2024:KER:17023

'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945

WP(C) NO. 22330 OF 2017

PETITIONER/S:

1 T.M.IRSHAD
AGED 47 YEARS
CONVENER, JANAKEEYA KOOTTAYAMA MUZHATHADAM, KANNUR DISTRICT.

2 MOHAMMED IMTHIYAS
JOINT CONVENER, JANAKEEYA KOOTTAYMA MUZHHATHADAM, KANNUR DISTRICT

BY ADVS.
SRI.PRAJIT RATNAKARAN
SRI.E.MOHAMMED SHAFI

RESPONDENT/S:

1 THE STATE OF KERALA
REPRESENTED BY SECRETRY TO GOVERNEMNT, HEALTH AND FAMILY WELFARE DEPARTMENT, SECRETARIAT, TRIVANDRUM-695001

2 THE DISTRICT COLLECTOR
KANNUR, COLLECTORATE, KANNUR-670307

3 THE SECRETARY
KANNUR MUNICIPAL CORPORATION, KANNUR -670001

4 THE CHIEF VETERINARY OFFICER

2024:KER:17023

DISTRICT MEDICAL OFFICER OF HEALTH, KANNUR-670503.

5 RAJEEV KRISHNAN
S/O LAKSHMANAN, KZS 14/71, MUZHATHADAM, P.O. CIVIL STATION, KANNUR-2

BY ADVS.
GOVERNMENT PLEADER
SRI.K.K.CHANDRAN PILLAI (SR.)
SRI.PHIJO PRADEESH PHILIP
SMT.S.AMBILY
SMT.M.MEENA JOHN, SC, KANNUR MUNICIPAL CORPORATION

OTHER PRESENT:

SRI BS SYAMANTHAK, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.02.2024, ALONG WITH WP(C).36807/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945

WP(C) NO. 36807 OF 2015

PETITIONER/S:

1 K.RIYADH
AGED 39 YEARS
S/O.K.P.ABDUL MAJEED, SUBAIDAS, MUZHATHADAM,THANA,
KANNUR - 2.

2 MOHAMMED ASHIQUE V.P
AGED 49 YEARS
S/O.MUSTAFA, MUZHATHADAM, THANA, CIVIL
STATION,KANNUR - 2.

BY ADVS.
SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH

RESPONDENT/S:

1 THE CORPORATION OF KANNUR
REPRESENTED BY ITS SECRETARY, KANNUR - 1

2 THE DISTRICT COLLECTOR KANNUR
COLLECTORATE, KANNUR CITY - 670 307.

3 THE DISTRICT MEDICAL OFFICER OF HEALTH
KANNUR - 670 503.

4 RAJEEV KRISHNAN
S/O.LAKSHMANAN, KZS 14/71, MUZHATHADAMP.O.CIVIL

STATION, KANNUR - 2.

BY ADVS.
SMT.S.AMBILY
SRI.JIKKU SEBAN GEORGE
GOVERNMENT PLEADER, SRI.B.S.SYAMANTAK
SRI.K.K.CHANDRAN PILLAI SR.
SMT.M.MEENA JOHN, SC, KANNUR MUNICIPALITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.02.2024, ALONG WITH WP(C).22330/2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2024:KER:17023

'CR'

P.V.KUNHIKRISHNAN, J

W.P.(C.) Nos. 36807 of 2015 & 22330 of 2017

Dated this the 29th day of February, 2024

JUDGMENT

"Barking dogs seldom bite" is an English proverb. But in reality, it may not be correct in our state atleast. Human-dog conflicts are taking place at regular intervals leading even to law and order problems in our State. If we read the newspapers, we can see regular news in which there is an attack from stray dogs towards small children, youngsters and even old people. If anybody says against this barbaric attack of stray dogs against human beings, they will be treated as inhuman persons towards animals. The animals should be protected, but of course not at the cost of human beings. It is scary to see the photographs of injured small children,

youngsters and old people in newspapers because of the attack from stray dogs. A solution is necessary for this.

2. This court and the Apex court considered the gravity of this threat from stray dogs to the human beings in several cases. But even then, the threat from these stray dogs towards the human beings is continuing. A section of the people is against the stray dogs and their demand is to kill those dangerous dogs. On the other hand, there are dog lovers and they are fighting for these stray dogs. That is why, I said that there is conflict between the human-dogs.

3. These two writ petitions are filed by the residents of the Muzhathadam Ward in Kannur District. The grievances of the petitioners, in these cases, are against the activities of the 5th respondent in W.P.(C) No.22330/2017 who is the 4th respondent in W.P.(C) No.36807/2015. Hereinafter I will mention him by name, Rajeev Krishnan, because his rank is different in these cases. Rajeev Krishnan is an animal lover.

Whenever there is an attack against the stray dogs in the street and they are injured from the street, Rajeev Krishnan will take care of them in his house. The petitioners in W.P.(C) No.22330 of 2017 are the Convener and the Joint Convener respectively of 'Janakeeya Koottayma', an association formed by a group of people in Muzhathadam Ward in Kannur District. The petitioners in W.P.(C) No.36807 of 2015 are the residents of Muzhathadam Ward in Kannur District. It is submitted that Muzhathadam Ward within the Kannur Corporation is a thickly populated residential area having several houses within the short distance.

4. Rajeev Krishnan is residing in house No. 14/71 of Muzhathadam ward. It is submitted that for the last three years, Rajeev Krishnan is keeping several stray dogs in his house. Whenever a stray dog is affected with illness or met with an accident or is having infirmity, those dogs were brought to the house of Sri.Rajeev Krishnan and he has been keeping all

those dogs in his house. It is submitted that, initially there were only a few dogs in his house and that was not much of a problem for the residents. But later on, when the number of dogs increased, Rajeev Krishnan was not able to nurture them in a proper manner and the place has become very unhygienic and filthy and foul smell started emanating from the house causing nuisance to the people of the locality. It is also submitted that during day and night, the dogs used to bark in high volume causing sound pollution also in the locality. Since the dogs were not kept in the cages, it used to wander in the locality and many times, it was noticed that the leather chappals and other items from the house were bitten and damaged by the dogs. It is further submitted that the children are also afraid of being affected with diseases and health hazards from these dogs. Therefore, it is submitted that the residents of the locality are undergoing a lot of trauma and mental agony due to the activities of Rajeev Krishnan.

Therefore, the people started agitation. Several complaints were filed. A meeting was held at the Collectorate Office, Kannur on 28.09.2016 by inviting the petitioners and others and the respective officials in Kannur District in the presence of Rajeev Krishnan. Ext.P3 produced in W.P.(C) No.22330/2017 is the proceedings of the meeting held at Collectorate, Kannur. It is submitted that Rajeev Krishnan refused to follow the decision in Ext.P3. Ext. P7 is an investigation report of the kennel belonging to Rajeev Krishnan prepared by the Chief Veterinary Officer to the District Collector about the action to be taken in this issue.

5. Similarly, Ext.P2 produced in W.P.(C) No. 36807/2015 is a report recommending necessary action against the activities of Rajeev Krishnan by the Kannur Town Police Station to the Secretary, Kannur Corporation. But no action was taken based on the same also is the submission. Hence, these writ petitions are filed with the following prayers :

WPC No. 22330/2017

i) "issue a writ of mandamus or such other writ or order directing the respondents no. 1 to 3 to effectively implement the recommendation and action plan in Exhibit P7 submitted by the 4th respondent in a time bound manner.

(ii) issue a Writ of Mandamus or such other writ or order directing the 2nd and 3rd respondents to take immediate action against the illegal activities of the 5th respondent as per the relevant laws.

(iii) grant such other relief's as this Hon'ble Court may deem fit and proper as on the facts and circumstances of the case." [sic]

WPC No. 36807/2015

i) "issue a Writ of Mandamus or such other writ or order directing the respondents 1 to 3 to take urgent action against the 4th respondent from preventing the keeping of stray dogs in large numbers in his property and house bearing No. KZS 14/71, Muzhathadam, Kannur.

ii) issue a Writ of Mandamus or such other writ or order directing the Ist respondent to stop any kind of illegal construction contemplated by the 4th respondent in his

property without plan and permit

(iii) grant such other order that this Hon'ble court may deem fit and proper in the facts and circumstances of this case." [sic]

6. Heard the learned counsel for the petitioners, Standing Counsel appearing for the Kannur Corporation and also the counsel appearing for Rajeev Krishnan.

7. The learned counsel for the petitioners reiterated the contentions raised in these writ petitions and picturised the gravity of nuisance from the activities of Rajeev Krishnan. Rajeev Krishnan filed counter in both these writ petitions. It is submitted that the allegations in these writ petitions are absolutely incorrect. It is also submitted that he and his family members are animal lovers. The house where he is residing is more than 100 years old building and the said property housed many generations. According to Rajeev Krishnan, he feeds animals and takes care of animals in distress. He submitted that, he takes care of injured animals and the Society for the

Prevention of Cruelty to Animals (SPCA) of Kannur is also taking his help in providing service to animals in need. According to the petitioner, he is keeping his stray dogs in his own property for the last several years and they are maintained by him. It is also submitted that after vaccination and sterilization, the dogs are not a threat to human beings. It is also submitted that there is no incident of dog bite by the stray dogs maintained by him. His contention is that these writ petitions and the protest against him are at the instance of some family members who are against him. It is also submitted that he approached the Municipal Corporation for getting a licence for his activities. Rajeev Krishnan also submitted that, only nine dogs are now in his possession and he will maintain them without any disturbance to the neighboring people and without creating any pollution in the area.

8. As I mentioned earlier, when human-dog conflict is going on, here is a case where an animal lover is coming to

maintain the stray dogs. The injured and weak dogs are maintained by Rajeev Krishnan. Whether this Court can endorse the activities of Rajeev Krishnan is the question to be decided in this case.

9. The Apex Court in a batch of cases considered the similar issues in SLP No.691/2009. As per order dated 18.11.2015 in SLP No.691/2009, the Apex Court passed an order directing all the High Courts not to pass any order relating to the Prevention of Cruelty to Animals Act, 1960 and Animal Birth Control Rules 2001. It will be better to extract the order dated 18.11.2015:

> "We would also request all the High Courts not to pass any order relating to the 1960 Act and the 2001 Rules pertaining to dogs. Needless to say, all concerned as mentioned herein-above, shall carry out this order and file their respective affidavits as directed."

10. The above order was clarified by the Apex Court subsequently as per the order dated 12.10.2022 in Civil Appeal

No.5988/2019. It will be better to extract the same:

> "In our opinion, the order of this Court dated 18.11.2015 viz. the penultimate paragraph requires clarification. We do not think it is the intent of the said paragraph is that all writ petitions and proceedings before the High Courts would be stayed and no effective and required orders will be passed by the High Courts in cases pertaining to the stray dogs. The proceedings before the High Court have not been transferred to this court. We perceive and believe that there are and would be individual cases that raise grievance relating to the applicability and enforcement of Prevention of Cruelty to Animals Act, 1960 and The Animal Birth Control (Dogs) Rules, 2001 as well as the State Laws which may require urgent hearing and decisions would depend upon relevant prevailing facts in an area or location. Parties should not be compelled to approach this Court at Delhi, when the issues raised can be considered by the High Courts. Accordingly, in order to avoid any ambiguity and doubt, we clarify that the order dated 18.11.2015 does not bar or prohibit the authorities/ individuals including associations and organizations from approaching the jurisdictional High Courts for appropriate relief. The High Courts, will examine and deciding these cases in accordance with law, and will keep in mind the orders passed by this Court and the precedents. If there is any violation of law, the parties are at liberty and should approach the jurisdictional High Court."

11. Therefore, there is no bar in passing orders in individual cases by this court. The Ministry of Fisheries and Animal Husbandry and Dairying issued a notification on 10.03.2023 by which Animal Birth Control Rules 2023 (for short 'ABC Rules 2023') came into force in supersession of the earlier Rule. As per Rule 5 of ABC Rules 2023, no Animal Birth Control Program for street dogs shall be conducted unless the local authority or the Animal Welfare Organisation has obtained a certificate of Project Recognition for conducting such a program under the rules. The certificate means the certificate of Project Recognition issued by the Board to any Animal Welfare organization or local authority for the purpose of animal birth control program under these Rules. Rule 3(1) says that the local authority may conduct the Animal Birth Control program through their own veterinary officers, or if required, local authority may engage the services of an Animal Welfare Organisation which is duly recognised by the Board for Animal Birth Control and which has the requisite

training, expertise and human resources, for conducting the Animal Birth Control program as per the extant policy of the Board. Rule 3(2) says that, under both conditions referred to in sub-rule (1), obtaining a Certificate Project Recognition from the Board shall be mandatory and Rule 3(3) says that, no local authority or organisation shall undertake, conduct or organise animal birth control program for street dogs without a Certificate of Project Recognition from the Board. Rule 7 classified animals as pet animals and street dogs or community owned Indian dogs or abandoned pedigreed dogs which are homeless, living on the street or within a gated campus. Rule 8(2) says that, in case of street animals, the local authority shall be responsible for deworming, immunisation and sterilisation and may engage an Animal Welfare Organisation duly recognised by the Board to carry out the animal birth control program in accordance with these Rules. The obligation of the local authority is narrated in Rule 10. As per Rule 10(1),

the local authority shall ensure the facilities enumerated in sub-clauses (a) to (h) are available in each Animal Birth Control Center within their jurisdiction. Rule 11 says about the capturing or sterilisation or immunisation or release. Capturing of street dogs shall be conducted for general purpose and specific complaints. Rule 11(3) says that, before the street dogs are captured in any locality, the representative of the local authority or of the Animal Welfare Organisation shall put up banners or public notices making announcement informing residents that animals shall be captured from the area for the purpose of sterilisation and immunisation and will be released in the same area after sterilisation and immunisation. Rule 11(6) says that, only a stipulated number of animals, according to the housing capacity of the Animal Birth Control Center, shall be captured. Rule 11(8) says that, all the dogs caught shall be identified with a numbered collar immediately upon arrival at the Animal Birth Control Center and the number shall

correspond to capture records to ensure that each dog is released, in the same area from where it was captured, after sterilisation and immunisation. Rule 11(19) says that, the dogs shall be released at the same place or locality from where they were captured and the date, time and place of their release shall be recorded after their complete recovery and the representative of the local authority or of the animal welfare organisation shall accompany the team at the time of release and from time to time, the Board may provide a suitable application for geo-tagging the location of the dogs during capture and release. Rule 15 deals about the euthanasia of street dogs. It says that, incurably ill and mortally wounded dogs as diagnosed by a team appointed by the Local Animal Birth Control Monitoring Committee shall be euthanized during specified hours in a humane manner by intravenous administration of sodium pentobarbital or any other approved humane manner, by a qualified veterinarian. Rule 16 says

about the resolution of complaints regarding dog bites or rabid dogs.

12. Above are the salient ABC Rules of Rules 2023. Sections 435 to 438 of the Kerala Municipality Act, 1994 (for short 'Act 1994') deals about the control over certain animals. Section 435 says that, no person shall feed or permit any animal, which is kept by him for dairy purpose or which may be used for food, to be fed on filth. Section 436 says that, no person shall keep any animal on his premises so as to cause nuisance or danger to any person in the neighbourhood. Section 437 says that, no person shall keep any dog except with a licence obtained from the Secretary and every owner shall cause his dog to be inoculated against rabies. Section 438 says that, the Secretary may order for the seizure and destruction of unlicensed pigs or dogs straying in the municipal area shall make such arrangements thereof as he may deem fit.

13. A perusal of ABC Rules 2023 would show that there is

a duty to the Local self government authorities to keep an eye on these stray dogs. The Act 1994, shows that licence is necessary to keep dogs. Admittedly, Mr.Rajeev Krishnan is not having any licence from the authorities concerned. As I mentioned in the beginning, the stray dogs are creating a menace in our society. School children are afraid to go alone to their school because of the apprehension that they will be attacked by stray dogs. It is a habit for several citizens to go for a morning walk. Morning walk is also not possible today in certain areas because of the apprehension of attacks from stray dogs. If any action is taken against the stray dogs, the dog lovers will come and fight for them. But I am of the considered opinion that human beings should be given more preference than stray dogs. Of course, the barbaric attack on stray dogs by human beings also should not be allowed. In such circumstances, when dog lovers are coming to save these stray dogs, I am of the considered opinion that the local self

Government authorities should give licence to them in accordance with law. While giving licence, the local authorities can impose conditions in tune with the provisions in ABC Rules 2023. This should be in addition to the duties of Local Self Government Institutions to protect the stray dogs as per ABC Rules. I am of the considered opinion that the dog lovers need not write and speak for the dogs in print and visual media, but they should come forward to protect these dogs if there is bonafides in their words along with the Local Self Government Institutions. The bonafide dog lovers can be given licence if they are ready to protect the stray dogs in tune with the provisions of ABC Rules 2023 and other statutory provisions. The Central Bureau of Health Intelligence, the National Nodal Agency for Health Intelligence in the Directorate General of Health Services, Ministry of Health & Family Welfare, annually brings out a Publication named 'National Health Profile' which covers all the major information health-related matters

including the number of cases and deaths due to rabies in India. The number of cases or deaths in various years goes as follows: 733 in 2020, 105 in 2019, 116 in 2018, 111 in 2017, 93 in 2016, 113 in 2015, 125 in 2014 and 132 in 2013. Hundreds of people, mostly children from poor and rural families, have been killed by dogs in our country. The deaths and serious injuries because of the dog bite is there in the State of Kerala also. The stray dogs are increasing every day and it is a menace to the society. Dog lovers also should be aware of the same. They should come forward like Rajeev Krishnan to protect these stray dogs so that school going children, morning walkers, old people etc., can walk free without the danger of stray dogs. I leave it there.

14. Here is a case where Mr. Rajeev Krishnan is a dog lover and he is protecting injured stray dogs and other abandoned dogs in his own property. But Rajeev Krishnan should be aware of the concerns of the petitioners who are his

neighbours. They are not against the dogs but they are worried because of the nuisance while keeping large numbers of dogs by Rajeev Krishnan in an unhygienic manner. Since Mr. Rajeev Krishnan is ready to maintain stray dogs, I am of the considered opinion that, he should approach the Corporation of Kannur for getting a licence for keeping the stray dogs in his premises. If such an application is received, the Corporation of Kannur will consider the same and issue a licence after imposing stringent conditions in tune with ABC Rules 2023 and also Act 1994. The grievance of the petitioners in these Writ petitions is to take urgent action against Mr. Rajeev Krishnan to see that he is not keeping stray dogs in large numbers on his property in an unhygienic manner. If an application is submitted by Rajeev Krishnan, the Corporation authorities will consider the facility provided by him and thereafter impose stringent conditions while granting licence. If no licence application is filed within the time prescribed by this court, the

Corporation authorities will take steps to remove stray dogs kept in the property of Mr. Rajeev Krishnan.

15. Before parting with the case, I am of the considered opinion that the state government should frame a guideline or scheme or if necessary, rules or legislation in consultation with the Union government to give licence to individual interested dog lovers to maintain stray dogs in tune with ABC Rules 2023, so that the dog lovers can come forward to protect these dangerous furies dogs along with local government institutions instead fighting for these dogs in print and visual media. The registry will forward a copy of this judgement to the Chief Secretary, State of Kerala for appropriate action.

Therefore, these Writ petitions are disposed of in the following manner:

1. Mr. Rajeev Krishnan is allowed to file an application for licence to keep stray dogs in his property, within a period of one month from the date of receipt of a copy

of this judgment with all supporting documents.

2. If such an application is received, the Corporation of Kannur will consider the same and pass appropriate orders granting license in accordance with law after imposing stringent conditions in tune with ABC Rules 2023 and Act 1994. The orders shall be passed within one month from the date of receipt of the application.

4. If any license application is filed as directed above by Mr. Rajeev Krishnan, an opportunity of hearing shall be given to the petitioners in these Writ petitions and Mr. Rajeev Krishnan before passing orders in it regarding the imposition of conditions.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

smv/SKS/DM

APPENDIX OF WP(C) 36807/2015

PETITIONER EXHIBITS

EXT.P-1: TRUE COPY OF THE MEMORANDUM SUBMITTED BY THE PETITIONER AND SEVERAL OTHERS IN THE LOCALITY BEFORE THE CHAIR PERSON OF KANNUR MUNICIPALITY ON 7.9.2015

EXT.P-2: TRUE COPY OF THE REPORT FILED BY KANNUR TOWN POLICE BEFORE THE IST RESPONDENT DATED 21.11.2015

EXT.P-3: TRUE COPY OF THE REPRESENTATION BEFORE THE IST RESPONDENT DATED 26.11.2015

EXT.P-4: TRUE COPY OF THE REPRESENTATION BEFORE THE 2ND RESPONDENT DATED 26.11.2015

EXT.P-5: TRUE COPY OF THE REPRESENTATION BEFORE THE 3RD RESPONDENT DATED 26.11.2015

RESPONDENT EXHIBITS

EXT.R4(A)	**TRUE COPY OF THE CERTIFICATE ISSUED BY SPCA**
EXT.R4(B)	**TRUE COPY OF THE PHOTOGRAPHS OF THE FENCE ENCLOSURES**
EXT.R4(C)	**TRUE COPY OF THE PHOTOGRAPHS OF THE DOG KENNEL**
EXT.R4(E)	**TRUE COPY OF THE CERTIFICATE DATED 02.02.2016 ISSUED BY SENIOR VETERINARY SURGEON, DISTRICT VETERINARY CENTRE**

APPENDIX OF WP(C) 22330/2017

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE COMPLAINT FILED BY THE PEOPLE OF THE LOCALITY ON 1/9/2016 BEFORE THE 2ND RESPONDENT**
EXHIBIT P2	**TRUE COPY OF THE MASS PETITION BEFORE THE RESPONDENTS 1 TO 4**
EXHIBIT P3	**TRUE COPY OF THE PROCEEDINGS OF THE MEETING HELD AT COLLECTORATE KANNUR DATED 28/9/2016**
EXHIBIT P4	**TRUE COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR DATED 31/3/17**
EXHIBIT P5	**TRUE COPY OF THE COPY OF THE COMPLAINT DATED 19/4/2017 BEFORE THE DISTRICT POLICE CHIEF.**
EXHIBIT P6	**TRUE PHOTO COPY OF THE NEWS ITEM APPEARED IN MALAYALAM MANORAMA DAILY VARIOUS DATES**
EXHIBIT P7	**TRUE COPY OF THE INVESTIGATION REPORT SUBMITTED BY THE 4TH RESPONDENT.**