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GOVERNMENT OF KERALA

24/2/16

No. e- 75 /RC3/2016 / LSGD

Local self Govt (RC)Department

Thiruvananthapuram, Dated.18/2/2016

From

The Principal Secretary

To

The Director Of Urban Affairs

Thiruvananthapuram.

The Director of Panchayath

Thiurvananthapuram.

A.O, Please

24/2/2016.

Sir,

Sub : LSGD –Wp(c) – 29543 /2015 Filed by Thomas Chandy - regarding

Ref: *Wp(c) – 29543 /2015 Filed by Thomas Chandy dated 04.11.2015*

I am to forward herewith a copy of the Judgment in *Wp(c) – 29543 /2015 Filed by Sri.Thomas Chandy and to request you comply the court direction at the earliest.*

Yours faithfully

P.N.Suresh Kumar

Under Secretary

Signature valid

Digitally signed by SURESH KUMAR P N
Date: 2016.02.18 15:50:41 IST
Reason: Approved

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 29543 of 2015 (S)

PETITIONER :

THOMAS CHANDY, AGED 68 YEARS,
S/O.V.C.THOMAS,
MEMBER OF LEGISLATIVE ASSEMBLY VETTIKKAD,
KALATHIPARAMBIL, CHENNAMKARY P.O,
ALAPPUZHA

BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL
SRI.A.MUJEEB REHUMAN

RESPONDENT(S):

*1. UNION OF INDIA,
REP. BY ITS SECRETARY, MINISTRY EXTERNAL AFFAIRS,
KASTURBA GANDHI MARG, NEW DELHI - 110 011. (CORRECTED)

2. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO THE GOVERNMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN -695 001.

3. ANIMAL WELFARE BOARD OF INDIA,
REPRESENTED BY ITS CHAIRMAN, 13/1, THIRD SEAWARD ROAD,
VALMIKI NAGAR, THIRUVANMIYUR, CHENNAI -600 041.

4. DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, VELLAYAMBALAM,
TRIVANDRUM, PIN- 695 001.

5. THE CORPORATION OF THIRUVANANTHAPURAM,
REP. BY ITS SECRETARY, CORPORATION BUILDINGS,
TRIVANDRUM, PIN -695 001.

6. THE CORPORATION OF KOLLAM, REP. BY ITS SECRETARY,
CORPORATION BUILDING, KOLLAM, PIN -691 541.

7. THE CORPORATION OF KOCHI,
REP. BY ITS SECRETARY, CORPORATION BUILDINGS,
COCHIN, PIN -693 021.

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8. THE CORPORATION OF THRISSUR,
REP. BY ITS SECRETARY,
CORPORATION BUILDINGS, THRISSUR,PIN -688 001.

9. THE CORPORATION OF KOZHIKODE,
REP BY ITS SECRETARY,
CORPORATION BUILDINGS, KOZHIKODE, PIN -643 004.

10. TRIVANDRUM DISTRICT PANCHAYATH,
REP BY ITS SECRETARY, PANCHAYATH OFFICE, PATTOM,
TRIVANDRUM -695 502.

11. KOLLAM DISTRICT PANCHAYATH,
REP. BY ITS SECRETARY, DISTRICT PANCHAYATH OFFICE,
THEVALLY, KOLLAM- 691 009.

12. PATHANAMTHITTA DISTRICT PANCHAYATH,
REP. BY ITS SECRETARY, DISTRICT PANCHAYATH OFFICE,
COLLECTORATE ROAD, CHITTOOR, PATHANAMTHITTA -689 645.

13. ALAPPUZHA DISTRICT PANCHAYATH,
REP BY ITS SECRETARY, DISTRICT PANCHAYATH OFFICE,
PALACE ROAD, CIVIL STATION WARD, ALAPPUZHA- 688 001.

14. KOTTAYAM DISTRICT PANCHAYATH,
REP BY ITS SECRETARY, DISTRICT PANCHAYATH OFFICE,
K.K.ROAD, COLLECTORATE, KOTTAYAM- 686 002.

15. IDUKKI DISTRICT PANCHAYATH,
REP BY ITS SECRETARY, DISTRICT PANCHAYATH OFFICE,
IDUKKI TWP, IDUKKI -685 603.

16. ERNAKULAM DISTRICT PANCHAYATH,
REP BY ITS SECRETARY, DISTRICT PANCHAYATH OFFICE,
KAKKANAD, ERNAKULAM -682 030.

17. THRISSUR DISTRICT PANCHAYATH,
REP BY ITS SECRETARY, DISTRICT PANCHAYATH OFFICE,
AYYANTHOLE ROAD, THRISSUR -680 003.

18. WAYANAD DISTRICT PANCHAYATH,
REP BY ITS SECRETARY, DISTRICT PANCHAYATH OFFICE,
KALPETTA, WAYANAD- 673 122.

19. KOZHIKODE DISTRICT PANCHAYATH,
REP BY ITS SECRETARY, DISTRICT PANCHAYATH OFFICE,
NH 212, ERANHIPALAM, KOZHIKODE -673 020.

20. KANNUR DISTRICT PANCHAYATH,
REP. BY ITS SECRETARY, DISTRICT PANCHAYATH OFFICE,
S.P.OFFICE ROAD, TALAP 212, KANNUR- 670 002.

21. KASARGODE DISTRICT PANCHAYATH,
REP. BY ITS SECRETARY, DISTRICT PANCHAYATH OFFICE,
VIDYANAGAR, CIVIL STATION, VIDHYANAGAR,
NEERCHAL, MUNDAYATHADKKA ROAD, KASARGODE -671 121.

*ADDRESS OF RESPONDENT NO.1 IS CORRECTED

*1. UNION OF INDIA, REP. BY ITS SECRETARY,
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE,
GOVERNMENT OF INDIA, KASTURBA GANDHI MARG,
NEW DELHI-110 011

*THE ADDRESS OF RESPONDENT NO.1 IN THE CAUSE TITLE IS CORRECTED AS SHOWN ABOVE VIDE ORDER DATED 29/9/2015 IN I.A.NO.14009/2015.

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 & R4 BY SPL.GOVERNMENT PLEADER SMT. GIRIJA GOPAL
R3 BY SRI.K.JAJU BABU,SENIOR ADVOCATE
ADV. SMT.M.U.VIJAYALAKSHMI
R5 BY SRI.N.NANDAKUMARA MENON,SENIOR ADVOCATE
BY SRI.P.K.MANOJKUMAR,SC,TVPM CORPORATION
R6 BY SRI.M.K.CHANDRA MOHAN DAS,SC,KOLLAM MPT
R7 BY ADV. SRI.MILLU DANDAPANI,SC,COCHIN CORPORATION
SRI.P.K.SOYUZ,SC,COCHIN CORPORATION
R8 BY ADV. SRI.K.P.VIJAYAN
SRI.V.N.HARIDAS
R9 BY SRI.P.V.SURENDRANATH,SENIOR ADVOCATE
SRI.SYAMANTHAK,SC
SRI.K.D.BABU,SC,KOZHIKODE CORPORATION
R12 BY SRI.VARGHESE M.EASOW, SC, DIST. PANCHAYAT, PATHANA
R14 BY SRI.JOBI JOSE KONDODY, KOTTAYAM DISTRICT PANCH
R15 BY ADV. SRI.UNNIKRISHNAN V.ALAPATT, SC
BY ADV. SRI.DILISH JOHN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-10-2015 , ALONG WITH WPC.NO.28255 OF 2011AND CONNECTED CASES, THE COURT ON 04-11-2015 DELIVERED THE FOLLOWING:

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"G.R."

ASHOK BHUSHAN, C.J.
and
A.M. SHAFFIQUE, J.

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W.P(C) No.28255 of 2011,
W.P(C) Nos.13430 & 30510 of 2008,
W.P(C) No.30792 of 2011,
W.P(C) Nos.12302, 14210 & 19005 of 2014,
W.P(C) Nos.17958, 18374,
26164, 28720 and 29543 of 2015

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Dated this the 4th day of November, 2015

JUDGMENT

Ashok Bhushan, C.J.

This group of Writ Petitions raising common issues have been heard together and are being decided by this common judgment. All the Writ Petitions have been filed as Public Interest Litigations. The Writ Petitions can be divided into two groups. First group consists of Writ Petitions raising grievance of common man residing in different Corporations, Municipalities and Panchayats who is affected by the menace caused by stray dogs. Writ Petitions cite various instances where stray dogs have bitten small children, old men and even young persons, some of them subsequently died of rabies. Petitioners pray that the local authorities may

remove/destroy stray dogs to save the common man from their furry. W.P(C) No.12302 of 2014, W.P(C) No.28255 of 2011, W.P(C) No.17958 of 2015, W.P(C) No.14210 of 2014, W.P(C) No.28720 of 2015, W.P(C) No.19005 of 2014, W.P(C) No.18374 of 2015, W.P(C) No.29543 of 2015 and W.P(C) No.30792 of 2011 which are included in the second group, belong to this group. The second group of Writ Petitions consists of 3 Writ Petitions, i.e., W.P(C) No.13430 of 2008, W.P(C) No.30510 of 2008 and W.P(C) No.26164 of 2015. These three Writ Petitions have been filed by registered Societies/Trust which have been constituted to prevent cruelty to animals and to assist the administration to take action against those who commit cruelty to animals. Petitioners object to the killing of stray dogs in the State by the Local Authorities. Petitioners have further prayed for direction to the respondents to implement the provisions of Animal Birth Control (Dog) Rules, 2001 (hereinafter referred to as "the 2001 Rules").

FACTS AND PLEADINGS

2. To appreciate the issues raised in all these cases it

is necessary to note the facts and pleadings raised in some of the Writ Petitions. Writ Petition No.28255 of 2011 is being treated as the leading case of the first group whereas W.P(C) No.26164 of 2015 is being treated as the leading case representing the second group.

3. W.P(C) No.28255 of 2011 (**M.R.Ajayan v. State of Kerala and others**) has been filed by the petitioner, a journalist by profession and human right promoter raising concern of recurring attacks from stray dogs in Vypin Island. Different instances as reported in the newspapers of stray dog bite have been narrated. News item published in Metro Manorama dated 20.10.2011 and 21.10.2011 have been referred to wherein newspaper reported about serious injuries suffered by a small child on his neck on account of stray dog bite. In the Writ Petition reference of various other instances of dog bites and details of various incidents of stray dog menaces have been referred to. Instances of domestic animals bitten by stray dogs have also been mentioned. In this Public Interest Litigation various individual complaints sent to this Court to treat as Public

Interest Litigation have also been tagged under orders of the Chief Justice. Several individuals have also filed applications stating that people of the State are now living under the fear of stray dogs. Streets, lanes, passages of houses, bus-stand, railway station, school compound, hotel premises and other public places are crowded with wandering dogs who often become aggressive. They unexpectedly attack the pedestrians and make road accidents to the riders especially two wheelers. Petitioners complain that no measures are being taken by the local authorities to seize and kill the stray dogs. The local authorities are abdicating their statutory duties of removing and destroying the stray dogs. Petitioners allege that Kerala which is known as "God's own country" has now become "Dog's own country". There are more than 12 lakhs wandering dogs in public places. In every 50 metres wandering dogs can be seen on road sides and near heap of garbage which attracts stray dogs. It is further stated that one of the main reasons that hamper elimination of stray dogs is the involvement of group, so called pet lovers or

animal rights protection agencies, like animal welfare institutions, etc., who obstruct killing of stray dogs by local authorities. Human life is more valuable than life of a dog. There is no proper implementation of the 2001 Rules. Hence no effective check have been made on the ever increasing population of stray dogs. In the Writ Petition the following prayers have been made:

> (i) To issue a writ of mandamus or any other appropriate writ or order directing respondent Nos.1 to 6 to take all necessary immediate actions to destroy stray dogs in the State.
>
> (ii) To issue a writ of mandamus or any other appropriate writ or order directing respondent Nos.1 to 6 to implement the provisions of the Animal Birth Control (Dogs) Rules 2001 for an effective result in long term basis.
>
> (iii) To issue a writ of mandamus or any other appropriate writ or order directing respondent Nos.1 to 6 to initiate vaccination and sterilization drive in the State; and'
>
> (iv) Grant such other relief as this Hon'ble Court deems fit and proper in the interest of justice."

4. On an application, Sat Jeev Karuna Parivar Trust, has been impleaded as the additional 8th respondent to the Writ Petition. The Trust which got itself impleaded objects to the killing of stray dogs in inhuman way. It is pleaded

by the Trust that Prevention of Cruelty to Animal Act, 1960 (hereinafter referred to as "the 1960 Act") and the 2001 Rules framed thereunder regulate the procedure and extend under which stray dogs can be eliminated. It is further pleaded by the Trust that the local authorities in exercise of the powers under the Kerala Municipality Act, 1994 (hereinafter referred to as "the 1994 Act") cannot kill the stray dogs and the Local Authorities are bound to follow the 1960 Act and the 2001 Rules. It is further stated that the issue is engaging the attention of the Apex Court in Special Leave Petition No.691 of 2009 arising from the judgment and order of the Full Bench of the Bombay High Court dated 19.12.2008 in ASWP No.6257 of 2006 (***Animal Welfare Board of India v. PEST. & Others***). The judgment of the Bombay High Court has been stayed by the Apex Court by its order dated 23.07.2009.

5. The Animal Welfare Board of India has filed a counter affidavit. In the counter affidavit it is pleaded that various issues arising from the judgment of the Bombay High Court is engaging attention of the Apex Court in SLP No.691

of 2009. The AWBI has pleaded that had the removal/culling could control dog population, so many stray canines would not still be around. The killing of dogs as a means to control dog population has not worked anywhere in the world. Guidelines framed by the World Health Organization advocates systematic sterilization programme in place of mass killing/removal for reducing dog population. The 2001 Rules reflects this progression in thought. The local authorities cannot indiscriminately kill dogs in exercise of the power under the Kerala Municipality Act or the Kerala Panchayat Act, 1994.

6. W.P(C) No.12302 of 2014 (**Basil Attipetty @ Basil A.G. v. Local Self Government Department and Others**) has been filed by a practicing Advocate of the High Court raising the issue of attack of stray dogs which according to the petitioner is alarmingly increasing day by day. The school children, women and other persons are repeatedly attacked by the stray dogs spread in the local regions of the Panchayats, Municipalities and Corporations. Incidents of dog bites on small children and adults have been

narrated in the Writ Petition. Reference of attack of stray dog on a child having 3½ years as reported in Malayala Manorama daily dated 03.05.2014 has been annexed with photographs. In the Writ Petition details of human beings dying of rabies after dog bite has been brought on the record. It is pleaded that in Ernakulam District alone in the year 2013 there has been instances of 4019 stray dog bites. Petitioner pleads that stray dogs be removed from public street by the local authorities to save valuable life of the human beings. Petitioner refers to a complaint submitted to the Grama Panchayats and Corporations. Petitioner also relies on the Division Bench judgment of this Court in **Animal Welfare Board of India and another v. Ombudsman for Local Self Government Institutions and others** (2006 KHC 561) where the Division Bench has held that there has to be more concern with the life of human being than that of stray dogs. The right to live as enshrined under Article 21 of the Constitution of India is a fundamental right and it would take precedence over Dog Rules. In the Writ Petition the following prayers have been made by the petitioner:

"(i) direct the 1st respondent to take measures to remove the stray dogs from public places and to have a fearless life from the menace of stray dogs in public places throughout Kerala.

(ii) direct the 1st respondent to issue a circular to all the Secretaries of Local Self Government Departments to the effect that the Secretaries of Local Self Government Institutions will be liable for stray dog bites in Kerala in their respective jurisdiction.

(iii) direct the 1st respondent to file a detailed report before this Honourable Court with regard to the steps taken by the department to catch and remove the stray dogs from the street and public places in Kerala.

(iv) direct the 1st respondent to pay adequate compensation to the victims of stray dog bites in Kerala.

(v) grant such other reliefs as are deem just and necessary in the facts and circumstances of the case."

7. Counter affidavits have been filed in the Writ Petition by various respondents including Corporations, Grama Panchayats and Director of Kerala Medical Services Corporation.

8. The Cochin Corporation in its counter affidavit stated that the Corporation has identified a place at Brahmapuram where a multi speciality Veterinary Hospital was constructed which has become operational since 28.05.2015. The said hospital has been constructed under

the ABCD-ARV programme. There are a team of 4 Doctors and 4 animal handlers who have been trained. Figures of dog capture from May to August, 2015 has also been given. It is pleaded that after capture, the stray dogs shall undergo the ABC-ARV procedure and then they shall be released to the exact location from where they were captured.

9. The Elamkunnapuzha Grama Panchayat has filed a counter affidavit in which it is stated that stray dog menace is at a very high rate. Reason for the same is stated to be availability of waste food materials by both sides of the road. It is stated that during the earlier periods persons were engaged by the Panchayat to catch and kill stray dogs which has now been stopped. It is further pleaded that the Panchayat has taken steps for anti rabies vaccination among dogs in the Panchayat area but the same is carried out only in domestic dogs, reared and brought up by the occupants of the various houses. Although there are guidelines for vasectomyzing stray dogs, there is no facility available in the Panchayat.

10. A counter affidavit has been filed by the 3rd

respondent where it is pleaded that due to the restriction contained in the 1960 Act, the Panchayat is unable to seize and destroy the stray dogs. The option of sterilization of dogs is not found successful since neighbouring Panchayats are not adopting the same. It is further pleaded that Government have to take all appropriate action to engage an agency for doing it in a successful manner. It has been pleaded that an estimated 20000 people die every year from rabies infections.

11. The Managing Director of Kerala Medical Services Corporation, additional 14th respondent has also filed a counter affidavit where it is pleaded that the Corporation procures drugs for the use of the hospitals under various departments. The drugs required to be procured for treatment of rabies or dog bitten cases are: (1) Anti Rabies Vaccine (ARV) (2) Anti Rabies Immunoglobulin (Enquine) and (3) Anti Rabies Immunogloulin (Human). Anti Rabies Human Immunoglobulin is generally imported and is much more costlier than Equine Immunoglobulin. It is submitted that the Corporation could not finalise tender for the year 2014-15 for

supply of ARV for the reasons stated in the counter affidavit. The counter affidavit further states that there is sufficient stock of drugs at Government Hospitals.

12. By a detailed additional counter affidavit, the Corporation has filed details of availability of Anti Rabies Vaccines in different Districts of the State along with its quantity.

13. Petitioner in the Writ Petition by affidavit dated 26.06.2015 has brought more recent instances of dog bites. It is pleaded that public in protest is carrying on demonstration against inaction of the Local Authorities from removing/killing dogs by the Local Authorities. It is pleaded that on 17.06.2015 against the indifferent attitude of the Municipal Authorities a rally was organized under the aegis of the Indian Red Cross Society which was joined by various organizations protesting the inaction of the Municipal Authorities.

14. W.P(C) No.29543 of 2015 (**Thomas Chandy v. Union of India and Others**) has been filed by a Member of Legislative Assembly representing the Kuttanad Constituency

in Alappuzha District. Petitioner aggrieved by the inaction of the Corporation in taking appropriate measures in destruction of stray dogs in the State of Kerala has filed the Writ Petition. Instances of various dog bites in the year 2015 has been narrated in the Writ Petition. It is pleaded that the 2001 Rules was implemented by the respondents but the same is not effective in controlling the population of stray dogs.

15. W.P(C) No.14210 of 2014 (**Kochouseph Chittilappilly v. Union of India and Others**) has been filed by an industrialist highlighting the plight of the persons who were subjected to dog bites and handling of the dogs by the local authorities contrary to the letter and spirit of the constitutional philosophy and inaction on the part of the local authorities to implement the 2001 Rules. The petitioner prays for direction to the respondents to implement the 2001 Rules by setting up a Committee in terms of Rule 4 for establishment of dog ponds in a time limit.

16. W.P(C) No.28720 of 2015 (**Thichur Nazeer v. State of Kerala and Others**) has been filed by a public

spirited individual raising concern about the menace of the stray dogs and suffering of victims of dog bite. Instances of various dog bite has been narrated in the Writ Petition. A statement made by Minister for Women and Child Development as published in newspaper has also been objected by the petitioner. The petitioner prays for a direction to the State and other State authorities to take necessary and effective steps to remove the stray dogs from public streets. Direction has also been sought to the State to issue circulars to local authorities to exterminate the stray dogs causing nuisance.

17. Other Writ Petitions in this group have been filed more or less on the same facts. In W.P(C) No.19005 of 2015 (**N.P. Subair v. State of Kerala and Others**) petitioners have prayed for implementation of the 2001 Rules strictly.

18. W.P(C) No.26164 of 2015 (**Satjeev Karuna Parivar Trust v. State of Kerala and Others**) has been filed by a Registered Trust which claims to be formed to resist cruelty against animals. Petitioner alleged that the

local authorities (Grama Panchayats), respondent Nos.5, 9 and 10 have illegally killed various stray dogs with regard to which complaints have already been filed against the officials but no action has been initiated. Reference of various newspaper publication have been made in the Writ Petition. Reference of Mathrubhumi daily dated 28.07.2015 has been made wherein it is stated that the State Government has passed an order to annihilate the stray dogs. It is pleaded that on the strength of the said order 450 stray dogs were killed in an inhuman way. Petitioner refers to a complaint dated 11.07.2015 submitted to respondents 6 and 7 against the illegal killing. Some photographs showing a catcher/hunter catching and killing stray dogs have also been filed. It is pleaded that dogs have been killed by injecting potassium cyanide which inhuman killing is prohibited. Petitioner submitted that killing of dogs by Municipalities and Panchayats amounts to offences. Petitioner prays for the following reliefs:

> "(i) To issue a writ of mandamus or any other appropriate writ order or direction commanding respondents 3, 6, 7, 11 and 12 to look into the complaints and conduct a full-fledged

investigation in respect of the crimes committed by the officers of the respective local authorities.

(ii) Grant such other reliefs as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case; and

(iii) Award costs of the proceedings."

19. W.P(C) No.13430 of 2008 (**Idukki Society for Prevention of Cruelty to Animals v. State of Kerala and Others**) has been filed by a registered Society for preventing cruelty to animals. Petitioner's case is that the authorities in the State are not enforcing the 2001 Rules and other enactments. Petitioner's case is that about 30000 people die every year in the country of rabies. The 2001 Rules impose a statutory obligation on the statutory bodies. It is pleaded that although the Director of Animal Husbandry on 19.12.2007 has written to all the District level Officers to take action to implement the 2001 Rules in their respective Districts, the said directions have not been complied with. Various reports published in the newspaper have been referred to. The Society contends that as per the 2001 Rules there is prohibition of killing of any dogs except mortally wounded or incurably ill ones. Petitioner prays for

the following reliefs:

"(i) Issue a writ of mandamus, or such other writ order or direction, directing the respondents to take steps to implement the provisions of the Animal Birth Control (Dogs) Rules, 2001 immediately.

(ii) Direct the 1st respondent to by issuing appropriate orders to all the local self Government Bodies to stop killing of stray dogs except in the manner as permitted by Rule 9 of the Animal Birth Control (Dogs) Rules, 2001.

(iii) Direct the 1st respondent to ensure that all the local bodies in the State comply with the obligations required to be complied with under Rule 6 of the Animal Birth Control (Dogs) Rules, 2001.

(iv) Direct the respondents to ensure that the procedure prescribed in Rule 7 of the Animal Birth Control (Dogs) Rules, 2001 with respect to capturing, sterilization, immunization and release of street dogs is strictly followed throughout the State of kerala.

(v) Direct the respondents to ensure that the procedure prescribed in Rule 10 of the Animal Birth Control (Dogs) Rules, 2001 with regard to rabid dogs is strictly enforced throughout the State of Kerala.

(vi) Grant such other further reliefs as may be prayed for and which this Hon'ble Court deems fit in the circumstances of the case."

20. From the facts and pleadings as noted above, it is apparent that two rival stands have been taken, one by Writ Petitions filed as Public Interest Litigation raising

concern of common man who is affected by dog bites and who prays that the Local Authorities be directed to exercise their discretion in removing/destroying stray dogs in public street and on the other hand, the registered Societies and Trust espousing the cause of animal lovers, that the Local Authorities cannot have no jurisdiction to destroy/kill the stray dogs except in accordance with the 2001 Rules. It is pleaded by the animal lover group that control of population of stray dogs by the 2001 Rules is the only method to check the menace. This group pleads that effective measures for vaccination, sterilization of stray dogs be undertaken. It is further pleaded that human being has to show compassion to all animals including stray dogs who are unable to protect themselves have to be protected by the Society and Courts.

SUBMISSIONS

21. We have Shri A.G. Basil, Shri R. Sunilkumar, Shri T.R.Rajan, Shri Shajan C.George, Shri A.V.M. Salahudin, learned counsel for the petitioners, Shri Jaju Babu, learned Senior Advocate has appeared for the Animal Welfare Board,

Shri P.V.Surendranath, Shri N.Nandakumara Menon, learned Senior Advocates and Shri Millu Dandapani, learned counsel for the Corporations. Smt.Girija Gopal, learned Special Government Pleader has been heard for the State. Shri V.R.K.Kaimal, learned counsel appeared on behalf of the petitioner in W.P(C) No.26164 of 2015.

22. Learned counsel for the petitioners praying for destruction/removal of stray dogs contended that the safety of human life is more valuable than the life of a stray dog hence the Local Authorities are obliged to take action to destroy/remove the stray dogs from public places. It is submitted that the Kerala Municipality Act, 1994 (hereinafter referred to as "the 1994 Act") requires the Secretary to order for seizure and destruction of unlicensed dogs straying in the Municipal area which is a statutory obligation required to be fulfilled. Similar power is also been conferred on the Panchayat in the Kerala Panchayat Raj (Licensing of Pigs and Dogs) Rules, 1998 (hereinafter referred to as "the 1998 Rules"). It is submitted that the 1960 Act and the 2001 Rules does not prohibit

destruction/removal of stray dogs. It is submitted that the Local Authorities including the Panchayats are not taking appropriate measures as required by the statutory provisions which has jeopardized the safety of small children, women and men. Population of stray dogs is ever increasing without any check or control on their population. Local Authorities due to lack of resources and programmes are not even able to carry on sterilization and vaccination of stray dogs. The State Government has also not given due importance to the stray dog menace which is increasing day by day. Public is left with no remedy except to take measures for saving itself from injury by stray dogs. In most of the Local Authorities, Monitoring Committee as referred to in Rule 4 of the 2001 Rules has not been constituted. Due to non-constitution of Monitoring Committee there is no planning or management of dog control programme exposing the public in general to risk of life. Section 13(3)(b) of the 1960 Act itself contemplated destruction of stray dogs in lethal chambers or such methods as may be prescribed which itself is a clear indication that the 1960 Act does not

prohibit killing of stray dogs. What is prohibited by the 1960 Act is cruelty to animals which cannot be meant as not destroying the stray dogs which have become risk to the human life. The rabid and ferocious dogs have to be eliminated to save the human life. There is nothing contrary in the 1960 Act and 2001 Rules to the provisions of the 1994 Act and the 1998 Rules as referred above. Learned counsel for the petitioners submitted that in any event stray dogs have to be removed from public street. Secretary of the Local Authorities is fully entitled to extern the stray dogs. No sufficient steps are being taken by the Corporation/Municipality/Panchayat for bringing down the population of stray dogs. The 2001 Rules is not being implemented at all. The cries raised by the so-called animal lovers for stopping killing of stray dogs ignore the threat and loss of human life. Article 21 of the Constitution of India guarantees right of life which right shall include right to live in a fear free atmosphere from stray dog menace.

23. Learned counsel appearing for the registered Society/Trust opposing killing of dogs by local authorities or

individual persons have contended that no person has right to kill an animal including stray dogs. It is submitted that Constitutional provisions including fundamental duties as enshrined in Article 51A(g) enjoins upon every citizen to have compassion for living creatures. The animals who are unable to protect themselves have to be protected by human beings. The 1960 Act has been enacted with laudable object of preventing cruelty to animals. Killing of stray dogs is a clear incident of cruelty to animals which cannot be permitted. The 2001 Rules permit killing of stray dogs only in accordance with Rules 9 and 10 of the 2001 Rules. Section 11(l) of the 1960 Act prohibits killing of any animal including stray dogs. Several Panchayats and individual persons are indiscriminately killing stray dogs in an inhuman manner which has to be stopped. Local authorities cannot resort to the provisions of Section 438 of the 1994 Act and the Provisions of 1998 Rules for killing stray dogs.

24. Learned Senior Advocate appearing for the Animal Welfare Board contended that the local authorities have no right to kill dogs violating the provisions of the

2001 Rules and 1960 Act. It is submitted that only incurably ill and mortally wounded dogs can be killed as per Rule 9(1) of the 2001 Rules. Provisions of the 1994 Act and the Rules 1998 contrary to the 2001 Rules and 1960 Act have to give way to the Central Legislation and shall become inoperative in view of the Central Legislation. It is submitted that the Full Bench judgment of the Bombay High Court in **People for Elimination of Stray Troubles by its Convenor Dr.Rosario Menezes & Others v. State of Goa by its Chief Secretary & Others** ((2009) 1 Bom. CR 501 FB) has been stayed by the Apex Court in SLP No.691 of 2009. It is submitted that the Bombay High Court has permitted the Municipal Authorities to kill stray dogs in exercise of the statutory power under the Mumbai Municipal Corporation Act which judgment having been stayed, the Local Authorities cannot be given power to kill stray dogs. It is submitted that issues raised by the petitioners in these Public Interest Litigations are pending before the Apex Court.

25. Learned Standing Counsel appearing for the Thiruvananthapuram, Kozhikode and Cochin Corporations

have submitted that in view of the 1960 Act and the 2001 Rules, the Municipal Corporation cannot resort to killing of stray dogs which shall violate the Central Legislation. It is submitted that the Corporation is implementing programme of vaccination and sterilization of stray dogs which shall effectively control the population of stray dogs. Learned counsel for the Municipalities and Panchayats have also submitted that although earlier the Panchayats were taking decisions to destroy stray dogs, in view of the Central Legislation no Panchayat is destroying stay dogs and are ready to implement the birth control measures. It is submitted that sufficient infrastructure for sterilization and vaccination is not available in Panchayats and if all Panchayats are not adopting such methods, no useful purpose will be served in sterilizing only a few dogs in the Panchayat area.

26. Smt.Girija Gopal, learned Special Government Pleader contends that the State Government is fully conscious of the menace and is taking appropriate measures for combating fears of the public. Learned

Special Government Pleader has referred to Government Orders dated 17.09.2015 and 28.09.2015 by which the Government has directed for taking systematic animal birth control programme to control the stray dog menace. The State Government is of the view that killing of stray dogs as a means of control of stray dogs may not be a solution. Government has directed the Animal Husbandry Department to take technical aspects of the matter with the Local Authority who will take care of the logistic part of the programme. Further it is submitted that Section 11(3)(c) deals with an exception for extermination or destruction of any animal under any authority of law for the time being in force. It is submitted that provisions under the 1994 Act and the 1998 Rules are the law in force which provides for taking measures by then Local Authorities in the above regard. It is submitted that the First Schedule to the 1994 Act enumerate one of the functions of the Municipality as issue of licence to the domestic dogs and destroy the stray dogs. Similar power is also invested with the Panchayat under entry No.27 of the III schedule of the Kerala

Panchayat Raj Act, 1994.

27. Learned counsel for the parties placed reliance on judgments of the Apex Court, this Court and other High Courts which shall be referred to while considering the submissions in detail.

ISSUES

28. The issues which need to be answered in these Public Interest Litigations are:

I. Whether Municipalities, Corporation and Panchayats exercising their power under the Kerala Municipalities Act, 1994 and Kerala Panchayat Raj Act, 1994 and THE 1998 Rules framed thereunder can take a decision to kill a stray dog in their respective areas ?

II. Whether in view of the provisions of the Prevention of Cruelty to Animals Act 1960 and the Rules framed thereunder including the Animal Birth Control (Dogs) Rules 2001, the power exercised by the local authorities under the Municipal laws/Panchayat laws shall stand overridden and for killing a stray dog the provisions of

1960 Act and the Rules 2001 have to be followed ?

III. Whether the State Government, Corporations, Municipalities and Panchayats have taken appropriate measures for birth control of dogs as per the Animal Birth Control (Dogs) Rules 2001 ?

IV. Whether all the stray dogs roaming in the public streets/public places are required to be captured/killed to avoid any dog bites in the area ?

V. What are the measures required to be taken to combat the stray dog menace as highlighted by the petitioners ?

BACKGROUND FACTS

29. In the pre-historic period animal was only companion of human being. Early historic period reveals that early possession and wealth of human being were the animals. Gradually the man started utilising the animal folk for its food, safety etc. The dogs were used by shepherds to protect their sheeps from attack of wild animals. Dogs were also included in the hunting team by men. Till date dog is

useful for human being for protection of its household from thieves and other intruders. In initial stages when orderly Society organised itself there were no laws for animals. In our country which consists of several diversities, customs, religions, the animals had always remained in forefront of affairs of life. Hindus rever and worship several animals which includes ox and snakes. The cow is regarded sacred by Hindus.

30. The Apex Court in **Animal Welfare Board of India v. A.Nagaraja and Others** ([2014] 7 SCC 547) has quoted from Isha Upanishads (1500-600 BC) where Upanishad professed that no creature is superior to any other and no species should encroach over the rights and privileges of other species. Following was stated in paragraph 55:

> "55. As early as 1500-600 BC in Isha - Upanishads, it is professed as follows:
>
> "The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."

31. The Philosophers and Writers started expressing

opinion regarding the lives of the animals in 18th and 19th Century. 'Jeremy Bentham' wrote in Chapter XVII of his book "Introduction to the Principles of Morals and Legislation" the following:

> "The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may one day come to be recognised that the number of the legs, the viscosity of the skin or the termination of the so sacrum are reasons equally insufficient for abounding a sensitive being to the same fate. What else is it that should trace the insuperable line ? It is the faculty of reason, or perhaps the faculty of discourse ? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day or a week or even a month, old. But suppose they were otherwise, what would it avail ? The question is not, can they reason ? Nor, can they talk ? But, can they suffer?"
>
> "If a being suffers there can be no moral justification for refusing to take that suffering into consideration. No matter what the nature of the being the principle of equality requires that its suffering be counted equally with the like suffering -in so far as rough comparisons can be made of any other being. If a being is not capable of suffering, or of experiencing enjoyment or happiness, there is nothing to be taken into account. So the limit of sentience (using the term as a convenient if not strictly accurate shorthand for the capacity to suffer and/or experience enjoyment) is the only defensible boundary of concern for the interest of others. To mark

this boundary by some other characteristic like intelligence or rationality would be to mark it in an arbitrary manner".

32. In Britain thought for legal rights for animals started gathering mass. In 1821 Richard Martin M.P. proposed a law to prevent the il-treatment of horses. In the debate which ensured, the above proposed law was laughed at and discarded by the members. An account of details of the debates as recorded states following:

"...when Alterman C.Smith suggested that protection should be given to asses, there were such howls of laughter that the Times reporter could hear little of what was said. When the Chairman repeated this proposal, the laughter was intensified. Another member said Martin would be legislating for dogs next, which caused a further roar of mirth and a cry "And Cats!" sent the House into convulsions."

33. What transpired, while consideration of the bill of Richard Martin, indicates the early responses of Legislature in recognising the rights of the animal. However, soon thereafter the British Parliament passed law making punishable mistreating certain domestic animals. A plethora of law was passed thereafter by the British Parliament protecting different rights of animals including Animal Welfare Act of 2006 (U.K.). It is not necessary for this case to

dwell upon such law except noticing about the gradual recognition of rights of animals.

34. In India Prevention of Cruelty to Animals Act, 1890 was enacted under the British Regime which prohibited cruelty to the animals and brought in force certain regulations and provisions in dealing with an animal. After India became independent, a private bill was introduced in the House by Smt. Rukmini Devi Arundale namely the "Prevention of Cruelty to Animals Bill, 1953". Although the private Bill could not be passed, the Bill found support by the then Prime Minister Late Jawahar Lal Nehru, the Government assured that a Committee would be appointed to look into the issues raised. The Committee was appointed thereafter which submitted its report on the basis of which Prevention of Cruelty to Animals Bill was introduced in Parliament on 12.12.1960. The Minister for Food and Agriculture while introducing the Bill stated the following:

> "At the outset, I may say I do, not claim that this is an ideal Bill. After 70 years, we are making an attempt for the first time to put on the statute at least something that will ultimately lead us on to the ideal Bill, after some years of experience.

> There are two aspects of looking at this question, an, humanitarian aspect and the penal aspect. I personally feel that you cannot make people by law more humanitarian. We may pass an Act, but it may remain a dead letter. People should feel kindly towards animals; they should protect the animals and give humane treatment in every possible way. It is something that really takes a very long time for people to develop those habits.
>
> So, just as human being have got their own dignity and status, animals also have got a dignity and status of their own. So, it takes a long time, perhaps centuries, for these qualities to be engrained in our character and blood. So the humanitarian aspect is not something which can be achieved overnight by passing law by our own personal conduct-I do not mean merely the conduct of Government-the humanitarian aspect should be emphasised and people should lay stress on that."

35. The Bill was passed and 1960 Act was enacted containing various provisions pertaining to Cruelty to Animals which shall be hereinafter be noted in detail.

ISSUE NOS.II AND III

36. Both the issues being interrelated are taken together. Before we proceed to consider the respective submissions of learned counsel for the parties, it is necessary to look into the statutory provisions governing the field. Even before adoption and enactment of the Constitution of India there were Municipal Laws regulating the functioning of the

Local Self Government in different areas of the State. With regard to Panchayats also laws were enforced in the State of Kerala which included laws enforced in the Madras Presidency as well as State of Cochin and Travancore. In the Municipal laws and laws regulating the Panchayats, provisions were made for the governance of the local areas, abatement of nuisance, regulating the animals and other allied matters. The animals in this country have always been looked with reverence. Cruelty to animals was prohibited and the enactment namely "Prevention of Cruelty to Animals Act, 1890 was prevailing the field.

37. In Schedule VII of the Constitution, List II-State List Entry 5 enumerates as follows :

> "5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

In List III, i.e., Concurrent List, Entry 17 reads "prevention of cruelty to animals".

38. The Parliament enacted the 1960 Act to prevent the infliction of unnecessary pain or suffering on animals and

for that purpose to amend the law relating to the prevention of cruelty to animals. Section 4 contemplates for establishment of Animal Welfare Board of India for promotion of animal welfare generally and for the purposes of protecting animals from being subjected to unnecessary pain or suffering. Section 5 provides for constitution of the Board. Section 9 enumerates functions of the Board. For the purposes of the present case function as enumerated in Section 9(f) is relevant, which is to the following effect:

> "9(f) to take all such steps as the Board may think fit to ensure that unwanted animals are destroyed by local authorities, whenever, it is necessary to do so, either instantaneously or after being rendered insensible to pain of suffering."

Section 11 enumerates the instances of treating the animals with cruelty. Section 11(1)(l) contemplates that if any person mutilates or kills any animal including stray dogs he shall be punished. Section 11(1)(l) is quoted as below:

> "(l) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in the heart or in any other unnecessarily cruel manner."

Section 11(3) contains an overriding effect which is to the following effect:

5

"(3) Nothing in this section shall apply to-

(a) the dehorning of cattle, or the castration or branding or nose-roping of any animal, in the prescribed manner; or

(b) the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed; or

(c) the extermination or destruction of any animal under the authority of any law for the time being in force; or

(d) any matter dealt with in Chapter IV; or

(e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering."

Section 38 provides for rule making power of Central Government. Section 38(1) empowers the Government to make rules for the purpose of this Act. Section 38(2) empowers the Central Government to make rules providing for all or any of the matters enumerated therein. By amendment Act 26 of 1982 with effect from 30.07.1982 sub-clause (ea) was added in Section 38(2)which was to the following effect:

"(ea) the other methods of destruction of stray dogs referred to in clause (b) of sub-section (3) of section 11;"

39. In exercise of the powers under Section 38(1) and

(2) of 1960 Act, Rules have been framed as "Animal Birth Control (Dogs) Rules, 2001. Rule 3 provides for classification of dogs and their sterilisation. All dogs have been classified into two categories, i.e., pet dogs and street dogs. Rule 4 contemplates formation of the Monitoring Committee consisting of Commissioner/Chief of the Local Authorities who shall act as Chairman of the Committee and 7 more representatives in the Committee. Rule 5 enumerates functions of the Committee. Rule 5 is quoted as below:

> "5. **Functions of the Committee.**- The Committee constituted under rule 4 shall be responsible for planning and management of dog control programme in accordance with these rules. The Committee may,-
>
> (a) issue instructions for catching, transportation, sheltering, sterilisation, vaccination, treatment and release of sterilised vaccinated or treated dogs;
>
> (b) authorise veterinary doctor to decide on case to case basis the need to put to sleep critically ill or fatally injured or rabid dogs in a painless method by suing sodium pentathol. Any other method is strictly prohibited;
>
> (c) create public awareness, solicit co-operation and funding;
>
> (d) provide guidelines to pet dog owners and commercial breeders from time to time;
>
> (e) get a survey done of the number of street dogs by an independent agency;
>
> (f) take such steps for monitoring the dog bite cases to

ascertain the reasons of dog bite, the area where it took place and whether it was from a stray or a pet dog;

(g) keep a watch on the national and international developments in the field of research pertaining to street dogs' control and management, development of vaccines and cost effective methods of sterilisation, vaccination, etc.

(h) the activities of the Committee shall be brought to the public notice by announcements and advertisements."

Rule 6 enumerates obligation of the Local Authority. Rule 7 provides for capturing, sterilisation, immunisation and release of the dogs. Rule 9 provides for euthanasia of Street Dogs. Rule 10 deals with furious or dumb rabid dogs.

40. After noticing the provisions of 1960 Act and the Rules 2001, it is necessary to note the provisions of the 1994 Act and Panchayat Raj Act regulating the field. Chapter XIX of the 1994 Act deals with nuisances. Section 435 to 438 are under the heading "control over certain animals". Section 438 which is relevant in the present case empower the Secretary to issue orders for seizure and destruction of unlicensed pigs or dogs straying in the municipal area. Section 438 is quoted as below:

"**438. Power to dispose of stray pigs and dogs.**- The Secretary may order for the seizure and destruction of unlicensed

pigs or dogs straying in the municipal area shall make such arrangements therefor as he may deem fit."

41. The first Schedule of the 1994 Act enumerates the functions of the Municipality under the heading "Mandatory Functions", item No.27 provides as follows: "Issue licence to domestic dogs and destroy stray dogs". Under the Kerala Panchayat Raj Act, 1994, Rules have been framed namely " The Kerala Panchayat Raj (Licensing of Pigs and Dogs) Rules, 1998. Rule 6 empowers the Village Panchayat to seize and destroy stray dogs and pigs. Rule 6 reads as follows:

"6. **Power to destroy stray dogs and pigs.**- (1) it shall be the inevitable function of every Village Panchayat to seize and destroy stray dogs and pigs.

(2) The Village Panchayat may employ specially trained persons to seize and destroy stray dogs and pigs and he shall be paid remuneration as may be fixed by the Government from time to time.

(3) Any person obstructing the person authorised by the Village Panchayat to destroy stray dogs and pigs shall, on conviction, be punished with fine which may extend upto five hundred rupees."

42. The petitioners as well as Municipalities and Panchayats have pleaded, as noted above, that earlier

Municipalities and Panchayats were taking decision to kill stray dogs which is not being done as on date looking to the objection raised by the animal lovers and the provisions of 1960 Act and the Rules 2001. What are the consequences of Central Legislation i.e., 1960 Act and the Rules 2001 framed thereunder on the extend of power of the Local Authorities is the first question to be answered. Whether there is any conflict between the provisions of 1960 Act and the 2001 Rules on one hand and those of the Municipal laws and Panchayat laws on the other hand. The Municipal Laws as well as the Panchayat Laws have been enacted by the State Legislature in exercise of its legislative power under Entry 5 of List II of Schedule VII of the Constitution. The 1960 Act has been enacted by the Parliament under Entry 17 of List III of Schedule VII of the Constitution. Section 438 of the 1994 empowers the Secretary to order for the seizure and destruction of stray dogs and make arrangements therefor as he deems fit. The power given to Secretary under Section 438 is not hedged by any condition and under the said power the Secretary could order for seizure and destruction of any

number or any kind of dogs straying in the municipal area. Section 11(1)(l) of the 1960 Act as noted above treats mutilating any animal or killing any animal (including stray dogs) prohibited and punishable under the Act. Section 11(3) however contains an overriding provision, of which sub clause (b) provides that the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed and sub clause (c) provides that the extermination or destruction of any animal under the authority of any law for the time being in force, shall not attract anything in Section 11.

43. The important question however to be considered is as to whether in exercise of a power under Section 438 Secretary can direct extermination or destruction of any number of dogs or any category of dogs or whether such exercise is to be regulated by provisions of 1960 Act and 2001 Rules.

44. It is the settled principle of interpretation that when a conflict is found in two legislation referable to different lists of Schedule VII of the Constitution, the attempt should first be made to remove the conflict by harmonious

construction. A Constitution Bench of the Apex Court in **Special Reference No.1 of 2001, INPF** [(2004) 4 SCC 489] laid down that in case of apparent conflict it is the duty of the Court to iron out the crease and avoid conflict by reconciling the conflict. Following was laid down in paragraphs 13 and 14 :

> "13. The Constitution of India delineates the contours of the powers enjoyed by the State Legislature and the Parliament in respect of various subjects enumerated in the Seventh Schedule. The rules relating to distribution of powers are to be gathered from the various provisions contained in Part XI and the legislative heads mentioned in the three lists of the Schedule. The legislative power of both Union and State Legislatures are given in precise terms. Entries in the lists are themselves not powers of legislation, but fields of legislation. However, an Entry in one list cannot be so interpreted as to make it cancel or obliterate another entry or make another entry meaningless. In case of apparent conflict, it is the duty of the court to iron out the crease and avoid conflict by reconciling the conflict. If any entry overlaps or is in apparent conflict with another entry, every attempt shall be made to harmonise the same.
>
> 14. When the question arose about reconciling Entry 45 of List I, duties of excise, and Entry 18 of List II, taxes on the sale of goods, of Government of India Act, 1935, Sir Maurice Gwyer, C.J., In re: The Central Provinces and Berar Act No. XIV of 1938 1939 ELR 18 at page 42-44 observed:
>
> "A grant of the power in general terms, standing by itself, would no doubt be construed in the wider sense, but it may be qualified by

other express provisions in the same enactment, by the implication of the context and even by considerations arising out of what appears to be the general scheme of the Act."

It was further observed :

".....an endeavour must be made to solve it, as the Judicial Committee have said by having recourse to the context and schemes of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting, and, where necessary modifying the language of the one by that of the other. If indeed such a reconciliation should prove impossible, then, and only then, will the non obstante clause operate and the federal power prevail.""

45. Further in **Jamshed N. Guzdar v. State of Maharashta and others** [(2005) 2 SCC 591] it was held that when there is irreconcilable conflicts between two legislations the Central Legislation shall prevail. However, every attempt should be made to reconcile the conflict. To the similar effect is another judgment of the Apex Court in **Bar Council of India v. Board of Management, Dayanand College of Law and others** [(2007) 2 SCC 202] wherein it was held that before reaching the conclusion that there is repugnancy arising from conflict, effort should be made to remove the conflict by harmonious construction.

46. What are the inconsistent provisions in the

Municipal and Panchayat Laws to the provisions of 19 and the 2001 Rules framed thereunder? We have not above that Section 438 of the 1994 Act empowers th Secretary to order for seizure and destruction of unlicensed pigs or dogs straying in the municipal area. The power given to the Secretary under Section 438 is not hedged by any condition. He in exercise of that power can direct for seizure and destruction of all the dogs or any number of dogs or any category of dogs straying in the Municipal area. Section 9(f) of the 1960 Act enumerates one of the functions of the Animal Welfare Board, i.e., "to take all such steps as the Board may think fit to ensure that unwanted animals are destroyed by the Local Authorities, whenever, it is necessary to do so, either instantaneously or after being rendered insensible to pain of suffering". There is nothing on record to indicate that steps have been taken by the Animal Welfare Board in exercise of the above said power. Hence there are no guidelines for destruction of animal by the local authorities to follow the guidelines while exercising their power under the Municipal Laws and Panchayat Laws.

47. As noted above Section 38(2)(ea) empowers the Central Government to make rules on methods of destruction of stray dogs referred to in Clause (b) of Section 11(3). For the first time the rules have been framed, namely 2001 Rules, where some indications regarding destruction of stray dogs have been included. Section 5(b) empowers the Committee to authorise a veterinary doctor to decide on case to case basis the need to put to sleep critically ill or fatally injured or rabid dogs in a painless method. The petitioners have submitted that most of the local bodies have not yet formed a Committee as contemplated by Rule 4 of the 2001 Rules. None of the local authority which are represented before us in these writ petitions have come up with formation of the Committee or any steps taken by such Committees under Section 5(b). Rule 9 of 2001 Rules deals with Euthanasia of Street dogs. Rule 10 deals with furious or dumb rabid dogs. Rules 9 and 10 of the 2001 Rules are as follows:

> **"9. Euthanasia of Street Dogs :** Incurably ill and mortally wounded dogs as diagnosed by a qualified veterinarian appointed by the committee shall be euthanised during specified hours in a

humane manner by administering sodium pentathol for adult dogs and Thiopental Introperitoneal for puppies by a qualified veterinarian or euthanised in any other humane manner approved by Animal Welfare Board of India. No dog shall be euthanised in the presence of another dog. The person responsible for euthanising shall make sure that the animal is dead, before disposal.

10. Furious or dumb rabid dogs : (1) On the receipt of complaints from the public to the Dog Control Cell of the Local Authority or on its own, the dog squad of the Local Authority would catch such dogs, suspected to be rabid.

(2) The caught dog would then be taken to the pound where it would be isolated in an isolation ward.

(3) The suspected rabid dog would then be subjected to inspection by a panel of two persons i.e.

(i) a veterinary surgeon appointed by the Local Authority; and

(ii) a representative from an Animal Welfare Organisation

(4) If the dog is found to have a high probability of having rabies it would be isolated till it dies a natural death. Death normally occurs within 10 days of contracting rabies. Premature killings of suspected rabid dogs therefore prevents the true incidence of rabies from being known and appropriate action being taken.

(5) If the dog is found not to have rabies but some other disease it would be handed over to the AWOs who will take the necessary action to cure and rehabilitate the dog."

48. A perusal of 2001 Rules indicates that the Rules permit Euthanasia of incurably ill and mortally wounded dogs under Rule 9 and empowers the Committee under Section 5

(b) to authorise a veterinary Doctor to put to sleep critically ill or fatally injured or rabid dogs in a painless method. The 2001 Rules thus indicates that Euthanasia/put to sleep can be undertaken only with regard to certain categories of dogs whereas the Municipal and Panchayat Laws give general power to the Secretary of the Municipality and the Panchayat to destroy stray dogs. There is apparent conflict between the two set of Laws.

49. Learned counsel for the petitioners have supported the provisions of Section 438 of the 1994 Act and the 1998 Rules empowering the Secretary and the Panchayat to capture and destroy the stray dogs under Section 11(3) of the 1960 Act. It is submitted that Section 11 (3)(c) carves out an exception to the effect that "extermination or destruction of any animal under the authority of any law for the time being in force" which clearly is referable to power under Section 438 of the 1994 Act and 1998 Rules. It is submitted that since extermination or destruction of any animal is excepted from the definition of cruelty, which extermination or destruction being under

authority of any law, the local authority is still with power to exterminate or destruct any animal including stray dogs.

50. Whether Section 11(3)(c) saves and continues power of Secretary of Municipality and Panchayat to destroy an animal is the issue to be looked into.

51. Section 11(3)(c) begins with the words "nothing in this section" which means that it has the overriding effect on Section 11. Section 11 enumerates the instances where an animal shall be treated to be dealt with cruelly. Under Section 11(1)(l) if any person mutilates or kills any animal including stray dogs by using the method of strychine injections in the heart or in any other unnecessarily cruel manner, it shall be cruelty. Section 11(3)(c) only saved the act or extermination or destruction of any animal under the authority of law for the time being in force. The exception carved out in Section 11(3)(c) was in respect of extermination or destruction of animal under the authority of any law for the time being in force. The phrase "time being in force" have been dealt with by the Apex Court in several decisions. The phrase "time being in force" may relate to a

particular point of time or which may extend to future course or it may confine to unspecified period of time. In **Jivendra Nath Kaul v. Collector/District Magistrate** ([1992] 3 SCC 576) the phrase "for the time being in force" came up for consideration in the context of Section 28(11) of the U.P.Kshettra Samitis and Zilla Parishads Adhiniya, 1961. Section 28(11) reads as follows:

> "If the motion is carried with the support of more than half of the total number of members of the Zilla Parishad for the time being...."

The Apex Court interpreting the phrase "for the time being in force" held that "for the time being in force" means at the moment or existing position. The words indicated that the actual membership in existence on the date of motion of the no confidence.

52. In **U.T. of Chandigarh v. Rajesh Kumar Basandhi** ([2003] 11 SCC 549), the Apex Court had again occasion to consider the phrase "for the time being in force". Noticing the various dictionary meaning of the phrase, the following was laid down in paragraphs 7, 8 and 9:

> "7. It may be pertinent at this stage to see the meaning of

the phrase "for the time being" as given in the Stroud's Judicial Dictionary as quoted in the judgment of the Tribunal. It reads as follows:

"The phrase 'for the time being' may according to its context, mean the time present, or denote a single period of time; but its general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the future, and which may (and probably will) vary from time to time"

The respondent also refers to the Law Dictionary by Dr. A. R. Gupta 1979 Ed. Published by Eastern Law House and the phrase 'for the time being', has been indicated therein to mean as follows:

"Time Being. - The phrase 'for the time being' may according to its context, may mean the time present or denote a single period of time; but its general sense is that of time indefinite and refers to an indefinite state of facts which will arise in the future and which may vary from time to time. Re Gunter's Settlement Trusts, 1949 Ch. 502"

8. In the Law Lexicon by T. P. Mukherjee 1989 Ed. the phrase "for the time being in force" has been indicated to mean as under:

"For the time being in force. - The expression "any other enactment for the time being in force" means any legislation enacted whether before or after the imposition of the tax by the corporation. The general sense of the phrase "for the time being" is that of time indefinite and refers to indefinite state of facts which will arise in future and which may vary from time to time. (See Constitution of India Art.265) D. Kasturchandji v. State (AIR 1967 MP 268).

The expression may refer either to a particular point of time or to several periods of time and the interpretation that is to be adopted in any particular case must depend upon the context in which the expression occurs [See Defence of India Act, 1939, S.19 (1)(g) E. I. Film Studio v. P. K. Mukherjee, (AIR 1954 Cal. 41)"

and in Venkataramaiya's Law Lexicon "Legal Maxims", as revised by Justice M. C. Desai (2nd Ed.) 1966 (Reprint), the meaning of the phrase "for the time being" is given as follows:

"For the time being. - The words "for the time being" are capable of different interpretations according to the context; for example, they might be used with a context showing clearly that

they were intended to point one single period of time; and a case was put of a person intending to give a promissory note to a company, and giving it to the secretary "for the time being", meaning clearly the person who appeared to be the secretary at the particular time when the note become payable. It might be according to the context, that the same words would apply to a succession of periods. Take, the common case of petition for payment of dividends to the rector of certain parish "for the time being" which, of course, would point not to single period but a succession of periods - Ellison v. Thomas (1862 (31) LJ Ch 867, LJ Ch at p.869.

The general sense of the phrase "for the time being" is that of time indefinite, and refers to indefinite state of facts which will arise in future and which may vary from time to time. - See Ellison v. Thomas, (1862 (31) LJ Ch 867); D. Kasturchandji v. State, AIR 1967 M. P. 268 at P. 274."

9. We also find that in Law Lexicon by P. Ramanatha Aiyar, 2nd Ed., Reprint 2000, the expression "time being" has been indicated to mean;

"Time being. - The phrase "for the time being" may according to its context mean the time present or denote a single period of time, but its general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the future, and which may (and probably will) vary from time to time. (Ellison v. Thomas (31 LJ Ch 867); Coles v. Pack (LR 5 CP 65)."

The Apex Court concluded that for the meaning of the expression "for the time being in force", the context, purpose, intention and use of the phrase has to be seen and examined. The following was laid down in paragraph 10:

"10. A perusal of the meaning of the expression "for the time being" by different authors, based on decided cases makes it clear that it cannot be said that it must in every case indicate a single period of time. It may be for indefinite period of time

depending upon the context in which the phrase is used. It is also evident that generally it denotes indefinite period of time, meaning thereby, the position as existing at the time of application of the rules, may be amended or unamended. Therefore, to come to a conclusion as to whether it is for one time or for indefinite period of time, the context, purpose and the intention of the use of the phrase will have to be seen and examined."

53. In the present case the exception under Section 11(3)(c) was en-grafted to take out extermination or destruction of animal under authority of any law for the time being in force. Even if Section 11(3)(c) of the 1960 Act can be treated to refer to the provisions of the 1994 Act and Panchayat Rules 1998 the 'law' should be for the time being "in force". The above clause shall refer to a valid law in "force". In event the law enacted by a State Legislature under Entry 5 of List II cannot see eye to eye a law framed by the Parliament reference to Entry 17 of List III, Parliamentary Law shall prevail. Further, Section 11 enumerated instances of "cruelty" and was not providing for power of any Local Authority to kill an animal. Thus the 'law' referred to in Section 11(3)(c) "for the time being in force" has to be valid and enforceable law.

54. Rules 2001 itself provides answer as to what will happen in case of there being any conflict between any law in force and Rules 2001 which is provided in Rule 13. Rule 13 is as follows:

> "13. **Application of rules where local bye-laws, etc., exist**.- If there is in force in any area to which these rules extend, any Act, rule, regulation or bye-law made under any law for the time being in force by the State or the Local Authority in respect of any of the matters for which provision is made in these rules, such rule, regulation or bye-law shall to the extent to which-
>
> (a) it contains provisions less irksome to the animal than those contained in these rules, shall prevail;
>
> (b) it contains provisions more irksome to the animal than those contained in these rules, be of no effect."

55. One more relevant provision of the Constitution of India needs to be noted before interpreting the relevant provisions of 1960 Act and the 2001 Rules. By 42nd amendment Act 1976 fundamental duties have been inserted in Part IV A of the Constitution of India. The fundamental duties are contained in Article 51A in which Article 51A(g) is to the following effect:

> "**51A. Fundamental duties**.- It shall be the duty of every citizen of India-
>
> xx xx xx xx

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;"

56. One of the duties which has been en-grafted in Sub-Section (g) is 'to have compassion for living creatures'. A seven Judges Bench of the Apex Court reported in **State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and others** [(2005) 8 SCC 534] had an occasion to consider Article 51A(g) in the context of Bombay Animal Preservation Act, 1954. The Apex Court held that fundamental duties though not enforcible by the writ of the Court yet provide valuable guidance and aid to interpretation and resolution of Constitutional and legal issues. Following was laid down by the Apex Court in paragraphs 51, 52 and 56 :

"51. By enacting clause (g) in Art.51A and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of Art.48 and 48A are honoured as a fundamental duty of every citizen. Parliament availed the opportunity provided by the Constitution (Forty second Amendment) Act, 1976 to improve the manifestation of objects contained in Art.48 and 48A. While Art.48A speaks of "environment", Art.51A(g) employs the expression "the natural environment" and includes therein "forests, lakes, rivers and wildlife". While Art.48 provides for "cows and calves and other milch

and draught cattle", Art.51A(g) enjoins it as a fundamental duty of every citizen "to have compassion for living creatures", which in its wider fold embraces the category of cattle spoken of specifically in Art.48.

52. In ARMS Students' Union v. AIMS (2002 (1) SCC 428) a three Judge Bench of this Court made it clear that fundamental duties, though not enforceable by the writ of the court, yet provide valuable guidance and aid to interpretation and resolution of constitutional and legal issues. In case of doubt, people's wish as expressed through Art.51A can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. The fundamental duties must be given their full meaning as expected by the enactment of the Forty second Amendment. The Court further held that the State is, in a sense, "all the citizens placed together" and, therefore, though Art.51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is, collectively speaking, the duty of the State.

56. In T.N. Godavarman Thirumalpad v. Union of India (2002 (10) SCC 606) a three Judge Bench of this Court read Art.48A and 51A together as laying down the foundation for a jurisprudence of environmental protection and held that:

"Today, the State and the citizen are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wildlife and to have compassion for living creatures.""

57. Learned counsel for the parties have placed reliance on the Apex Court judgment reported in **Animal Welfare Board of India v. A.Nagarja** ([2014] 7 SCC 547). The Apex Court in the said case has elaborately considered

the purpose and object of the 1960 Act in the light of various international declarations and Article 51A(g). One of the questions which arose for consideration was validity of the Tamil Nadu Regulation of Jallikattu Act, 2009 which conferred rights on the Organisations and bull tamers to conduct jallikattu, a bull race in the State of Tamil Nadu. After considering the provisions of the 1960 Act, the Apex Court laid down that the 1960 Act being a Welfare Legislation, provisions of law should be liberally construed in favour of the weak and infirm and the Court should be vigilant to see that such legislation should not be defeated by subtle devices. The following was laid down in paragraphs 33 and 34:

> "33. The PCA Act is a welfare legislation which has to be construed bearing in mind the purpose and object of the Act and the Directive Principles of State Policy. It is trite law that, in the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm. Court also should be vigilant to see that benefits conferred by such remedial and welfare legislation are not defeated by subtle devices. Court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smoke - screen and discover the true state of affairs. Court can go behind the form and see the substance of the devise for which it has to pierce the veil

and examine whether the guidelines or the regulations are framed so as to achieve some other purpose than the welfare of the animals. Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the welfare legislation and the constitutional principles, Court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. Court has also a duty under the doctrine of parents patriae to take care of the rights of animals, since they are unable to take care of themselves as against human beings.

34. The PCA Act, as already indicated, was enacted to prevent the infliction of unnecessary pain, suffering or cruelty on animals. S.3 of the Act deals with duties of persons having charge of animals, which is mandatory in nature and hence confer corresponding rights on animals. Rights so conferred on animals are thus the antithesis of a duty and if those rights are violated, law will enforce those rights with legal sanction. S.3 is extracted hereunder for an easy reference:

> 3. **Duties of persons having charge of animals.**-- It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well - being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering."

58. The Apex Court further held that every species has an inherent right to live and shall be protected by law, subject to the exception as provided out of necessity. The Apex Court also held that it is the duty of the citizens to have compassion for living creatures. The following was laid down by the Apex Court in paragraphs 61, 66, 67, 70 and 72:

"61. When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.

66. Rights guaranteed to the animals under S.3, S.11, etc. are only statutory rights. The same have to be elevated to the status of fundamental rights, as has been done by few countries around the world, so as to secure their honour and dignity. Rights and freedoms guaranteed to the animals under S.3 and S.11 have to be read along with Art.51A(g)(h) of the Constitution, which is the magna carta of animal rights.

67. Art.51A(g) states that it shall be the duty of citizens to have compassion for living creatures. In State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others, 2005 (8) SCC 534, this Court held that by enacting Art.51A(g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of Art.48 and Art.48 - A are honoured as a fundamental duty of every citizen. Art.51A(g), therefore, enjoins that it was a fundamental duty of every citizen "to have compassion for living creatures", which means concern for suffering, sympathy, kindliness etc., which has to be read along with S.3, S.11(1)(a) & (m), 22 etc. of PCA Act.

70. We have got over those inequalities like Castism, Racism, Sexism etc. through Constitutional and Statutory amendments, like Art.14 to 17, 19, 29 and so on. So far as animals are concerned, S.3 of the Act confers right on animals so also rights under S.11 not to be subjected to cruelty. When such statutory rights have been conferred on animals, we can always judge as to

whether they are being exploited by human beings. As already indicated, an enlightened society, of late, condemned slavery, racism, castism, sexism etc. through constitutional amendments, laws etc. but, though late, through PCA Act, Parliament has recognized the rights of animals, of course, without not sacrificing the interest of human beings under the Doctrine of necessity, like experiments on animals for the purpose of advancement by new discovery of physiological knowledge or of knowledge which will be useful for saving or for prolonging life or alleviating suffering or for combating any disease, whether of human beings, animals or plants and also destruction of animals for food under S.11(3) of the PCA Act. Legislature through S.28 also saved the manner of killing of animals in the manner prescribed by religions, those are, in our view, reasonable restrictions on the rights enjoyed by the animals under S.3 read with S.11(1). Evidently, those restrictions are the direct inevitable consequences or the effects which could be said to have been in the contemplation of the legislature for human benefit, since they are unavoidable. Further, animals like Cows, Bulls etc. are all freely used for farming, transporting loads etc., that too, for the benefit of human beings, thereby subjecting them to some pain and suffering which is also unavoidable, but permitted by the Rules framed under the PCA Act.

72. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Art.21 of the Constitution, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Art.21 of the Constitution. So far as animals are concerned, in our view, "life" means something more than mere survival or existence or

instrumental value for human - beings, but to lead a life with some intrinsic worth, honour and dignity. Animals' well - being and welfare have been statutorily recognised under S.3 and S.11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under S.3 and S.11 of the PCA Act read with Art.51A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under S.3 and S.11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. Right, not to be beaten, kicked, overridder, over - loading is also a right recognized by S.11 read with S.3 of the PCA Act. Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in S.11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act."

59. Learned counsel for the petitioners have contended that the Apex Court in the above case has also recognised the doctrine of necessity as en-grafted in Section 11(3) of the 1960 Act. It is submitted that the doctrine of necessity recognises killing of animals and has been

accepted by the Apex Court in paragraph 41 of the judgment. It is useful to extract the relevant portion:

> "41. S.11(3) carves out exceptions in five categories of cases mentioned in S.11(3)(a) to (e), which are as follows:
> "11(3) Nothing in this section shall apply to--
> (a) the dehorning of cattle; or the castration or branding or nose - roping of any animal, in the prescribed manner; or
> (b) the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed; or
> (c) the extermination or destruction of any animal under the authority of any law for the time being in force; or
> (d) any matter dealt with in Chapter IV; or
> (e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering.
> "Exceptions are incorporated based on the "doctrine of necessity". Clause (b) to S.11(3) deals with the destruction of stray dogs, out of necessity, otherwise, it would be harmful to human beings....."

The Apex Court in the above case also noticed that Section 11(3) deals with destruction of stray dogs out of necessity. Section 11(3)(b) and (c) is extracted as under:

> "11(3)(b) the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed; or
> (c) the extermination or destruction of any animal under the authority of any law for the time being in force."

Thus Section 11(3)(b) and (c) extracted above indicate that

destruction of stray dogs in lethal chambers or by such other methods as may be prescribed. The word "prescribed" has been defined in Section 2(h) which reads: prescribed means "prescribed by rules made under this Act". Rules have been framed, viz., the 2001 Rules where destruction of certain categories of dogs have been provided for. Thus while destructing stray dogs Rules prescribed under the Act have to be followed. Section 11(3)(c) at best takes out extermination or destruction of animals under authority of any law for the time being in force out of the definition of cruelty as given in Section 11(3). That cannot be read to mean that "under authority of any law for the time being in force" stray dogs can be exterminated or destructed contrary to the provisions of the 1960 Act and 2001 Rules. Section 11(3)(c) cannot be read to mean that authority given in any law for the time being in force can be exercised contrary to the provisions of the 1960 Act and 2001 Rules. We are thus not persuaded to accept the submissions of the learned counsel for the petitioners that discretionary power vested in the Secretary of the Municipality under Section 438

of the 1994 Act and the 1998 Rules can still be exercised untrammelled by any restriction contained in the 1960 Act and 2001 Rules. Learned counsel for the petitioners have placed reliance on the Division Bench Judgment of this Court in **Animal Welfare Board of India and another v. Ombudsman for Local Self Government Institutions and others** (2006 KHC 561). The Division Bench had laid down that there has to be more concerned with the life of human being than that of dogs. The Division Bench in the above case had occasion to consider the 1960 Act and 2001 Rules as well as the exception en-grafted in Section 11(3)(b) of the 1960 Act. The Division Bench had laid down the following in paragraphs 5 and 7:

> "5. It is under S.38(1) of the Animals Act, the rule making power of the Government that Animal Birth Control (Dogs) Rules, 2001 came into being. Whereas it may be difficult to uphold the observation made by the Ombudsman in the impugned order Ext. P2 that the subject matter of the 'The Dog Rules' namely The Animal Birth Control (Dogs) Rules is not one of the matters enumerated in sub-s.(2), nor for that matter is this, one of the purposes of the Act, it is however clear that Rules made pursuant to the provisions contained in S.38(1) of the Act 1960, could not override the provisions contained in S.9(f) and 11(3)(b) which in turn deals with destruction of unwanted animals, including stray

dogs. The Parliament in its wisdom thought it expedient that effective steps be taken for destruction of stray dogs and as mentioned above, the Rules made under S.38(2) could not take precedence over the provisions of Animals Act, 1960. 'The Dog Rules' framed under S.38(2) of the Animals Act could be permitted to operate without violating the provisions of S.11(3)(b) of the Animals Act. In other words, the said Rules would apply to stray dogs and not to the dogs afflicted with fatal diseases or rabies and who had become dangerous. The Rules, it is too well settled, cannot travel beyond the Act and must thus operate within it subject to the provisions of the main Act.

"7. Going by simple logic or provisions of Act, 1960 under discussion, it is apparent that there has to be more concern with the life of human being than that of stray dogs. The right to live as enshrined under Art.21 is a fundamental right. It would take precedence over Dog Rules. It is rather strange that the petitioner, a registered Society for Prevention of Cruelty to Animals wants dogs inflicted with fatal disease or suffering from rabies to be preserved at the cost of invaluable human lives. Whereas, one may appreciate the anxiety of the petitioners to save animals, its total abdication to the interest of human lives and preservation thereof thus needs to be condemned. Finding no merit in this writ petition, we dismiss the same leaving, however, the parties to bear their own costs."

We have been informed that against the Division Bench judgment, a Special Leave Petition has already been filed in the Apex Court which is pending consideration.

60. There cannot be any dispute to the proposition

laid down by the Division Bench that there has to be more concern with the life of human being than that of stray dogs and further there cannot be any quarrel to the proposition that local authorities can exercise the power to capture and destroy the stray dogs but the said exercise has to be carried out in accordance with the provisions of the 1960 Act and the 2001 Rules. Destruction of stray dogs cannot be undertaken violating the provisions of the 1960 Act and the 2001 Rules. There are ample powers vested in the Monitoring Committee formed under Rule 4 of the 2001 Rules to take a decision to put to sleep critically ill or fatally injured or rabid dogs. The Animal Welfare Board in exercise of the power under Section 9(f) of the 1960 Act can also take steps for destruction of unwanted animals by the local authorities. Local authorities with any direction of the Animal Welfare Board as contemplated in Section 9(f) as well as the direction of the Monitoring Committee under Rule 5 of the 2001 Rules can take decision for destruction of stray dogs. The Animal Welfare Board has been entrusted with functions to take a decision to destroy the "unwanted

animals". There can also be no dispute that powers given under the 1960 Act cannot be controlled or restricted by any rules framed under the 1960 Act. However, power of the local authorities to destroy stray dogs can be exercised only in accordance with the 1960 Act and the 2001 Rules.

61. Learned counsel for the petitioners have also relied on the judgment of the Apex Court in **People for Elimination of Stray Troubles by its Convenor Dr.Rosario Menezes & Others v. State of Goa by its Chief Secretary & Others** ((2009) 1 Bom. CR 501 FB). The Full Bench of the Bombay High Court had issued various directions where it was held that Municipal Corporation of Greater Mumbai can take a decision to destroy the dogs which are not suffering from illness or rabies or diseased and are found without collars or marks distinguishing them as private property. We are informed that the said judgment of the Bombay High Court has been stayed by the Apex Court and the matter is pending consideration before the Apex Court.

62. In **G.Master Jishnu & Others v. Bruhat**

Bangalore Mahanagara Palike. (CDJ 2013 Kar HC 777) a Division Bench of the Karnataka High Court considered the powers of the Municipal authorities under the Karnataka Municipal Corporation Act, 1936, the 1960 Act and the 2001 Rules. The Division Bench while considering the inconsistency between the two sets of provisions have laid down following in paragraphs 36 an 38:

> "36. We reiterate that repugnancy or inconsistency as contemplated under Article 254 of the Constitution would not apply in the instant case, as the two enactments are relatable to List-II and List-III of the VII Schedule and are not in the Concurrent list. Also, by applying the Doctrine of pith and substance, it could be stated that the KMC Act, 1976 which essentially deals with Local Self Government, also contemplates destruction of stray dogs in the context of municipal administration and public health and sanitation. Keeping mind clauses (2) and (3) of Article 246 o the Constitution, an attempt must be made by the Court to give a harmonious interpretation to these provisions in order to iron out any apparent conflict.
>
> 38. We reiterate that the provisions of the 1960 Act as well as the Rules made thereunder do not prohibit the extermination of stray dogs as such. To this extent there is no conflict between the 1960 Act and ABC Rules, 2001 made by the Parliament on the one hand and the provisions of the KMC Act enacted by the State. But in the exercise of power of power under the provisions of the KMC Act, 1976, the Municipal Commissioner would have to bear in mind the provisions of the Central Act and

Rules made thereunder namely the 1960 Act and ABC Rules, 2001 as they are enacted under Article 246(2 read with List III and presently occupy the field as far as State of Karnataka is concerned and having regard to the Rule 13 thereof."

The Karnataka High Court has also laid down that the Municipal Commissioner in exercise of the power under the 1976 Act has to bear in mind the provisions of the 1960 Act and the 2001 Rules. We are expressing the same opinion as noticed in the judgment. Learned counsel for the Animal Welfare Board submitted that against the aforesaid judgment, Special Leave Petition No.4453 of 2013 has been filed wherein interim order has been passed staying the direction given in clause 5 of paragraph 54 of the judgment. Clause 5 of paragraph 54 of the judgment is to the following effect:

"(5) Dogs which do not come within the scope of Rule 9 or 10 but which are a menace or cause nuisance irrespective of whether there is evidence of such dogs having mauled or bitten children or adults could be exterminated in the manner specified in Rule 9 of the AC Rules, 2001 under the orders of the Commissioner of the BBMP as per the provisions of the KMC Act, 1976."

Other directions were not stayed by the Apex Court.

63. Learned counsel for the petitioners submitted that although against the Full Bench judgment of the Bombay High Court and the Division Bench judgment of the Karnataka High Court matter is engaging attention of the Apex Court, looking into the continued stray dog menace in the State of Kerala certain directions are urgently required to ameliorate the residents of the State. Accepting the above said request of the petitioners we proceeded to examine the issues raised in the Writ Petitions without placing reliance on the Full Bench Judgment of Bombay High Court which has been stayed by the Apex Court as well as the directions issued by the Karnataka High Court which has been stayed by the Apex Court.

64. Now we revert to Rule 13 of 2001 Rules, on the strength of which it is to be decided as to whether provisions of Section 438 of the 1994 Act and similar provisions under the Panchayat Raj Act are less irksome or more irksome to the 2001 Rules. The word 'irksome' has been defined in New English Dictionary on Historical Principles in following words:

"**irksome** 1. affected with weariness or disgust; tired; disgusted;'bored'. Const. of.obs.

(implied in IRKSOMENESS) Promp.Paru. Irksoum(K.P.irksum); fastidiosus. Cath.Angl.Irksome,fastidious. More Treat. Passion Wks. Vnto sufferaunce for our synne, how lothe and irksom wold we be of our selfe. CHALONER Erasm. On Folly I ij aq, He shall see straight all the audience, other slepe, or gaspe, or be urksome. SPENSER.F.Q. I ii yrksome of life, and too long lingering night.

2. Wearisome, tedious, tiresome; troublesome,burdensome,annoying. Formerly also, in Disgusting,loathsome.

DOUGLAS Eneis vi. Vii.go Hevy curis lang Of irksum weir and sad a Prov. Hoesolde-Kepyng in pol. Rel.&L. Poems A sity garment is yrksome to neyybors. FLEMING P. Epist. The putrified botches and irksome scabs of vice. GREENE Mourn.Garm.Thou shalt pocket vp much disparagement of humor, which i know will be yerksome to thy patience. SHAKS.Tam.shr.i.ii I know she is an irksome brawling scold.MILTON P. L Not to irksom toile, but to delight He made us. BURKE Corr.I know and feel what an irksome task the writing of long letters is. SYD. SMITH Wks. It is very galling and irksome to any men to be compelled to disclose their private circumstances. MARRYAT Fac.Faith.xv, The confinement to the desk was irksome."

65. It does not require any detailed reasoning to come to the conclusion that the provisions under the Municipalities and Panchayat Laws which empowers seizure and destruction of all or any kind of stray dogs by any means or method are more irksome to the dogs.

66. As noted above in the event of conflict between the Laws made by Parliament and those of the State Legislature, the Court shall endeavour to harmonious the conflict and in the event the conflict is not reconcilable, is the Central Law which shall prevail. In view of the above we conclude that the power of local authorities under the Municipal and Panchayat Laws to seize and destroy all or any number of stray dogs shall stand overridden by the statutory scheme as delineated by 2001 Rules. The local authorities thus cannot direct for destruction of stray dogs without following the provisions of 2001 Rules. For implementing the 1960 Act and Rules 2001, the Rules 2001 contemplates formation of Monitoring Committee by local authority which Committee is responsible for planning and management of dog control and to discharge various functions as given in Rule 5. A Monitoring Committee has to be constituted to monitor all actions pertaining to planning and management of dog control. It is for the Monitoring Committee to lay down instructions and guidelines for planning and management of dog control including the manner and

procedure of putting to sleep critically ill or fatally injured or rabid dogs, actual implementation of which is required to be done by the local authority concerned. In view of the forgoing discussion our answer to Issue Nos.I and II is as follows:

i. Municipalities, Corporations and Panchayats can take a decision to kill stray dogs only in accordance with the provisions of 1960 Act and the Animal Birth Control (Dogs) Rules, 2001 and are obliged to follow the said Rules and it has no discretionary power under the Municipal and Panchayat Laws to take a decision to destroy all or any stray dogs in any manner in the respective areas.

ii. In view of the provisions of 1960 Act and Rules 2001 powers exercised by local authorities under the Municipal/Panchayat Laws stood overridden with regard to killing of stray dogs and such decision by the local authorities has now to be in accordance with 1960 Act and 2001 Rules.

ISSUE NO.III

67. In Several Writ Petitions filed as Public Interest Litigation, petitioners have raised a grievance regarding non-compliance of the provisions of the 2001 Rules in so far as birth control of dogs has been envisaged. Learned counsel for both the parties are at unison that the 2001 Rules have to be strictly implemented to control the ever increasing dog population. Division Bench of the Bombay High Court in **People for Elimination of Stray Troubles by its Convenor Dr.Rosario Menezes & Others v. State of Goa by its Chief Secretary & Others** ((2003) 4 Bom. CR (PB) 558) while making reference to the Full Bench judgment had occasion to consider the factors relevant for increasing dog population and the nuisance caused by stray dogs. It is useful to quote paragraphs 19 and 20:

> "19. The nuisance of dogs becomes more and more serious because of the reproductive capacity and power of the dogs. The following scientific data from Encylopaedia Britanica Vol.VII page 545 speaks for itself:-
>
> "Dogs belong to the family of wolves. However, wolves become sexually mature after the age of two years, but females of most breeds of the domestic dogs will show their heat (or estrus) before they are a year old and sometimes before six months. The pattern of any individual dog is usually fairly consistent, but longer and shorter cycles are common. The period of gestation is approximately nine weeks. Liter size varies

roughly with the size of the breed. But there is great individual variation. Some toy breeds rarely have more than one or two puppies whereas the setters and larger breeds may have eight to ten with some record, litters going much higher. Four to six is a good average. The reproductive power of female diminishes after five years of age and the reproductive cycle ceases by the age of eight. Males usually remain capable of breeding to a more advanced age, but the male of six years is entering middle age".

20. Looking to the gestation period of the dogs which is only nine weeks and the fact that the females of most breeds of domestic dogs show their first heat before they are one year old and sometimes before six months and their reproductive cycle continues upto the age of eight years and so far as male dog in concerned six years is their middle age and the rate of litters is 4 to 6 in average, then anybody can visualize what will be the tremendous growth in dog population in one particular year or one season. And considering the fact that most of these dogs have no shelter and they have to remain on the streets as stray dogs, the gravity of the problem worsens."

68. The above facts clearly indicate that dog population keeps on multiplying and unless appropriate measures of birth control of dogs are taken by the local authorities, the menace of stray dogs cannot be controlled. Both under the 1960 Act and the 2001 Rules sterilization and vaccination have been envisaged. The local authorities are empowered to catch, transport, shelter, sterilize and vaccinate the stray dogs. Sterilization and vaccination of dogs is contemplated. Rule 6 of the 2001 Rules lays down

the obligations of the local authority. Rule 7 provides for capturing, sterilization, immunization/release of dogs. Whole procedure for developing the infrastructure and sterilisation are mentioned in the Rules. Grievance of the petitioners in all the Writ Petitions is that the Local Authorities are not taking adequate measures for birth control of the dogs. In some of the Writ Petitions counter affidavits have been filed by different Corporations, Municipalities and Grama Panchayats. In W.P.(C) No.12302 of 2014 the Elamkunnapuzha Grama Panchayat (Respondent No.2) has stated that anti rabis vaccination is done only in domestic dogs. Thripunithura Municipality (respondent No.5) has stated that it has allocated Rs.5 lakhs for budget 2014-15. The Cochin Corporation (respondent No.6) has pleaded that a Veterinary Hospital has been constructed at Brahmapuram and the same was started functioning on 28.05.2015, 423 dogs were captured and surgery has been done on 421 dogs and two dogs were confirmed two dogs were confirmed with rabies. The Corporation stated that its annual target of the project is 4000 dogs. In W.P (C) No.14210 of 2014 it is pleaded that no dogs kennels,

shelters have been established by the Corporation (8th respondent) and no steps have been taken under Rule 10 of the 2001 Rules. Counter affidavit has been filed by the Kozhikode Corporation (8th respondent) pleading that for animal birth control project an estimate of Rs.5,82,500/- has been set apart which has also been approved by the District Planning Committee. Training of animal birth control programme has been taken and steps are taken. The Thrissur Corporation (7th respondent) stated that animal birth control programme has been launched in 2013-14. As per the animal birth control programme for 2014-15 steps have been taken to construct a Veterinary Hospital and Rs.20 lakhs have been set apart for construction. The Thiruvananthapuram Corporation (5th respondent) has also pleaded that animal birth control programme has been executed and 840 operations have been conducted and 94 stray dogs infected by rabis have been eliminated. The Kollam Corporation (6th respondent) has also pleaded that the animal birth control programme has been implemented in March, 2011 but due to unavailability of budget, the

scheme could not be effected. It is further pleaded that annual budget for 2013-14 Rs.10 lakhs was earmarked.

69. Learned Government Pleader as well as learned counsel for the Animal Welfare Board have referred to and relied on the Government Order dated 17.09.2015. It is submitted by the learned Special Government Pleader that the Government of Kerala for Animal Birth Control Programme has taken measures. It is useful to quote Government Order dated 17.09.2015:

"GOVERNMENT OF KERALA

Abstract

Local Self Government Department - Dog menace - Guidelines issued to the Local Government Institutions - Orders issued

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LOCAL SELF GOVERNMENT (RC) DEPARTMENT

G.O(Rt.)No.2840/2015/LSGD Dated Thiruvananthapuram 17.09.2015

Read: 1) Note from the Principal Secretary, LSGD dated 16.09.2015.

2) Co-ordination Committee decision dated 16.09.2015.

ORDER

The Co-ordination Committee in its meeting held on 16th September, 2015 decided to implement safe and Animal friendly Environment, Kerala Project (SAFE KERALA PROPJECT). As per the decision the most important step towards controlling the dog

menace is to implement the Licensing Rules strictly. Separate orders are being issued for this.

The Animal Husbandry Department is planning to have a massive vaccination and sterilization programme with the active participation of Local Government Institutions. All dogs including pet dogs shall be vaccinated, sterilised and marked (with a notch on the ear lobe). The willing owners may get their pets sterilised. There will be vaccination and certification for dogs reared by breeders as well. The Animal Husbandry Department upgraded 50 poly clinics at Taluk Head Quarters level for the purpose of conducting sterilisation. They will upgrade the balance 25 Taluk level poly clinics also. In Blocks where poly clinics are not located, Animal Husbandry Department will upgrade the Block Headquarters level Veterinary Hospitals/Clinic so that all blocks will have facilities. The Panchayat level Veterinary Clinics also will undertake sterilisation wherever feasible.

In view of the above decision, Government are pleaded to order that the Animal Husbandry Department will take care of the technical aspects and Local Government will take care of the Ligistic part of the programmed. The Local Self Government should make arrangements for capturing the stray dogs transporting them to the block level centre for intervention and transferring them after the intervention to the location from which the dogs were captured. The Local Governments have to incur an expenditure of about Rs.250/- per dog. An incentive of Rs.250/- per dogs sterilized may also be given in regards to pet dogs on production of certificate issued by a Veterinary Surgeon by the owner. The Local Government should take steps to invite Quotations for engaging dog catchers with Rs.250/- per dog as the upper limit. The public awareness creation and public participation also are to be ensured by the Local Governments.

Governments also order as the follows:

(i) Local Governments (Grama Panchayat and Urban bodies) are allowed to prepare projects for the control of Dog menace using plan funds as envisioned above and implement it pending approval by DPC for the variation.

(ii) District Panchayats are allowed to continue the Schemes being undertaken in convergence with the Scheme.

(iii) Local Governments are allowed to call quotations for the purpose of capturing transporting and retransporting stray dogs on 22nd September giving time up to 29th and finalise it on 29th itself.

(iv) The Local Governments are directed to start campaign on 1st October, 2015.

(v) The District Collectors may review the progress of the campaign periodically and upraise the Government on the progress.

(By Order of the Governor)

JAMES VARGHESE,
Principal Secretary."

The Director of Animal Husbandry by letter dated 17.09.2015 has also informed the Chairman of Animal Welfare Board of India under the Ministry of Environment and Forest, Government of India about the decision of the Government of Kerala to expedite animal birth control programme by the local self Government Department and the Department of the Animal Husbandry.

70. After noticing the pleadings on record on behalf of a few Corporations, a few Municipalities and a few

Panchayats it is clear that although the Rules were enforced in 2001 Rules providing for statutory obligation on the local authorities to carry on animal birth control programme no sufficient steps have been taken either by the Local Authorities or by the Government. The Animal Welfare Board has also not shown to have taken steps as enjoined on it by the Act. All statutory authorities are obliged by the statute to take steps as enjoined on them to control the stray dog menace and ameliorate the sufferings of residents of local areas. There is steep increase in instances of dog bite by stray dogs to children, women and men. Hundreds of deaths are being reported which is a fact which should alarm the local authorities, Government and the Animal Welfare Board. There cannot be any dispute that the State and the Animal Welfare Board have to take steps keeping in mind statutory requirements under the 1960 Act and the 2001 Rules. But that cannot be a ground for abdicating their mandatory duty to save the citizens from the stray dog menace. We are satisfied that appropriate measures have not been taken by the local authorities, State Government and Animal Welfare

Board which are urgently required to be taken. We are of the opinion that petitioners have made out a case for issuing necessary directions in this regard.

ISSUE NO.IV

71. As observed above, stray dogs roaming in public street have to be captured for purposes of vaccination and sterilization which is the obligation of the Local Authorities with the collaboration of Animal Welfare Board for implementing the animal birth control programme. However, all stray dogs are not required to be killed and killing of stray dogs has to be undertaken by the local authorities only in accordance with the 1960 Act and the 2001 Rules. Rule 7 of the 2001 Rules clearly indicate that stray dogs have to be captured on receipt of complaint about the dog nuisance, dog bites, etc., and information about rabid dogs. We are of the view that all local authorities have to set up dog control cell to receive complaint about about the dog nuisance, dog bites, etc., and information about rabid dogs. If a complaint is received that a particular dog has beaten one or several persons it is the obligation of

the local authority to capture the dog, keep it in dog kennel or other specified places, sterilise it and then only release it at appropriate place. The Issue is answered accordingly.

ISSUE NO.V

72. We are satisfied that several measures are required to be urgently taken by the local authorities, Government and Animal Welfare Board to combat stray dog menace which is ever increasing in the State of Kerala. The foremost measure which need to be urgently taken is the strict implementation of animal birth control programme as envisaged by the 2001 Rules. Destruction of certain categories of dogs as specified in the 2001 Rules or as directed by the Animal Welfare Board in exercise of the 1960 Act has to be undertaken to protect the residents of different local areas.

In view of the foregoing discussion, we dispose of all the Writ Petitions with the following directions:

(i) All Local Authorities shall exercise the power of:

(a) capturing of stray dogs in

accordance with Rule 7 of the 2001 Rules and take immediate action on receipt of complaint.

(b) Carry on destruction of stray dogs in accordance with Rules 9 and 10 of the 2001 Rules and directions of the Monitoring Committee under Rule 5(b) if any as well as any instruction of the Animal Welfare Board given under Section 9(f) of the 1960 Act.

(ii) All the Local Authorities who have not yet formed Monitoring Committee as required by Rule 4 of the 2001 Rules shall form the Monitoring Committee within two weeks from the date a copy of this judgment is produced before the Commissioner/Chief of the Local Authority.

(iii) All the Local Authorities in consultation with the Monitoring Committee shall set up a dog control cell to receive complaints about dog menace, dog bites and information about rabid dogs within two weeks from formation of the Monitoring Committee. Public notice of such dog control cell shall also be given.

(iv) All Local Authorities shall provide for dog ponds (including kennels, shelter), dog vans with driver and dog catchers, ambulance-cum-clinical van, incinerators

as required by Rule 6 of the 2001 Rules at the earliest and not later than by the next financial year.

(v) The State Government shall also ensure that necessary infrastructure as directed above be acquired by all the Local Authorities and the financial commitment be fulfilled by the Local Authorities. The State shall also provide necessary financial assistance to the extent necessary to the Local Authorities.

(vi) All the Local Authorities under the supervision of Animal Husbandry Department shall carry on vaccination and sterilization programme of stray dogs as contemplated by Government Order dated 17.09.2015.

(vii) The Animal Husbandry Department of the State in collaboration with the concerned Local Authorities shall ensure that veterinary hospitals are set up if not already in existence at all District level, poly clinics at Taluk Head Quarters level and Taluk level as contemplated by Government Order dated 17.09.2015.

(viii) The Animal Welfare Board of

India shall also take steps for providing financial assistance wherever necessary for construction of sheds, water-troughs and the like and by providing for veterinary assistance as contemplated by Section 9 (d) and rescue homes and animal shelters as contemplated by Section 9(g) of the 1960 Act.

We place on record our sincere gratitude to late Basil Attipetty @ Basil A.G., for the assistance rendered by him in the disposal of these cases, who has reached his heavenly abode yesterday.

Sd

ASHOK BHUSHAN,
CHIEF JUSTICE.

Sd

A.M. SHAFFIQUE,
JUDGE.

vsv/ttb

WP(C).No. 29543 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- COPY OF THE MANGALAM DAILY DATED 7.9.2015

P1(A)- TRANSLATION OF EXBT P1

P2- COPY OF THE MANGALAM DAILY DATED 14.9.2015

P2(A)- TRANSLATION OF EXBT P2

P3- COPY OF THE MALAYALAMANORAMA DATED 12.9.2015

P3(A)- TRANSLATION OF EXBT P3

P4- COPY OF THE MALAYALAMANORAMA DATED 19.9.2015

P4(A)- TRANSLATION OF EXBT P4

P5- PUBLICATION MADE BY JEFERRY S GREEN REGARDING STRAY DOGS

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

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Examiner