IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE GOPINATH P.

TUESDAY, THE 2ND DAY OF NOVEMBER 2021/11TH KARTHIKA, 1943

W.P(C).NO.13603 OF 2021

PETITIONER:

PEOPLE FOR ANIMALS (PFA),
REPRESENTED BY ITS SECRETARY, KARTHIKA, ANAYARA,
THIRUVANANTHAPURAM-695029.

BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.S.R.PRASANTH
SMT.BHANU THILAK
SMT.SRUTHI K.

RESPONDENTS:

1 **STATE OF KERALA,**
REPRESENTED BY ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF LOCAL SELG GOVERNMENT,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.

2 **ANIMAL WELFARE BOARD OF INDIA,**
(MINISTRY OF FISHERIES, ANIMAL HUSBANDRY AND DIARY,
GOVERNMENT OF INDIA).
REPRESENTED BY ITS CHAIRMAN, NATIONAL INSTITUTE OF
ANIMAL WELFARE CAMPUS P.O., 42 KM STONE, DELHI-AGRA
HIGHWAY, NH-2, SEEKRI VILLAGE, BALLAHBGARH,
FARIDABAD, HARYANA-121004.

3 **PEOPLE FOR ETHICAL TREATMENT OF ANIMALS (PETA, INDIA),**
REPRESENTED BY ITS CHAIRMAN, F-110, 1ST FLOOR,
JAGDAMBA, PLOT NO.13, COMMUNITY CENTRE, PREET VIHAR,
NEW DELHI-110092.

ADDL. RESPONDENT NO.4 VINOD SANKAR
AGED 56 YEARS, S/O SAROJA NAIR, RESIDING AT FLAT NO.1A, BEACON GREEN LILLIES APARTMENT, VETTAMUKKU, THIRUMALA VILLAGE, TRIVANDRUM.

ADDL. 4TH RESPONDENT IS IMPLEADED AS PER ORDER DTD. 1/10/2021 IN IA.NO.2/21 IN WP(C).NO.13603/2021.

ADDL. RESPONDENT NO.5 DR.SREELATHA
AGED 58 YEARS,
W/O.SREENIVASAN ALIAS IMMANUEL, BETHEL, 11A, QUEENS, JOSE ALUKKAS IMPERIAL TOWER, KUTTNELLUR P.O., THRISSUR – 680 014.

ADDL. 5TH RESPONDENT IS IMPLEADED AS PER ORDER DTD. 2/11/2021 IN IA.NO.3/21 IN WP(C).NO.13603/2021.

ADDL. RESPONDENT NO.6 SREENIVASAN ELIAS IMMANUEL
AGED 61 YEARS, S/O.SUBRAMONIAN, BETHEL, 11A, QUEENS, JOSE ALUKKAS IMPERIAL TOWER, KUTTNELLUR P.O., THRISSUR – 680 014.

ADDL. 6TH RESPONDENT IS IMPLEADED AS PER ORDER DTD. 2/11/2021 IN IA.NO.3/21 IN WP(C).NO.13603/2021.

BY SRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL
BY SRI.SHYAM PRASANTH, GOVT. PLEADER
BY SRI.JAISHANKAR V.NAIR, CGC
BY SRI.KEERTIVAS GIRI, AMICUS CURIAE
BY ADV.SMT.SAYUJYA
BY ADV.SRI.K.R.RAJEEV KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.10.2021, THE COURT ON 02.11.2021 DELIVERED THE FOLLOWING:

'C.R.'

J U D G M E N T

A.K. Jayasankaran Nambiar, J.

This writ petition, in the nature of a public interest litigation, has been filed by a person aggrieved by the stand of the office bearers of the resident association of the apartment complex in which he resides. It is alleged that, by taking shelter under a clause in the bye-laws of the association that prohibits the residents from keeping pets of their choice in their individual apartments, the office bearers of the association have issued notices to him asking him to remove his pet from the premises. During the pendency of the writ petition, other persons impleaded themselves as the additional fourth to sixth respondents in the writ petition, faced with similar directives from the office bearers of their respective resident associations. The short issue that arises for consideration in this writ petition is whether such stipulations in the bye-laws of resident associations or

other agreements entered into by occupiers of residential apartments can withstand legal scrutiny under our laws ?

2. The State Government has filed a statement indicating that it does not consider such stipulations justified and that denying permission to occupiers of residential apartments, to keep pets of their choice, while infringing their fundamental rights would also infringe the fundamental freedoms recognised in animals by the decision of the Supreme Court in ***Animal Welfare Board of India v. A. Nagaraja and Others – [2014 (7) SCC 547]***. In the counter affidavit filed on behalf of the Animal Welfare Board of India, the stand taken is that the Board has been constituted in terms of the Prevention of Cruelty to Animals Act, 1960 [hereinafter referred to as the 'PCA Act'] with the object of ensuring that unnecessary pain or suffering is not inflicted on animals. It is stated that the Board has from time to time issued advisories and circulars to government authorities and local authorities on various issues including the feeding of community dogs and the keeping of pet animals. Pointed reference is made to the guidelines dated 26.02.2015 issued for the benefit of Residents' Welfare Associations and Apartment Owners Associations.

3. We have heard Ms. Bhanu Thilak, the learned counsel for the petitioner, the Additional Advocate General Sri. Ashok M. Cherian, assisted by the learned Government Pleader Sri. Shyam Prasanth, for the State Government, Sri. Jaishankar V. Nair, the learned counsel for the Animal Welfare Board of India, Ms. Sayujya, the learned counsel for the additional 4th to 6th respondents and Sri. Keertivas Giri, the learned *amicus curiae*. In his written submissions filed after the hearing, the learned *amicus curiae* emphasises the necessity for striking a balance between the rights enuring to a pet owner to keep a pet of his/her choice in his/her residential apartment and the rights of his/her neighbours to a life free of any nuisance. He suggests the imposition of conditions on the pet owners that would safeguard the interests of their neighbours and further points out that the legislative lacuna in the PCA Act & Rules in that regard can be addressed by the Central Government by framing Rules in terms of Section 38 of the PCA Act.

4. The trajectory of animal rights jurisprudence in India has sadly been a retrograde one. Over the years we have virtually moved from an eco-centric worldview where animals, like humans were seen as living beings containing a life force and therefore morally worthy, to an anthropocentric one where humans alone are seen as morally

worthy and privileged to enjoy the bounties that nature has to offer. **E.Szucs, R.Geers, T. Jezierski, E.N.Sossidou and D.M.Broom**, in a paper on '***Animal Welfare in Different Human Cultures, Traditions and Religious*** **Faiths'- *Asian-Aust.J.Anim.Sci. Vol.25, No.11 (Nov.2012) pp.1499-*1506**, observe that the religions of the east such as Jainism, Buddhism and Hinduism have always believed in non-injury to living beings and a repeated, cyclical embodiment of all living beings. Since according to the said religions, ancestors return in animal form, animals have to be treated with the respect that is due to humans. The vedas set out the code of '*sarva-bhuta-hita*' that exhorts people to see the same life in all creatures regardless of their external manifestation. Those who cannot understand this principle of life in lesser beings miss the meaning of life altogether and risk losing their sense of humanity. Islam too teaches that the almighty has given people power over animals, yet to treat them badly is to disobey his will. The words of the prophet state that animals should be killed only out of necessity and that doing otherwise is a sin. Ancient Indian jurisprudence in the area of animal welfare was therefore truly eco-centric for it recognised the moral worth of life forms other than humans. The anthropocentric shift was probably the result of over two centuries of British rule, and

the Judeo-Christian concept of human dominion over animals that it brought with it.

5. The above aspects have been noticed by our Supreme Court while deciding the legality of the practice of 'Jallikattu' in ***Animal Welfare Board of India v. A. Nagaraja and Ors – [(2014) 7 SCC 547]***. Speaking on the scope and ambit of the PCA Act, it was observed that the 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. Since it is trite that welfare legislations have to be construed liberally in favour of the intended beneficiaries, it was found that any regulations or guidelines, whether statutory or otherwise, that purported to dilute or defeat the welfare legislation and the constitutional principles would need to be struck down by the courts so as to achieve the ultimate object and purpose of the welfare legislation. It was emphasized that the court has a duty under the doctrine of *parens patriae* to take care of the rights of animals, since they are unable to take care of themselves as against human beings. The court went on to hold that the provisions of the PCA Act had to be interpreted in the backdrop of the fundamental duties prescribed under our Constitution and accordingly that animals should now be seen as having certain rights,

corresponding to the duties that were prescribed for human beings. Sections 3 and 11 of the PCA Act recognize five freedoms as inherent in all animals viz.

1. Freedom from hunger, thirst and malnutrition
2. Freedom from fear and distress
3. Freedom from physical and thermal discomfort
4. Freedom from pain, injury and disease
5. Freedom to express normal patterns of behavior

and the above five freedoms are, for animals, akin to the rights guaranteed to the citizens of our country under Part III of our Constitution.

6. We must point out, however, that the PCA Act carves out exceptions to the freedoms recognised in animals based on the doctrine of necessity, the necessity being the sub-serving of the needs of human beings. To this extent, the statute is essentially welfarist in its approach and not abolitionist. It promotes an anthropocentric view of animal welfare and does not advocate the extremist point of view canvassed by abolitionists for whom exploitation of animals in any form is taboo as it deprives animals of

their individual autonomy and inherent dignity. While the latter view, without doubt, provides an ideal that we must strive to attain as compassionate and accommodative human beings, sharing our space on this planet with other living species, it is the legislature that must enact the law regulating human-animal relations in any society, based on the policy adopted after ascertaining the views of the citizenry. Courts can only effectuate the law enacted by the legislature by giving a meaning to the words and concepts in a statute that accord with the principles, text and spirit of our Constitution.

7. Even within the limits of animal welfare recognised under the PCA Act, we are of the view that the duty cast on the citizenry to respect the five freedoms recognised in animals is of sufficiently wide ambit as to require them to refrain from interfering with another persons right to keep a pet of his choice. In interpreting the provisions of the PCA Act, we have also to bear in mind the provisions of Article 48A of our Constitution that obliges the State to protect and make all endeavours to safeguard the forests and wildlife, as also Article 51A (g) of our Constitution that imposes a duty on every citizen of our country to protect and improve the natural environment and to have compassion for living creatures.

Further, in ***Prakash v. State of Kerala – [2020 (2) KLT Online 1011]***, a Division Bench of this Court has found the citizens' choice to rear pets as traceable to their fundamental right to privacy under Article 21 of our Constitution. It follows therefore that clauses in the bye-laws of resident associations, such as the one impugned in this writ petition, that seek to prevent owners/occupiers of residential apartments from keeping pet animals of their choice in the residential apartments owned/occupied by them, or accessing the elevators and common facilities in the apartment buildings, cannot withstand legal and constitutional scrutiny. Such clauses defeat the objectives of the PCA Act and the principles recognised under our Constitution, and have necessarily to be struck down as illegal and unconstitutional.

8. The clauses in bye-laws or agreements entered into with owners of residential apartments cannot have the effect of negating the fundamental rights of citizens of our country. The decisions in ***Basheshar Nath v. CIT & Anr. – [AIR 1959 SC 149]*** and the review judgment in ***Behram Khurshed Pesikaka v. State of Bombay – [(1955) 1 SCR 613]*** that it referred to, are authorities for the proposition that fundamental rights cannot be waived by a citizen, either expressly or by implication. This is because

fundamental rights have not been put in the Constitution merely for individual benefit, though ultimately they may come into operation in considering individual rights. They have been put there, as a matter of public policy and the doctrine of waiver can have no application to provisions of law, which have been enacted as a matter of constitutional policy. The said proposition applies with added vigour when the particular fundamental right is seen as complementing or augmenting the fundamental freedoms recognised in animals owned or kept by that citizen. We have no hesitation, therefore, to hold that those clauses in the bye-laws of resident associations, that seek to prevent owners/occupiers of residential apartments from keeping pet animals of their choice in the residential apartments owned by them, or accessing the elevators and common facilities in the apartment buildings, are illegal, unconstitutional and unenforceable in law. Our coastal State, that announces itself to be ‘Gods Own Country’ to the visitors who come calling to its shores, cannot be seen denying just privileges to its animal inhabitants.

9. While holding such clauses as illegal, unconstitutional and unenforceable, we have to observe that the aforesaid freedoms recognised in animals, and the co-relational right recognised in pet owners, is by no means absolute or unconditional and must

necessarily be qualified by safeguards designed to protect the competing rights of others including the owners/residents of neighbouring apartments. Accordingly, we make it clear that, short of effectively prohibiting the keeping and maintaining of pets in the residential apartments and appurtenant premises, the resident associations may stipulate reasonable conditions that must be adhered to by the owners/residents of individual apartments while keeping pets therein. We notice from the pleadings before us that the Animal Welfare Board of India has through its letter dated 26.02.2015 issued certain guidelines on this subject and the said guidelines could be adopted by the resident associations while stipulating conditions for the keeping of pets in the apartment(s) concerned. For ease of reference, the guidelines are extracted herein below:

> "Guidelines for Residents' Welfare Associations, Apartment Owners' Associations, etc:
>
> I. WITH RESPECT TO PET DOGS & PET OWNING RESIDENTS:-
>
> Banning pets:
>
> a) Please bear in mind that even by obtaining consensus, or even if the majority of residents and occupiers want it, residents welfare associations & apartment owners associations cannot legally introduce any sort of 'ban' on the keeping of pet dogs. They cannot insist that 'small sized' dogs are acceptable, and 'large sized' dogs are not. They cannot cite dog barking as a valid and compelling reason for any proposed ban or restriction.

b) If the residents or occupiers that have pets are not violating any municipal or other laws, it is not permissible for residents welfare associations & apartment owners associations to object to their having pets as companions. The general body cannot frame bye-laws or amend them in a manner that is at variance with the laws of the country. Even by a complete majority, a general body cannot adopt an illegality.

c) Please therefore bear in mind that even by amending bye-laws or regulations or otherwise, such a 'ban' cannot be put into place since it is illegal, and does not have the sanction of law. In fact, in trying to 'ban' pets, or limit their number, residents' welfare associations & apartment owners associations interfere with a fundamental freedom guaranteed to the citizens of India, i.e. the freedom to choose the life they wish to live, which includes facets such as living with or without companion animals.

Use of lifts by pets:

d) Residents welfare associations & apartment owners associations cannot disallow pets from the use of lifts; and no charges can be imposed by them either.

Use of parks by pets:

e) Seeking to ban pets from gardens or parks, is short-sighted. Firstly, you may or may not have any manner of right over the garden or park in question. Secondly, pets that are not properly exercised may exhibit aggressive conduct in frustration; and that cannot contribute to the benefit of the residents. It may be better to arrive by consensus at timings acceptable to all residents, when pets can be walked without inconvenience to other residents. These timings can then be intimated to the general body.

Use of leashes/muzzles by pet owners, defecation by pets in community premises, imposition of fines and other similar measures:

f) Pet owners are advised to and must leash their pets in all common areas. However, residents welfare associations & apartment owners associations cannot insist on the use of muzzles. Please do remember, the law already provides for penalties for negligent pet owners, which the aggrieved parties can avail of.

g) Please bear in mind that in the absence of central or state laws requiring cleaning of pet excrete by pet owners, residents welfare associations & apartment owners associations cannot impose any rule, regulation or bye-law, with respect to the same, or impose special charges or fines on pet owners. They can, however, request them to do so. The Board also recommends to and advises all pet owning residents to accept reasonable and lawful requests to participate in solutions aimed at peaceful community living.

h) Pet owners are advised to 'scoop the poop', or together with residents welfare association & apartment owners associations, and other residents, experiment with the creation of pet defecation areas within community premises, or arrive at other imaginative solutions through consensus. Residents welfare associations & apartment owners associations cannot however impose fines and special charges of any kind on pet owners, because there is no mandate in law for the same.

Intimidation:

i) Lastly, please bear in mind that if any association succeeds in intimidating a pet owner into 'giving up' or 'abandoning' a pet, it will actually have abetted violation of law; and may well be aggravating the menace of ownerless animals on the street, that are not accustomed to living on the street and therefore get involved in and lead to accidents, injuries and deaths. Please also bear in mind that intimidation is an offence in law."

10. We believe the time has indeed come to nudge our citizenry into respecting the claims of other living beings that too have rights in our shared ecosystem. Compassion and empathy are the very essence of civilization and we must strive to preserve these values as part of our culture. It is often an inadequate understanding of the subject that fuels one's intolerance to that 'other' and hence the State and its institutions of governance must take appropriate

measures to inculcate a spirit of accommodation towards animals amongst our people, preferably by introducing animal awareness programmes at the school level in the State.

11. We allow this writ petition by declaring that clauses in any bye-law or agreement, that have the effect of absolutely prohibiting a person from keeping a pet of his/her choice in a residential unit occupied by that person, should be treated as void and unenforceable in law. Consequently, resident owners' associations and resident welfare associations shall desist from putting up notice boards and signposts prohibiting the keeping or entry of pets in their respective premises. This declaration shall be seen as one operating *in rem* and this judgment as one covered by Section 41 of the Indian Evidence Act, 1872. The Registry shall send a copy of this judgment to the Chief Secretary of the State who shall, in turn, take immediate steps to issue necessary instructions to the newly re-constituted State Animal Welfare Board, the administrative departments of the State, and to its law enforcement agencies, so that complaints brought to their notice by the citizenry, as regards infringement of the rights declared in this judgment receive immediate attention and resolution. The State Government shall also take note of the suggestions in this

judgment for the purposes of cultivating a healthy respect for animals among the people in our State.

Before parting, we wish to acknowledge the able assistance rendered by all counsel who appeared in this case as also the *amicus curiae* Sri.Keerthivas Giri. The enthusiasm shown by them in espousing the cause of animals has been truly encouraging. May their tribe increase.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
GOPINATH P.
JUDGE

prp/

APPENDIX OF W.P(C).NO.13603/2021

PETITIONER'S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE NOTICE DATED 04/09/2019 ISSUED BY THE SECRETARY OF ARTECH LAKE PALACE OWNERS ASSOCIATION, KOLLAM WITH ENGLISH TRANSLATION.**
EXHIBIT P2	**TRUE COPY OF THE LEGAL NOTICE ISSUED TO MR. VINOD SNAKAR DATED 27/04/2020.**
EXHIBIT P3	**TRUE COPY OF THE E-MAIL DATED 01/12/2020 SEND ON BEHALF OF UNI APARTMENT ASSOCIATION TO ONE HITESH M. KOTHARI.**
EXHIBIT P4	**TRUE COPY OF THE BYLAW OF BEACON GREEN LILLIES APARTMENT OWNERS ASSOCIATION.**
EXHIBIT P5	**TRUE COPY OF THE GUIDELINES ISSUED BY 2ND RESPONDENT DATED 26/02/2015.**
EXHIBIT P5	**TRUE COPY OF THE TRANSFER ORDER ISSUED BY THE DIRECTOR, TECHNICAL EDUCATION DIRECTORATE TO MR.SURESH B.K. DATED 19.01.2021.**

RESPONDENTS EXHIBITS:

EXHIBIT R2(A)	**TRUE COPY OF THE AWBI LETTER DATED 03.03.2021 TO IDENTIFY SUFFICIENT NUMBER OF FEEDING SPOTS FOR STRAY DOGS IN EVERY DISTRICT AND TO PROPER NOTICE DATED 04/09/2019 ISSUED BY THE SECRETARY OF ARTECH LAKE PALACE OWNERS ASSOCIATION, KOLLAM WITH ENGLISH TRANSLATION.**

EXHIBIT R2(B)	**TRUE COPY OF THE AWBI LETTER DATED 28.06.2021 TO ALL COMMUNITIES/RWA TO IDENTIFY ANIMAL FEEDING SPOTS AND TO COMPLY WITH THE AWBIS GUIDELINE'S DATED 26.05.2015 FOR RESIDENTS TO FEED STRAY DOGS.**
EXHIBIT R2(C)	**TRUE COPY OF THE AWBI LETTER DATED 28.06.2021 TO THE DIRECTOR GENERAL OF POLICE OF ALL THE STATES AND UT'S.**
EXHIBIT R2(D)	**TRUE COPY OF THE AWBI LETTER DATED 23.03.2020 TO ALL THE CHIEF SECRETARIES OF THE STATES/UT'S DIRECTED TO KEEP THE FEED/FODDER OF LARGE ANIMAL AND FOOD.**
EXHIBIT R2(E)	**TRUE COPY OF THE AWBI GUIDELINE DATED 26.02.2015 IN RELATION TO THE FFEDING OF STRAY DOGS AND PET.**
EXHIBIT R2(F)	**TRUE COPY OF THE AWBI GUIDELINES DATED 15.11.2016, FOR ALLOWING PET DOGS IN PUBLIC PARKS.**
EXHIBIT R2(G)	**TRUE COPY OF THE GOVERNMENT OF INDIA OFFICE MEMORANDUM DATED 26.05.2006.**
EXHIBIT R2(H)	**TRUE COPY OF THE HON'BLE HIGH COURT OF DELHI ORDER DATED 24.06.2021 IN I.A.NO.4164/2021 IN CS (OS) 277/2020, DR.MAYA D. CHABLANI VS. RADHA MITTAL & OTHERS.**
ANNEXURE R1(A)	**TRUE COPY OF CIRCULAR NO.RC3/241/2021/LSGD DATED 08/08/2021.**
EXHIBIT R4(A)	**TRUE COPY OF THE PLAINT IN O.S.NO.658/2021 PENDING BEFORE THE MUNSIFF'S COURT, THIRUVANANTHAPURAM.**
EXHIBIT R4(B)	**TRUE COPY OF THE ORDER IN CMP NO.882 OF 2021 DATED 10.08.2021 OF THE CHIEF JUDICIAL**

MAGISTRATE COURT, TRIVANDRUM.

EXHIBIT R4(C)	**TRUE COPY OF THE FIR DATED 02.09.2021 IN CRIME NO.1528/2021 OF POOJAPPURA POLICE STATION.**

//TRUE COPY//

P.S. TO JUDGE