

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO. 2364 OF 2022
IN
CIVIL WRIT PETITION NO.562 OF 2006

Vijay Shankarrao Talewar and anr.

Vs.

The State of Maharashtra and ors.

AND

CIVIL APPLICATION NO. 2363 OF 2022
IN
CIVIL WRIT PETITION NO.596 OF 2006

AND

Aniruddha Sharad Gupte and another

-Vs-

The State of Maharashtra and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.F.T.Mirza, counsel for the petitioners in both the writ petitions.
Mr.D.P.Thakre, Addl.G.P for respondent Nos.1 and 2.
Mr.S.M.Puranik, counsel for Municipal Corporation.
Mr.Ashwin Deshpande, counsel a/w Ms. Aradhya Pande, counsel for
intervenor

**CORAM :SUNIL B.SHUKRE &
ANIL L. PANSARE, JJ.**

DATE : 20.10.2022.

1. Heard.
2. Considering the fact that the applicant is also a person who claims to be equal sufferer of the menace of the stray dogs, the application is allowed and it is directed that the applicant/intervenor be joined as respondent in the present case and he shall have a right to be heard in the matter.

3. Amendment to the cause-title be accordingly carried out forthwith. The application is disposed of.

CIVIL WRIT PETITION NO.562 OF 2006

4. Leave to add Commissioner of Police Nagpur and Superintendent of Police, Nagpur (Rural) as party respondents is granted. Amendment be carried out to the cause-title forthwith.

5. Shri.D.P. Thakre, learned Addl.G.P waives notice on behalf of newly added respondents.

WRIT PETITION NO.562 AND 596 OF 2006

6. Heard Shri. Mirza, learned counsel appearing for the petitioners in both the Writ Petitions, learned Addl.G.P for the State Government, Shri. S.M.Puranik, learned counsel appearing for the Municipal Corporation and the Monitoring Committee appointed under Animal Birth Control (Dogs) Rules, 2001 (for short, hereinafter referred to as "the Rules, 2001"). Also heard Shri.Ashwin Deshpande, learned counsel appearing for the respondent/intervenor.

7. There can be a no denying the fact that the menace of stray dogs is being faced by the citizenry of Nagpur almost day in and day out and now it has increased beyond tolerable levels. The stray dogs are seen to be freely roaming around the streets of Nagpur with no restrictions and prohibitions whatsoever and are seen to be running after moving vehicles and even pedestrians, while barking at them and scaring them all

throughout. Some of the stray dogs have been seen to have made little children and babies as their targets of unwarranted aggression and attack, injuring them, mauling them and in some stray incidents even killing them. There was an urgent need for controlling the scourge of stray dogs and it continues till date, as the citizenry of Nagpur cries and pleads with the authorities in charge of the task to perform their duty to do something to effectively control the danger posed by the stray dogs. Of course, this is not to say that there is something wrong about the view that dog generally is the best friend of man but, this has to be taken with circumspection when it comes to dogs which are strays and which are not kept as pets. Many of these strays are aggressive, ferociously wild and simply uncontrollable in their behaviour. Therefore, there is a need for the authorities to take charge of the matter, as required under the law and also the need for the Samaritans to come forward and render their assistance to the authorities in controlling the stray dog hazard.

8. In the past, the authorities had taken certain steps in the direction of controlling the nuisance of stray dogs, but they were seen to be not enough to eliminate it or even reduce it. The difficulties of the authorities were increased and in fact they keep on increasing, when some citizens behaved and continue to behave in an irresponsible manner. These citizens posing themselves as sympathizers and friends of stray dogs, leave their houses on two wheelers and by four wheelers carrying with them loads of food items meant for distribution amongst the street dogs and making their stops

in different localities, offer food packets and different tidbits to stray dogs unmindful of the great harm that they are doing to the society. These supposed friends of stray dogs do not realise the disastrous consequences of their charity. Fed on the goodies provided by the animal lover, many of the stray dogs become insolent and get even more violent in their behaviour towards human beings in general and children in particular. If these so called friends of stray dogs are really interested in protection and welfare of the stray dogs, they must adopt the stray dogs, take home the stray dogs or at least put them up in some good dog shelter homes and bear all the expenses for their registration with Municipal Authorities and towards their maintenance, health and vaccination. They must understand that real charity lies in taking the complete care and not just feeding and then leaving poor creatures to fend for themselves. This is the most basic duty a benevolent must perform if he has real compassion for stray dogs. But the so called friends of stray dogs shy away from performing this basic duty of theirs and the result is of uncontrolled growth in population and nuisance of stray dogs.

9. Realising the danger lurking in the nature of stray dogs in the streets of Mumbai, the Full Bench of this Court in the case of **All India Animal Welfare Association and ors Vs. Brihanmumbai M. Corporation** reported in **2007(4) Bom.C.R.1** had issued stern directions to the Municipal Commissioner of Brihanmumbai Municipal Corporation to ensure strictly that there was no feeding of stray dogs in public places including beaches of Mumbai. Similar direction, we feel, is now necessary for

the City of Nagpur as well. Accordingly, we direct in general that no citizen and no resident of Nagpur and areas surrounding it shall feed or make any attempt to feed the stray dogs in public places, gardens etc. We further direct the Municipal Commissioner of Nagpur, Municipal Corporation to ensure that no such feeding at any place except own homes of such persons shall be undertaken. We further direct that if any person is interested in feeding stray dogs, he shall first adopt the stray dog/bitch, bring it to home, register it with Municipal Authorities or put it in some dogs shelter home and then showering his love and affection on it, may feed it while taking it's personal care in all respect. We further direct the Commissioner, Nagpur Municipal Corporation to ensure that, no feeding of street dogs takes place at any place except at the own place of the dog feeder or in the dog shelter homes or any other authorised place and we also direct him to impose appropriate penalty for any breach of these directions, which penalty may not be more than of Rs.200/- for every breach as per the resolution already passed in this behalf by Nagpur Municipal Corporation.

10. Now, it would be appropriate to address the main issue involved in this petition, the issue of elimination of stray dog menace with a view to finding out some way forward.

11. Shri.Mirza, learned counsel appearing for the petitioners has invited our attention to the provisions made in Section 44 of the Maharashtra Police Act which provides for destruction of stray dogs by following certain

procedure prescribed therein. This provision of law requires the Commissioner and Superintendent of Police in areas under their respective charges to proclaim that if any stray dog found wandering during specified period in the street or in any public place, may be destroyed. There is also a provision for ordering detention of such dogs and either selling them or destroying them by adopting the procedure prescribed therein. It has been brought to our notice and rightly so that no recourse to this provision of law is being taken by the Competent Police Authorities. We agree with the submission that now the time is ripe for taking action, in terms of the provisions made in Section 44 of the Maharashtra Police Act. The action that may be taken under Section 44 of the Maharashtra Police Act, we add, may not be of the extreme nature of destruction of the stray dog but, it can be at least in the nature of detention of the stray dog as per the procedure prescribed and then handing over the stray dog to the Monitoring Committee setup under rule 4 of the Rules, 2001 for their appropriate placement/disposal in terms of the Rules.

12. We, therefore, direct the Commissioner of Police and Superintendent of Police, Nagpur (Rural) to take necessary steps within their respective areas for controlling the menace of stray dogs/bitches in terms of Section 44 of the Maharashtra Police Act and in the light of observations made herein above.

13. Shri. S.M.Puranik, learned counsel appearing for Nagpur Municipal Corporation invites our attention to the reply filed by the Corporation on 05.08.2022, in

particular to what is stated in paragraph No.14 of the reply. He submits that in view of the directions issued by the Apex Court in an SLP, no further action with a view to controlling the unruly behaviour of stray dogs and controlling their population has been taken by the Municipal Corporation. He further submits that the Municipal Corporation has received approval to its proposal for allocation of fund of Rs.17 crores for the purpose of initiating measures for birth control of the stray dogs from the State Government. He further submits that if approved by this Court, the birth control measures that will be taken in respect of the stray dogs will be in the nature of removal of testes in case of dogs and removal of ovaries in case of bitches.

14. Shri. Mirza, learned counsel for the petitioners submits that now the stay granted by the Apex Court in the SLP, which was later registered as Civil Appeal No.5988 of 2019 has been vacated as the Apex Court by its order passed on 12.10.2022 has clarified that its order dated 18.11.2015 does not bar or prohibit the authorities/individuals including associations and organizations from approaching the jurisdiction of High Court for appropriate relief and that the High Courts are at liberty to examine and decide these cases in accordance with law, while keeping in mind the orders passed by the Supreme Court and its precedents. It has also clarified that the High Court of Judicature at Bombay can hear and decide Writ Petition No. 9513 of 2021 in accordance with law, which is pending before the Principal Seat of this High Court. This clarification has paved the way for dealing with the request for passing

appropriate orders in order to bring down the nuisance of stray dogs in appropriate cases, subject to four corners of law.

15. Having regard to the subsequent development as seen from the order of the Apex Court, dated 12.10.2022, we are of the view that permission can be granted to the Corporation to go ahead with and implement its programme of birth control of stray dogs by utilising the amount of Rs.17 crores, which has been stated to be decided to be released by the State Government to the Municipal Corporation. We, therefore, grant the permission and direct the State Government to release the amount of Rs.17 crores at the earliest and preferably within eight weeks from the date of the order. On receipt of the amount, we direct, the Corporation shall utilize the amount for taking measures of birth control of the stray dogs and these measures, as submitted on behalf of the Corporation, would be in the nature of removal of testes and removal of ovaries, in respect of the suitable dogs and bitches respectively, while ensuring that no cruelty is caused to the dogs and bitches subjected to surgical procedure and also ensuring that appropriate pre and post surgery care is provided to these dogs and bitches.

16. Shri.Mirza, learned counsel for the petitioners has invited our attention to the various directions issued by the Full Bench of this Court in the case of *All India Animal Welfare Association* (supra) and in our opinion, if these directions are complied with, it would go a long way in eliminating the nuisance of stray dogs in its

entirety and at the same time, it will also not cause any cruelty to the stray dogs. In fact, these directions are more or less the requirements of law as provided under the Rules, 2001. These provisions of law, as pointed out by Shri Ashwin Deshpande, learned counsel appearing for the respondent/intervenor, must be implemented in their letter and spirit by the Authorities. Accordingly, we direct the Chairman of the Monitoring Committee, we have been told by Shri.S.M.Puranik, learned counsel appearing for the Corporation that Monitoring Committee as well as Dog Control Cell as contemplated under rules 4 and 7 of the Rules, 2001 are already in place for the city of Nagpur, to implement the various provisions made in the Rules, 2001 strictly. We also direct the Monitoring Committee, to set up some online facility by making use of acceptable applications for receiving and disposing of the complaints of stray dogs' nuisance, which require immediate attention. We further direct the Monitoring Committee to publish the mobile number and/or online address of the facility set up by it, so that interested persons can access the Monitoring Committee by making online applications and/or by taking recourse to such applications as WhatsApp, Twitter Handle and so on. This will facilitate access to Monitoring Committee with great convenience and without any loss of time.

17. We also direct the Commissioner, Nagpur Municipal Corporation to consider the implementation of the directions given by the Full Bench of this Court in the case of *All India Animal Welfare Association* (supra) regarding identification of suitable plots of land, where

the captured stray dogs could be housed by creating a large dog shelter home which would be well equipped with sufficient manpower and all the facilities required for upkeep and maintenance of the dogs. After all, one cannot forget that basically dog is the best friend of man and therefore, we must take it as duty of each one of us to take proper care of the dogs/bitches, whether they are reared as our pets or allowed to grow up in the streets. We are of the view that the directions given in the case of *All India Animal Welfare Associations* (supra), which appear in paragraph No.5(a) are worthy of their implementation even in Nagpur and so it would be appropriate for the Nagpur Municipal Corporation to prepare plan for their implementation in their letter and spirit. We further direct the Corporation to sensitize its Officers, in charge of the task of controlling nuisance of stray dogs in respect of their duties under the Rules, 2001 in particular duty prescribed in rule 7 thereof. We further direct the Commissioner to ensure that all the provisions contained in rules 7, 8 and 10 of the Rules, 2001 are properly implemented.

18. We direct the respondents to submit their compliance report to this Court on or before the next date of hearing.

19. Meanwhile, we direct the Commissioner of Municipal Corporation, Nagpur to look into the complaint dated 18.10.2022 filed by Dhantoli Nagrik Mandal complaining about the nuisance created by the stray dogs in that area on day to day basis and ensure that the nuisance is removed and eliminated on or before the next

date, compliance in respect of which shall also be submitted by the Commissioner Nagpur Municipal Corporation.

20. We further direct the Commissioner, Nagpur Municipal Corporation to launch a public awareness campaign sensitizing the citizens and residents of Nagpur and various authorities about their respective duties and responsibilities under the Animal Birth Control (Dogs) Rules, 2001, other applicable enactments and the decisions and precedents of the Supreme Court and High Court.

21. We further direct that if there is any instance of creating hurdles and obstacles in the way of the authorities and their officers in performing their duties as required under this order and also the applicable Rules, stern action be taken against the persons creating such hurdles and obstacles and in suitable cases, appropriate offences also be registered against them.

22. Stand over to **23.11.2022**.

(ANIL L. PANSARE,J)

(SUNIL B. SHUKRE,J)