

# **Sanjay Phophaliya**

**vs**

## **State of Rajasthan and Ors**

23 July 1997

Rajasthan High Court

Citations: AIR 1998 Raj 96, 1997 (3) WLC 431, 1997 (2) WLN 112

Bench: V Singhal

ORDER

V.K. Singhal, J.

1. To leave the animals stray on roads is an offence and not to catch them by the Municipal Authorities is negligence. Under Section 98 of the Rajasthan Municipalities Act, 1959, a duty has been cast on the Board to make reasonable provisions for cleaning public streets, places and sewers, and all spaces, not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the Board or not, removing noxious vegetation and abating all public nuisances. Section 229 provides that whoever tethers cattle or other animals, or causes or suffers them to be tethered, by any member of his family or household in any public street or place so as to obstruct or endanger the public traffic therein or to cause a nuisance or causes or suffers such animals to stray about without a keeper, shall be punished with fine which may extend to twenty-five rupees. It is further provided that whoever keeps any swine, or causes or suffers them to stray about in public streets and places, so as to be a nuisance or a source of discomfort, inconvenience or annoyance to the inhabitants of the Municipality or of such public, public streets and places shall be punished with fine which may extend to twenty-five rupees.

2. Special provisions have been made for dogs under Section 208 by which the Board may take possession of any dog found wandering unmuzzled in any public place and may either detain such dog until its owner has claimed it, has provided a proper muzzle for it and has paid all the expenses of its detention or cause to be destroyed.

3. By this writ petition, a prayer is made to take custody of the animals roaming in public roads and places. It is stated that no appropriate steps have been taken by the respondents restraining the roaming of number of animals on the roads, hospitals, railway station, High Court premises and in the city. This not only creates hindrance in the public transport but also has created a havoc amongst the public as the roaming dogs, pigs, oxes, cows, camels, buffaloes, donkeys etc. are dangerous to the people and children. Numerous incidents and accidents have taken place regarding the biting and assaulting by the aforesaid animals for which the public at large has to suffer. Even the persons who are going for morning walk have been the victim of biting by street dogs. Buffaloes and cows are roaming or sitting on important chora has and every public places. This has not only resulted in erosion of the beauty of the city but ecological balance is also disturbed. The pollution created by these

animals on the road is nothing but a public nuisance and a common man is deprived of his right to life guaranteed under Article 21 of the Constitution of India. It is stated that only a day earlier, life of one old man was taken by stray animals. Similar incidents have occurred in the past and the respondents are not discharging their duties.

4. Reliance has been placed on the decision in the case of *Municipal Council, Ratlam v. Vardhichand*, AIR 1980 SC 1622, wherein it was observed that a responsible Municipal Council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage system not pompous and attractive, but in working condition and sufficient to meet the needs of the people cannot be evaded if the municipality is to justify its existence. A bare study of the statutory provisions makes this position clear. In this case it was observed that even by abating the affirmative acts, the action can be taken Under Section 188, I.P.C.

5. Reliance has also been placed on the decision given in the case of *Rampal v. State of Rajasthan*, 1980 Raj LW 395 : (AIR 1981 Raj 121), wherein it was observed that 'when the statute imposes a duty, the performance and non-performance of which is not a matter of discretion, then this Court has a power to issue a Mandamus directing the local body to do what the statute requires to be done. The Municipal Board is under a statutory obligation to construct sewers and drains for the discharge of water, both domestic as well as rain, which is likely to cause public nuisance, if allowed to accumulate for a long time.'

6. Reliance is also placed on the decision given by this Court in the case of *L.K. Koolwal v. State of Rajasthan* (1987) 1 Rajasthan LR 334 : (AIR 1988 Raj 2). wherein it was observed that 'it is primary, mandatory and obligatory duty of Municipality to keep city clean and to remove insanitation, nuisance etc. The Municipality cannot take plea whether funds or staff is available or not.'

7. I have heard the matter and the arguments of learned counsel for both the parties. It is stated that there are about 20 Class IV employees who are employed for the purpose of catching the stray animals. There are two in-charge, Cattle Pounds of the rank of Sanitary Inspectors. The entire matter is under the control of the Commissioner. If there is any deficiency in number of staff, then it is the duty of the Board to make proper arrangements, but it cannot be permitted that the stray animals roam about on the roads. The stray animals may be pet animals who if caught are released after paying the detention charges. Even a milkmen colony specially to keep these cattle at a place was formed, but even those milkmen are having their cows in the city and living in the city. From the arguments of both the learned counsel, it is evident that it is the duty of the Board to remove the stray animals from the roads, or any other public places which is causing nuisance. The steps which have been taken cannot be considered to be satisfactory. It only shows that the staff of the Municipal Board has been negligent in discharging their duties. It will be the duty of the Commissioner to take disciplinary action against the person concerned who is responsible for not removing the animals from the roads and other public places. It is not only when a complaint is made by inhabitants or any citizen with regard to stray animals that the action is taken by the respondents. In order to have the proper control the Board shall allocate the duties of the Class IV employees in 60 wards so that it could be identified as to who is the person negligent in not performing his duty. The Sanitary Inspectors who are in-charge of the cattle ponds shall also be entrusted the duties according to wards.

8. It may be that the general public out of charity or religious feelings might be offering bread and fodder to these animals for which the respondents shall issue an advertisement that such charitable activities would be performed at cattle pond or goshala only and not on the roads. Leaving the cattle fodder on the roads itself may be a cause of nuisance on the road. Steps would be taken by the Commissioner himself to have the round of the city once a week so that no negligence is done by the staff under him and the stray animals are not found on roads.

9. It is a serious matter when the dogs and other animals suffering from rabies bite animals and persons. The duty becomes more onerous on the respondents with regard to the dogs and such animals. The staff cannot say that its duty is complete if action is taken only on complaints. They must not sit in the office but should continuously take round of the city. If any inaction is found on the part of the staff, the respondents are bound to take disciplinary action against such staff. If still any accident happens, then the injured person or relative of the deceased person would be competent to invoke the provisions of Section 188 of IPC against such a negligent staff. It is expected that the roads of Jodhpur be cleaned from these stray animals within a period of four months from today. The respondents would be free to get work through contractors.

10. The writ petition stands disposed of with the above observations.