

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(W. P. 373 of 1987)
MAHARASHTRA ANIMAL PRESERVATION ACT
(C.S. Df armadhikari, Acting C.J. and V.P. Tipnis J.)

KRUSHI GOSEVA SANGH and another

Petitioners

v/s.

STATE OF MAHARASHTRA and others

Respondents

Maharashtra Animal Preservation Act (9 of 1977), SS 6,7,10, Criminal Procedure Code (2 of 1974), S. 451 and Constitution of India, Arts 19(1)(g) and 226 - Illegal slaughter of cow and scheduled animals - Police have power to seize cattle which are object of crime - Direction under Section 451 Criminal Procedure Code should be taken from competent Court of law for custody and disposal of property pending trial - Order should be for protection and not for slaughter - Direction to State Government to take steps for proper implementation of Act by making necessary amendments. ✓

The Krushi Goseva Sangh, a Social Organisation filed a petition for a writ of mandamus directing the State of Maharashtra to frame a scheme for effective implementation of the provisions of Maharashtra Animal Preservation Act. A further direction was sought for making arrangement for preservation and maintenance of animals during the pendency of trial through Social Organisations, like the Krushi Goseva Sangh. The police, it was contended, have power and authority to seize the cattle if it is noticed that persons are carrying illegal slaughtering.

Held, that Section 6 imposes restrictions on slaughter of scheduled animals and offence punishable under the Act is declared as cognizable by Section 10. The animal which is the object of crime can safely be held to be the property regarding which offence is committed. Recourse could be taken to Section 451 of the Criminal Procedure Code for seeking a direction from the Competent Court of law for the custody and disposal of the property pending trial. The order should be for preservation and protection of cows and scheduled animals and not for its slaughter or destruction. It is now well settled that what is directly forbidden cannot be indirectly permitted. The observations and guidelines of High Court in W.P. No.714 of 1986 decided on 12-8-1986. Ejaz Ahmed v/s. State of Maharashtra should be kept in view while passing an order under section 451. If Organisation like Goseva Sangh or any Panjrapole come forward for taking responsibility of preservation and protection of cattle, then they should be preferred but before handing over the custody to any person or institution, the Court should ascertain whether they would be able to make adequate arrangements for maintenance, preservation and protection of cattle. Moreover, the State Government should seriously consider to make necessary amendments for maintenance of cattle, burden of proof etc. apart from the provisions of Criminal Procedure Code and particularly Section 451 of Criminal Procedure Code. State Government directed to appoint a Committee of experts to suggest ways and

means to implement the Act and necessary amendments. (Para 4,5,6,10)

For petitioners : M.B. Mor with Kamalkishore Tated
 For respondents : Mrs. Manjula Rao, Public Prosecutor
 For intervenors : A. R. Shaikh

JUDGEMENT

DHARMADHIKARI, ACTG, C.J. : This writ petition is filed by Krushi Goseva Sangh, Malegaon, a social organisation and another for a writ of mandamus directing Respondent No.1 the State of Maharashtra to frame a scheme for effective implementation of the provisions of the Maharashtra Animal Preservation Act, 1976. A further direction is also sought for making arrangement for preservation and maintenance of animals during the pendency of the trial through social organisations, like the Petitioner No.1 Krushi Go-Seva Sangh. Ejaz Ahmed Kallu Alias Jhinka, Abdul Bari and Subhan Khan who claim to be the traders, dealing in the business of sale and purchase of cattle at Malegaon made applications for intervention which came to be allowed.

2. It is the case of the Petitioners that at Malegaon and several other places in Nasik District, flagrant breaches of the provisions of Sections 6 and 7 of the Maharashtra Animal Preservation Act, 1976 are being committed and no action is being taken by the authorities concerned, thereby making the very provision of the Act nugatory. On the other hand it is the case of the Intervenor that bonafide traders who deal in the business of sale and purchase of cattle at Malegaon and other places are being put to harassment merely on suspicion, thereby depriving them of their fundamental right to carry on trade or business guaranteed by Article 19 of the Constitution of India. According to them on the basis of mere suspicion they are arrested, cattle are seized and prosecutions are launched. Unfortunately the State Government of Maharashtra has not chosen to file any affidavit. One Rohidas K. Ghodake and Bhagwan U. Dhole Police Sub-Inspectors attached to Azad Nagar Police Station, Malegaon, have filed affidavits, since they are the Investigating Officers. They have denied the fact that the Intervenor are traders and are dealing with the purchase and sale of cattle. According to them the traders who deal in purchase and sale of cattle are required to obtain licenses from the Krushi Utpanna Bazar Samiti, Malegaon, District Nasik. Such a licence is also necessary under the Municipal Act. None of the Intervenor have any such licenses. It is their case that many times it is noticed that animals are carried in a truck, in such a manner which in itself is an offence under the Prevention of Cruelty to Animals Act, 1960. From the information received by the concerned Police Station it is noticed that the intervenors and others are only dealing in illegal slaughtering of cattle. It is then contended by them that the police had power and authority to seize the cattle if it is noticed that they are carried for illegal slaughtering. It is also their say that under Section 451 of the Code of Criminal Procedure a direction could be sought from the competent court of law for the prevention and protection of cattle during the pendency of the trial.

3. Under Article-48 of the Constitution of India a provision has been made

means to implement the Act and necessary amendments. (Para 4,5,6,10)

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3. Under Article-48 of the Constitution of India a provision has been made

that "The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle". Then in furtherance of the directive principles of the State Policy the Maharashtra Act IX of 1977 known as The Maharashtra Animal Preservation Act, 1976 hereinafter referred to as the said Act) came to be enacted. The day Legislature took a decision, that at least one animal shall not be killed for any purpose, it took a glorious step towards cultural progress and revolution. Ultimately what is culture? Culture is the art of living with others and respect for life. The Act is enacted to provide for the prevention of slaughter of cows and for preservation of certain other animals suitable for milch, breeding, draught or agricultural purpose. Section 2 of the said Act in terms makes a declaration that the Act is enacted for giving effect to the policy of the State towards securing principles specified in Article-48 of the Constitution of India. Section 3 defines various terms used in the Act. Then comes section 5 which lays down a prohibition of slaughter of cows. The said section reads as under:

"S. 5. Notwithstanding anything contained in any other law for the time being in force or any usage or custom to the contrary, no person shall slaughter any cow, in any place in the State of Maharashtra".

Section 6 imposes restriction on slaughter of the scheduled animals. Section 7 provides for specification of the places where schedule animals could be slaughtered. By Section 8, a power is conferred upon the competent authority or person authorised in writing in that behalf to enter and inspect any place. Section 9 provides for penalties and lays down that whoever contravenes any of the provisions of the Act shall, on conviction be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both. By section 11 abetments and attempts to commit any offenses under the Act is made punishable. The said section reads as under:-

"S. 11. Whoever abets any offence punishable under this Act or attempts to commit any such offence shall be deemed to have committed that offence and shall, on conviction, be punished with the punishment provided for such offence under Section 9".

From these provisions of the Act it is quite obvious that there is total prohibition of slaughter so far as the cows are concerned, which term includes a heifer or male or female calf of a cow. Section 6 imposes restrictions on slaughter of scheduled animals and then comes Section 9 which provides for penalties for the offenses. By Section 11 it is declared that whoever abets any offence or attempts to commit any such offence shall be deemed to have committed that offence. Therefore, an attempt or abetment to commit offence is also declared as an offence punishable under the said Act. As to what will constitute an attempt or abetment must obviously depend upon the facts and circumstances of each case. It will not be correct to say that only because the attempt or abetment of offence has taken place far away from the slaughter house in no case it could be deemed to be an offence under the Act. Such a straight jacket approach is wholly uncalled for. Section 5 and 11 are worded

in the broadest sense and, therefore, will have to be so constructed as to achieve the object of the Act. Driving or escorting animals for the purpose of slaughter can amount to abetment or attempt to slaughter obviously depending upon the facts of each case. By Section 5, even offering a cow for slaughter is made punishable. By Section 11 attempt and abetment is also made punishable.

4. In the case before us it is alleged by the Respondents that persons who claim to be bonafide traders in the sale and purchase of cattle, including cows and scheduled animals, have not obtained any licenses either from the Municipal Committee or the Krushi Utpanna Bazar Samiti. It is their case that the only business they are carrying on is illegal slaughter of cows and the scheduled animals. A person could be held guilty under the said Act if he slaughters or cause to be slaughtered or offers for slaughter any cow in any place in the State of Maharashtra. By Section 6 restrictions on slaughter of scheduled animals are imposed. The offence punishable under the Act is declared as cognizable by Section 10 of the Act. Therefore, in our view it will not be correct to say that the police have no power to seize the cattle, even if it is found that the crime is committed under the Act, and the cattle seized is the object of the crime; and deserves to be preserved and protected. Such an animal can safely be held to be the property regarding which offence is committed.

✓ 5. It is no doubt true that no provision is made in the Act about the custody and disposal of the property pending the trial. However, as rightly contended by the Respondents recourse could be taken to Section 451 of the Criminal Procedure Code for seeking a direction from the competent court of law for the custody and disposal of the property pending trial. The competent court is expected to pass an order which will be in tune with the object of the Legislation. An order cannot be passed which will defeat the very object of the Act. The order should be for ✓ preservation and protection of the cow or scheduled animals and not for its slaughter or destruction. It is by now well settled that what is directly forbidden cannot be indirectly permitted. Therefore, in our view while passing an interim order court should bear in mind the observations made and the laws laid down by the Division Bench of this Court in Criminal Writ Petition No.714 of 1986 Ejaz Ahmed Kallu Alias Jhinka vs. State of Maharashtra dated 12th August 1986. Obviously no order could be passed in that behalf without following the principles of natural justice and without giving an opportunity of being heard to both the sides. This is what the Division Bench has observed in the above case:

"The only question which now falls for our consideration is the provision that should be made to protect and preserve the cattle pending the proceedings. Mr. Parkar presses his client's claim that the cattle should be handed over to him on furnishing a bond. In view of the events which have taken place and also in view of the allegation against the petitioner that he has brought the cattle for slaughtering, according to us, the interest of all parties concerned will be best served if the cattle remain where they are. The maintenance charges of each of the animal is fixed at Rs.7/- per day. If there are any milch cows the Panjrapole or the individuals who have them in their custody, will maintain an account of the sale of milk. At the conclusion of the trial, the accounts should be worked out on the basis of the above arrangement.

The Petitioner is permitted to put on each of the heads of cattle an identifying mark of his own choice after giving a prior notice to the Go-Seva Sangh. The police is directed to file the charge-sheet within 10 days, from today. The learned Magistrate should dispose of the trial as early as possible in view of the fact that either the petitioner or the Go-Seva Sangh or the individual concerned have to feed the cattle in the meanwhile".

Obviously initially the amount will have to be paid by the accused who claims to be the owner of the cattle, though the account could be worked out and settled at the conclusion of trial.

6. In our view the observations of this Court in Ejaz Ahmed's case lay down enough guidelines for passing order under Section 451 of the Criminal Procedure Code so as to protect and preserve cattle. If the organisation like Go-Seva Sangh or the Panjrapole come forward for taking responsibility of preservation and protection of the cattle then they should be preferred. If the cattle is kept in the custody of somebody else then also the guidelines laid down in the aforesaid judgement of the Division Bench could safely be followed. However before handing over the custody to any institution or person, the court should ascertain whether such person or institution will be able to make adequate arrangement for maintenance, protection and preservation of the cattle.

7. We are really sorry to note that the State Government has not chosen to file any affidavit in reply. It seems that the Government is of the view that its responsibility is over by merely enacting the law, though it is alleged before us by the Petitioners that the Act is being implemented in its breach only. If the State is really serious about the implementation of the Act then the guidelines are not wanting and it cannot act as an onlooker. The Prevention of Cruelty to Animals Act, 1960 has laid down enough guidelines including presumption as to guilt, power of the Court to deprive a person convicted of ownership of the animal, right to the custody of the animal and treatment and care of the animal etc. Therefore, apart from the provisions of the Criminal Procedure Code and particularly Section 451 thereof, a specific provision as to maintenance of the cattle, burden of proof etc. could be incorporated by introducing necessary amendments. A provision could also be made for the completion of the trial within a specified time; such a speedy trial will be in the interest of both i.e. prosecution as well as the accused. It is also suggested by the petitioners that for effective implementation of the Act, and avoiding its evasion, a total ban should be imposed on the slaughter of progeny of cow itself. In our view all these suggestions deserve serious consideration.

8. It is also pertinent to note that several cases are pending trial in the court of Malegaon under the provisions of the present enactment. We are informed that by the end of June 1987 as many as 65 cases were pending in Malegaon Court. In the affidavit filed by the Investigating Officers, a complaint is made about the transport of the cattle in a truck without prior permission of the Regional Transport Officer. Cattle heads are being transported in a truck in breach of the provisions of the Prevention of Cruelty to Animals Act. Section 11(d) and (e) of the said Act lays

down that if any person conveys or carries, whether in or upon any vehicle any animal in such a manner or position as to subject it to unnecessary pain or suffering or keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement etc. shall be punished under the said Act. The learned Counsel appearing for the petitioners have drawn our attention to the provisions of the Gujarat and Madhya Pradesh Acts, which in terms lay down restrictions on export of the cows etc. Similar provisions could be made in the present enactment also to make it more effective so as to achieve the object of the Legislation. We hope that the Respondent State will take necessary steps in this behalf.

9. Our attention was also drawn by the learned counsel appearing for the petitioners towards the provisions of the Bombay Animals Preservation Act, 1984 as amended by the State of Gujarat and the decision of the Supreme Court in *Haji Usmanabhai Hansanbhai Qureshi and others vs. State of Gujarat* AIR 1986 SC 1213. This is what the Supreme Court has observed in the said judgement:

"It is thus clear that because of various scientific factors, namely, better cattle feeding, better medical health and better animal husbandry service, the longevity of cattle in the State of Gujarat has increased and in this context it is correct to say that if the scientific tests were to be applied, bulls and bullocks up to sixteen years of age can be said to be useful for the purpose of breeding, draught and other agricultural purposes. In these circumstances the prescription of the age of sixteen years in clauses (c) and (d) of sub-section(1-A) of Section 5 can be said to be reasonable, looking to the balance which has to be struck between public interest, which requires useful animals to be preserved and permitting the different appellants before us to carry on their trade and profession.

In a passage from the publication of the Indian Council of Agricultural Research. New Delhi published in the year 1962, which was reprinted in the year 1967, it has been pointed out :

"Indian cattle are found to do well in dry areas. They are small and non-decrepit in area of heavy rainfall, such as the coastal or the hilly areas of the country. Cattle of good breeds are thus found in Punjab, Rajasthan, and Andhra Pradesh. Varying types of cattle may be seen within the limits of the same State. Thus in Bombay one finds excellent cattle from Gujarat and similar dry parts of the State, while in Madras, such cattle are observed in Coimbatore".

The material before the Court thus clearly goes to show that with the help of scientific advances which have taken place since 1962, the longevity of the cattle and their useful span of life has increased and, therefore, the prescribed age of sixteen years can be said to be a reasonable restriction on the right of the appellants to carry on their trade and profession as mentioned in Article 19(1)(g) of the Constitution."

This aspect of the matter could also be taken into consideration while amending the Maharashtra Act.

10. According to one study report by experts, Desi cows are more efficient in terms of energy output. Animal power is the dominant aspect of the country's cattle wealth. It accounts for 66 percent of the total energy utilised in the country, as against only 14 percent from conventional sources such as coal and petroleum. The available energy from animal power is estimated at 60,000 million kilowat hours. Cattle dung has a fuel value equivalent to 35 million kilowat hours. Cattle dung has a fuel value equivalent to 35 million tonnes of coal or 68 million tonnes of wood. Annually an estimated 300 million tonnes of dung is used as fuel in rural houses and another 340 million tonnes go back to the soil as organic fertiliser. Thus the cattle is not a liability but an asset. We also like to draw the attention of the State Government towards the order passed by this Court in Writ Petition No. 1403 of 1981. Tulsidasbhai Vishram and anr. vs. The State of Maharashtra and ors. and the report submitted by the Regional Deputy Director of Animal Husbandry, Bombay Region in the said matter. We find that useful suggestions are made in the said report for effective implementation of the Act, which deserve serious consideration.

11. A grievance is made by the Petitioners as well as the Intervenors, that because of the lacunas in the enactment and its faulty implementation cities like Malegaon have become vulnerable to communal tensions and riots. Therefore, in our view the minimum that the State Government is expected to do is to appoint a Committee to look into the matter and also to suggest ways and means to implement the Act, and also necessary amendments to the Act. We accordingly recommend to the State Government that it should appoint a Committee of experts to look into the matter. The Committee should be directed to submit its report within a reasonable time.

Thus Rule is made partly absolute in terms of the observations indicated above. However, in the circumstances of the case there will be no order as to costs.

Order accordingly.