal welfare enforcement agency for rescue operations and other functions within a period prescribed by this Hon'ble Court.

(e). 10<sup>th</sup> respondent to recommend appropriate remedial measures for the cattle menace in the city at the interest of public within a period prescribed by this Hon'ble Court.

(f). 11<sup>th</sup> respondent to take action in accordance with the Tamil Nadu Animals and Birds in Urban Areas (Control and Regulation) Act, 1997 against the cattle owners who do not have a licence and owners who are violating the conditions of the licence by suspending or cancelling licences, impounding the cattle, levying penalty and prosecuting. Further, appoint

sufficient workers for impounding cattle that are found straying in the city within a period prescribed by this Hon'ble Court.

(g). 12<sup>th</sup> respondent to register the complaint and take action against the owner if any person is injured or dead in an accident due to cattle and register the case against the owners of the cattle when it gets injured or dead in an accident under Sections 268 and 289 of Indian Penal Code, 1860 with Section 11 (h) (i) of Prevention of Cruelty of Animals Act, 1960. Further give protection during impounding cattle in the case where owners prevent the workers of 11<sup>th</sup> respondent from doing their lawful duties and during the rescue of the injured cattle.

For petitioner ... Ms.B.Aparna

For respondents ... Mr.E.Manoharan  
Additional Government Pleader  
for R.R.8, 9 and 12

Mr.K.Soundararajan  
Standing Counsel  
for Corporation/R.11

Mr.P.T.Ramkumar  
Standing Counsel  
for Railways  
for R.3 and 7.

O R D E R

(Order of the Court was made by S.Manikumar,J)

Claiming himself to be a public interest litigant, petitioner has sought for a writ of mandamus, to direct

(a). 1<sup>st</sup> and 2<sup>nd</sup> respondents to make necessary changes in the Smart City Mission including features which are improving animal care and further select city for funding which comes out with the Smart City Proposal which are animal friendly or having the best animal welfare measures in their project within a period prescribed this Hon'ble Court.

(b). 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents to bring regulations with regard to cattle straying on the roads and train tracks causing traffic and dangerous accidents resulting in injuries and death of cattle and public in order to maintain

the road and train safety. Further, as a part of regulations, the 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents has to take strict actions such as imprisonment and fine against the cattle owners within a period prescribed by this Hon'ble Court.

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2. In the affidavit filed in support of the writ petition, it is stated that following are the serious issues developed in the recent years, causing serious harm and suffering to animals.

(i). The owners leave the cows, buffaloes and goats in the streets, in order to avoid spending money on shelter, food and water. This would ends up with serious danger and suffering.

(ii). When the animals are left outside, they go on crossing the roads searching for food and shelter and get hit by vehicles.

(iii). The stray cattle goes on the train track and gets hit by the train and dies on the spot or suffers from severe injuries.

(iv). Cattle resting in the middle of roads in disrupting traffic and causing hazards to pedestrians and bikers. It also poses risk to the lives of students in the bicycles. The number of accidents increased in the recent times are alarming.

3. Petitioner has further contended that in accordance with Cattle-Trespass (Tamil Nadu Amendment) Act, 1957, eleventh respondent is collecting a sum of Rs.1,550/- as penalty and for maintenance from the cattle owners who let their animals out to stray on the street of Chennai. However, it is reported in the news magazine Citizen Matters that "Each zone in GCC has workers, designated for the task of impounding cattle. The nexus between some of them, has been diluted the initiative to curb stray cattle menace in the city. A corporation worker, who has been impounding cattle for more than five years now revealed this to Citizen Matters. 'It is an unspoken rule not to impound the cattle. The cattle owners pay, each of the workers some amount every month, so that their animals are not touched', he shared on condition of anonymity.

4. When the cattle is impounded and brought to shelter, cattle will not be given back to the owners until the owner produces the Court order for return of the cattle. Most of the cattle are not taken back by the owners since they do have a licence and the cattle end up staying in the shelter itself for rest of its life.

5. It is reported in The Times of India that the eleventh respondent has effected a hefty hike in the fine amount imposed on the cattle owners who let their animals stray on the streets. Since the nexus between the workers of the Corporation, the owners and political connections of the cattle owners is revealed, the above increase in fine may not alone bring the entire issues in control. Nevertheless, the penalty is increased the sale value of the cow depending on the breed which varies from Rs.20,000/- to Rs.65,000/-. Therefore, the cattle owners are not very much affected by this, they are ready to pay such

fine in case, if their cattle is impounded and continue to leave their cattle to stray on the streets.

6. Petitioner has contended that deaths and injuries happened to animals, the number of people died and injured are not taken into consideration. The above issue being animal cruelty which has been happening every single day on large numbers of cattle for the past several years has to be given serious consideration and has to be taken serious actions against the owners of the cattle.

7. Nevertheless, there are families, who are dependent upon keeping of milch cows for the purpose of vending milk for their livelihood. When the cattle are put to grave cruelty and suffering and when the public is affected, it has to be taken into consideration. Traffic safety and animal cruelty weighs more in the context of public interest than fundamental interest of the owners, and the offenders are punishable under the law.

8. In the year 2012, a charity named Karuna Society for Animals and Nature has filed a case in W.P.(C) No.154 of 2012, before the Hon'ble Supreme Court of India, to ban the plastic garbage in an effort to save cattle from consuming plastic waste. The Hon'ble Supreme Court of India said that death of cattle from plastic consumption is alarming and directed all the local governments to take action to curb plastic bag pollution.

9. Except filing photographs of cows alleged to be suffering with disease, death as averred, no materials from the competent authorities, viz., Blue Cross, Animal Welfare Board and any other such Institutions have been filed. Newspapers reports have been enclosed in the typed set of papers. Hon'ble Supreme Court, as well as this Court have repeatedly held that news items cannot be taken as a base for filing writ petitions. Of course, Court has got powers to take cognizance of any material which has real bearing on public interest.

10. The question of admissibility of the newspaper reports came up for consideration in SAMANT N.BALKRISHNA AND ANOTHER VS. GEORGE FERNANDEZ and others reported in 1969 3 SCC 238 at paragraph 26, wherein the Apex Court observed as follows:

"A newspaper item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publish it. In this process truth might get perverted or garbled. Such news items cannot be said

to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

11. The Supreme Court in LAKMI RAJ SHETTY AND ANOTHER VS. STATE OF TAMIL NADU reported in 1988 (3) SCC 319, opined thus:

"...We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein."

12. In QUAMARUL ISLAM VS. S.K.KANTS reported in 1994 (1) SCC 452, the question as to whether mere production of a copy of the newspaper, be treated as proof of the report of the speech (news item) contained therein, came up for consideration. The Apex Court in Paragraph 48 of the judgment held as follows:

"Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and publisher, PW4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act. The learned trial Judge could not treat the newspaper reports as duly 'proved' only by the production of the copies of the newspaper. The election petitioner also examined Abrar Razi, PW5, who was the polling agent of the election petitioner and a resident of the locality in support of the correctness of the reports including advertisements and messages as published in the said newspaper. We have carefully perused his testimony and find that his evidence also falls short of proving the contents of the reports of the alleged speeches or the messages and the advertisements, which appeared in different issues

of the newspaper. Since, the maker of the report which formed basis of the publications, did not appear in the court to depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the manuscript of any of the advertisements or the messages or the publications of the same in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent."

13. When attention of the above was brought to the notice of the learned counsel for the petitioner, seeks for permission to withdraw the writ petition, with liberty to file a fresh writ petition, containing averments duly supported with prima facie documents from the competent authorities. Permission is granted.

14. Accordingly, writ petition is dismissed as withdrawn. Liberty as prayed for is granted. No costs. Consequently, the connected Miscellaneous Petition No.7462 of 2019 is closed.

Sd/-

सत्यमेव जयते  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mvs

To

1. The Secretary to Government  
Ministry of Housing and Urban Affairs  
The Government of India  
Nirman Bhawan  
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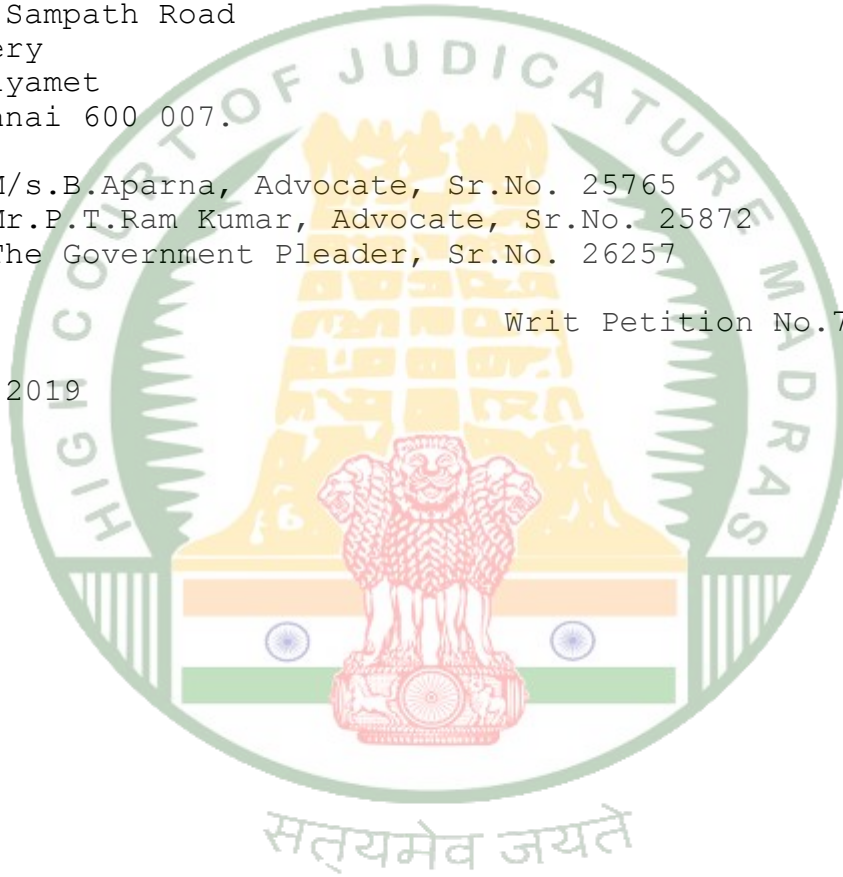
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+1 cc to M/s.B.Aparna, Advocate, Sr.No. 25765  
+1 cc to Mr.P.T.Ram Kumar, Advocate, Sr.No. 25872  
+1 cc to The Government Pleader, Sr.No. 26257

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NMI (CO)  
CSL/02.05.2019



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