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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-01-2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP NO.929 OF 2022

AND

WMP NO.998 OF 2022

Sai Bhairavalaya Animal Welfare Trust,
Represented by its Trustee,
Krithika S., aged 33 years,
D/o.Late R.Kumar,
185/2A, Kuttaikarai Street,
Pavalakkaran Chatram,
Poonjeri, Mammallapuram,
Chengalpattu - 603 104.

...Petitioner

vs.

Executive Officer,
Mammallapuram Special Grade Town Panchayat,
Chengalpattu District.

...Respondent

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to impugned Order No.18/2022/A1 dated 19.01.2022 on the files of the respondent and quash the same.

For Petitioner	:	Mr.E.Manoharan
For Respondent	:	Ms.C.Sangamithirai, Special Government Pleader.

O R D E R

The lis on hand has been instituted, questioning the validity of the notice issued by the respondent-Executive Officer, asking the petitioner-Trust to remove the Stray Dogs, numbering 41, kept in their premises, within a period of three days, failing which actions will be initiated against the petitioner-Trust.

2. The petitioner is a Trust set up with an objective of promoting and ensuring the welfare of the Stray/Injured/Ill animals by way of a Trust Deed dated 27.09.2021, which was registered with the Office of the Sub Registrar of Thirukazhukundram.



3. The petitioner states that the Founder Trustee of the petitioner-Trust has rented the space in 185/2A, Kuttaikarai Street, Pavalakkarai Chatram, Poonjeri, Mammallapuram, Chengalpattu - 603 104 on behalf of the petitioner-Trust, for providing shelter for dogs, which were abandoned/hurt/ill and rescued by the petitioner-Trust. Currently, the shelter houses, 41 dogs and the nutrition and care that is required by those dogs are provided meticulously.

4. The learned counsel for the petitioner mainly contended that the Trustee of the petitioner-Trust is an 'Animal Lover' and taking care of the Street Dogs and when the Trust is functioning for the welfare of the Stray Dogs, the petitioner may be permitted to continue the activities of the Trust. However, the learned counsel for the petitioner during the course of arguments informed that if the neighbours are disturbed on account of continuous barking and other smell or any other reasons, the petitioner is ready and willing to shift the subject premises within a reasonable period of time.

5. The learned counsel for the petitioner states that the neighbours are abusing frequently and they are not in a position to continue the activities of the Trust in the subject premises and therefore, the petitioner-Trust undertakes that they will shift the premises, within a reasonable period of time.

6. The learned counsel for the petitioner further states that 41 dogs are housed in the premises and it may cause nuisance to the neighbours and the petitioner is also facing abuse from the neighbours, the petitioner may be provided with sufficient time for shifting the street dogs.

7. It is an admitted fact that the petitioner has not obtained any license from the Competent Authorities of the Municipality under the provisions of the Act and Rules. Under these circumstances, the learned Special Government Pleader, appearing on behalf of the respondent, objected the contentions raised on behalf of the petitioner by stating that keeping 41 dogs in the nearby residential area without license is impermissible and the respondent is receiving frequent complaints from the neighbours and other persons and therefore, the respondent has issued the impugned notice. The impugned notice has been issued within the powers conferred under the Act and therefore, the petitioner has to remove the dogs from the subject premises immediately.

8. The learned Special Government Pleader relied on the judgment of this Court dated 23.12.2009 in CrI.R.C.No.1195 of 2009, wherein the similar facts were considered and this Court observed as under:-



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"23. It is not in dispute that public nuisance may be an annoyance, by way of unbearable noise or emitting foul smell. The barking and howling of dogs at the residential area is certainly be construed as a public nuisance, since it is an annoyance to public at the residential area. Keeping number of dogs in a residential area would also emit foul smell, injurious to the public health. It cannot be said by the petitioner that there was no howling or barking by the dogs or no emitting of foul smell, since more number of dogs were kept nearby the residence of the respondents 1 to 3. In a civilized society, every one has a right to live peacefully without noise pollution and health hazardous atmosphere, which has been recognised as a fundamental right guaranteed under Article 21 of the Constitution of India.

24. Even the conduct of any trade or occupation or keeping of any goods or merchandise, injurious to health or physical comfort of the community, could be construed only as a public nuisance. The noise pollution or air pollution cannot be ruled out as an exception. As held by the Kerala High Court, in Madhavi vs. Thilakan, reported in 1989 CrL. L.J 499, with reference to Articles 21 and 47 of the Constitution of India and Section 133 Cr.P.C, it cannot be disputed that right to live includes right to live in peace, to sleep in peace and right to repose good health. Running workshop in certain circumstances can cause air pollution and noise pollution, which could be regulated or prohibited by the authority in invoking the provisions of law. The noise and fumes emanating from the workshop will cause health hazardous. Noise pollution and emitting foul smell by keeping dogs in a residential area is no way a lesser hazardous condition than a factory creating noise pollution. Barking and howling of dogs and emitting foul smell in a residential area is undoubtedly a public nuisance.

26. It is also an admitted fact that the petitioner has not obtained any license from the authorities, as contemplated under



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Section 352 of the Coimbatore City Municipal Corporation Act, 1981, for keeping dogs. The petitioner is keeping number of dogs not as pet dogs, but for commercial purposes. The power agent of respondents 1 to 3 was examined and he has specifically stated that he was conversant with the facts of the case and he was also cross-examined by the petitioner herein and therefore, there is no error in considering the evidence of the power agent of the complainants, when it is supported by other material evidence available on record. It has been made clear that the Sub-Divisional Magistrate was empowered under Section 133 Cr.P.C., for removal of nuisance and to protect the people from public nuisance. The dogs, being kept by the petitioner were causing nuisance by way of barking and howling in the residential area of the respondents 1 to 3 and hence, the action taken by the 4th respondent under Section 133 Cr.P.C., cannot be construed as an illegal act.

27. As held by the Hon'ble Apex Court, nuisance is an inconvenience which materially interferes with the ordinary physical comfort of human existence, but it is not capable of precise definition. Section 133 attracts only public nuisance, as held by the Hon'ble Supreme Court in Vasant Manga Nikumba vs. Baburao Bhikanna Naidu, reported in (1995) 4 (Supp) SCC 54. If the inconvenience or annoyance affects public at large, that has to be construed only as public nuisance. In the instant case, it has been established that barking and howling of the dogs have caused inconvenience and annoyance to the respondents 1 to 3 as well as other people residing in the locality and therefore, it is only a public nuisance. Similarly, emitting foul smell is also a public nuisance, causing inconvenience to all the people residing in the locality. As a matter of right, no one is entitled to keep dogs or other animals in a residential area, so as to create public nuisance. Considering the barking and howling of dogs, in addition to emitting foul smell, the concerned authority, empowered under Section 133



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Cr.P.C., can take action to remove the nuisance.

28. The object and purpose behind Section 133 of the Code is essentially to prevent public nuisance and which involves a sense of urgency in the sense that if the Magistrate fails to take recourse immediately irreparable damage would be done to the public, as decided by the Hon'ble Apex court in State of M.P. vs. Kedia Leather & Liquor Ltd., reported in 2003 SCC (Cri) 1642."

9. In view of the above judgment, the respondent is bound to initiate action and accordingly a notice was issued. Instead of removing the dogs from the subject premises, the petitioner has chosen to file the present writ petition. Thus the present writ petition is liable to be rejected.

10. The learned counsel for the petitioner reiterated that no opportunity has been given to the petitioner for submitting their explanations and the impugned notice has been issued without even granting sufficient time to the petitioner and therefore, the impugned notice is in violation of the principles of natural justice.

11. Tamil Nadu Municipalities Act, 1920, speaks about the control over certain animals. Section 240 of the District Municipalities Act, stipulates the prohibition against keeping animal, so as to be nuisance or dangerous. Accordingly, no person shall keep any animal at his premises, so as to be nuisance or so as to be dangerous. Section 241 provides power to the Authorities to destroy stray pigs and dogs.

12. However, in the present case, the petitioner states that they are keeping the stray dogs inside the subject premises and maintaining the same. But keeping 41 stray dogs in a residential area, no doubt, would cause great nuisance to the neighbours and residents of that locality and more-so, it may produce smell and other problems, which may cause health issues to the humans residing in that locality.

13. The respondent also received many complaints from the neighbours and even the petitioner admits that they are being abused by the neighbours to such an extent and in spite of these factors, the petitioner is continuing in the premises and only during the hearing of the present writ petition, the petitioner has come forward by stating that they will look for an alternate accommodation, within a period of three or four months.



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14. No doubt, the petitioner may be an 'Animal Lover' and they may be doing services for the welfare of the animals. But the Courts are bound to consider the consequences, while doing such services to the animals.

15. Rights, duties and responsibilities are corresponding and a person claims right must honour the rights of other citizen while exercise of his right or performing his duties. The consequences of certain services, possible infringement of the rights of other citizen and other repercussions and implications are also of paramount importance, while considering such nature of cases.

16. No doubt, few people are willing to do services to the animal, as they are 'Animal Lovers'. However, while doing so, they are bound to do the same in accordance with law and without causing any nuisance or hindrance to the neighbours and the people of that locality. When the Statute provides certain prohibitions and restrictions, then proper license is to be obtained and the provisions of the Statute and Rules are to be scrupulously followed. In the present case, the petitioner is keeping 41 stray dogs in the residential area without even obtaining proper license from the Competent Authorities of the Municipality. Therefore, an action taken is in consonance with the provisions of the Act and there is no infirmity as such. Nuisance is an offence under the Indian Penal Code. Section 240 of the Tamil Nadu District Municipalities Act, prescribes action against keeping animal, so as to be a nuisance or dangerous.

17. In the present case, the respondent issued a notice, asking the petitioner to remove the stray dogs within a period of three days. Therefore, the petitioner is bound to remove the same, as keeping 41 stray dogs in an residential area, which all are old, sick or ill-health, can never be accepted.

18. The Competent Authorities, on information or identification of keeping any animal in violation of the provisions of the Act or without license and the same is causing nuisance to the people of that locality and neighbours, then they are bound to act immediately to clear the nuisance and create a peaceful atmosphere for the people of that locality for peaceful living. Once an offence of nuisance is identified, immediate actions are highly warranted and therefore, it is not as if a regular enquiry is to be conducted in such nature of cases, where persons are illegally keeping stray dogs in the residential premises, which is posing danger to the people living in that locality.



19. Though the petitioner made a submission that they will search for an alternate accommodation, the Court cannot decide the issues based on such future events and further no opinion can be formed, when the petitioner will get an alternate accommodation. Therefore, the said submission of the petitioner that they will try to seek alternate place, cannot be considered as keeping stray dogs without license itself is in violation of the provisions of the Act.

20. The Courts have held that public nuisance may be an annoyance by way of intolerable noise, barking and howling of dogs at the residential area certainly is to be considered as public nuisance, since it is a nuisance to public at the residential area and keeping more number of dogs in a residential area would also injurious to the public health. These all are the issues, which all are to be addressed and considered.

21. It is petitioner's choice to get an appropriate license from the Competent Authority and keep the dogs by identifying an alternate location. However, this Court is of an opinion that once the nuisance complaints are filed and the petitioner itself admitted that the neighbours are abusing frequently, then this Court is of an opinion that the stray dogs are to be removed immediately without any loss of time.

22. 'Right to Life' enunciated under the Constitution provides noise free, pollution free environment and health being an integral part of Article 21 of the Constitution of India, any issue involving public health and nuisance are to be viewed seriously.

23. In the present case, admittedly, the petitioner is not holding any valid license for keeping 41 stray dogs in the subject premises. The petitioner admits that the neighbours are frequently abusing. The respondent issued a notice, asking the petitioner to remove the stray dogs within a period of three days. The Act provides power to the Authorities to initiate action if the animals kept are causing nuisance to the people of that locality or it is dangerous.

24. This being the factum established, the respondent is directed to remove all the stray dogs kept in the subject premises by the petitioner and hand over the stray dogs to the Blue Cross Society or to any other recognised Animal Welfare Organisations or any Government Organisations, within 24 hours. The petitioner is at liberty to submit appropriate application seeking license for keeping the dogs in a particular place or area and after getting any such license, it is left open to the petitioner to keep those dogs in a specified area and by



following the provisions of the Act and Rules and without causing any nuisance or hindrance or public health to the people residing in the nearby locality.

25. With the abovesaid directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

Svn

To

Executive Officer,
Mammallapuram Special Grade Town Panchayat,
Chengalpattu District.

W.P.No.929 of 2022

PMK (CO)
RVM(09/02/2022)