
(1985) 12 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4572 of 1985

Bal Kishan Khanna and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 09-12-1985

Acts Referred:

Punjab Municipal Act, 1911 — Section 154, 168, 168(1), 168(2), 168(4)

Citation : AIR 1986 P&H 226 : (1986) 2 ILR (P&H) 289 : (1986) 89 PLR 468

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Judgement

1. Does the death of an animal cause ownership of its carcass vesting in the Municipal Committee, is the significant question which has cropped up in these two writ petitions, C.W.P. Nos. 4572 and 5300 of 1985.

2. Six petitioners in one case and seventy-eight in the other are residents of Ferozepore town and claim to be owners of cattle kept for milch and draught purposes. They claim that whenever any animal of theirs dies, they cause disposal of its dead body by removal to a place one kilometre outside the municipal limits to be buried under the ground. the grouse of the petitioners is that the Municipal Committee on 26-3-1985 observed a sham public auction for disposal of the dead bodies of animals for the year 1985-86 declaring Kala respondent 3 as the highest bidder for Rs. 41,000/-. Since the auction was conducted by the Executive Officer of the Municipal Committee, the auction obviously was submitted to the latter for approval. The Committee turned down the proposal and did not approve the auction. The state Government however, differed with the committee and endorsed the view of the executive officer. The petitioners attempt in these petitioners is to cut the auction at the very roots on the strength of S. 168 of Punjab Municipal Act which reads as follows:--

"168. Disposal of dead animals--(1) Whenever any animal in the charge of any person dies otherwise than by slaughter either for sale or for some religious purpose, the person in charge thereof shall within twenty four hours either-

(a) Convey the carcass to a place (if any) fixed by the committee under S. 154 for the disposal of the dead bodies of animals or to any the municipality; or

(b) give notice of the death to the committee whereupon the committee shall cause the carcass to be disposed of.

(2) In respect of the disposal of the dead body of animal under Cl (b) of sub-sec (1) the committee may charge such fee as the committee may, by public notice, have prescribed.

(3) For the purposes of this section the word "animal" shall be deemed to mean all horned cattle, elephants, camels, horses, ponies, asses, mules deer; sheep; goats, swine and other large animals.

(4) Any person bound to act in accordance with sub-sec (1) of this section shall, if he fails so to act, be punishable with fine which may extend to give hundred rupees."

This section figures in Chapter IX of the Punjab Municipal Act which is titled as powers for sanitary and other purpose S. 154 to which reference is made in the said section is quoted hereafter:--

" 154 Removal and deposit of offensive matters:--

The committee may fix places within or with the approval of the District Magistrate, beyond the limits of the municipality for the deposit of refuse, rubbish or offensive matter of any kind or for the disposal of the dead bodies of animals, and may by public notice give directions as to the time, manner and conditions at, in and under which such refuse, rubbish or offensive matter of dead bodies of animals may be removed along any street and deposited at such places."

3. A joint reading of the two sections, but predominantly to discern the object and attainment of S. 168, discloses that a sensible Municipal Committee would normally fix a place for the disposal of dead bodies of animals and may by public notice give directions as to the time, manner and conditions at, in and under which such dead bodies of animals may be removed along any street and deposited at such places. These places, subject of course of the approval of the District Magistrate, can be within or without the municipal limits. Amongst other matters, directions can include that while removing dead bodies of animals what routes are to be observed, what timings and transport and by what means, covered or uncovered. All these matter have, as the title of the Chapter suggests, sanitation in view and other decencies and desirabilities. S. 168, however, expresses the concern of the town-living flock that a carcass should not remain at the place of its demise for more than twenty four hours and the primary responsibility for its removal to a place, as fixed under S. 154, is that of the person who was in charge of that animal. In case he fails and neglects to carry out this direction, sub-sec (4) o S. 168 exposes him to criminal action and he can be punished with a fine which may come to Rs. 500/-. The section also

envisages that if such a person, in charge of the animal rendered carcass, may, for one reason or the other, find it difficult to dispose of the dead animal, then alternative is given to him in sub-clause (b) of sub-sec (1) of S. 168 to give notice of the death of the animal to the Committee, where upon the Committee, duty bounds as it is, would cause the carcass disposed of and for such disposal it is entitled to a fee as prescribed in sub-sec (2) 168. It is obvious from such scheme of things that the Committee, when it takes upon itself to dispose of the carcass under Sun-cl (b), would utilise the place earmarked for the purpose under S. 154. Failure to report attracts penal action under sub-sec (4). So far as these obligations of the person in charge of the animal turned carcass and the Municipal Committee are concerned, there is no quarrel. Equally there is no quarrel to the right of the Municipal Committee disposing of dead animals which have been deposited at the place earmarked by it under S. 154. It is obviously reasonable to infer such right, if a carcass has been deposited at a place earmarked under S. 154 or a carcass has been brought by the committee to that place in discharge of its statutory obligations. In either situation, the owner of the carcass by conduct has forsaken ownership of it by its deposit at the fixed place or permitting its removal to the place. I see no difficulty then the Municipal Committee, being in charge of the fixed place under S. 154, assuming the ownership of the carcass and disposing it of singularly per piece or on future expectancies by open auction to a private contractor, as has been done in the instant case. As I have been able to understand the argument of the learned counsel for the petitioners he does not dispute such a right of the Municipal Committee for carcasses deposited at the places of disposal under S. 154. And if the auction held in favour of respondent 3 is meant to confine to that place or places, the petitioners seemingly have no grievance.

4. The dispute narrows down to the right of the person in charge of the animal turned carcass when he himself chooses to dispose it of at a place beyond the limits of the municipality. The petitioners claim that they dispose of their dead animals one kilometre beyond the limits of the municipality. The petitioners are obviously adopting an erroneous stand for such disposal must be at a place at least one mile beyond the limits of the municipality. Perhaps they have confused their legal right. I would take it for the present purposes that what the petitioners mean is that they dispose of their dead animals at a place one mile beyond the limits of municipality, but by process of burial. On that premises. It seems to me that the petitioners are on surer footing for S. 168 gives then this alternate right to which the municipality can in no event object. What is canvassed on behalf of the municipality and the State of Punjab, however, is that if such private disposal is permitted, it might lead to insanitary conditions and would give rise to obnoxious or foul smell in the vicinity. In the first place, there is no occasion for these respondent to assume such a situation for the Legislature in its wisdom considered that one mile distance beyond the limits of municipality was a safe distance where the person in charge of the dead animal would safely dispose of its dead body, by burial or otherwise. Secondly, even in

places earmarked under S. 154, which may fall within or without the municipal limits, the customary manner in which the carcass is disposed of is to flay it for its hide and thereafter to leave it in the open for the vultures to eat away its flesh and the remainder bones are then collected for being used in various industries. That is why in common parlance, which has derived somewhat a legal semblance, the place is known as Hada Rori which literally means "pile of Bones". If the carcass so placed at places fixed under S. 154 are a safe risk for the populace of the town, I see no reason to assume that disposal of animals, even by the same process at a distance of one mile beyond the limit of municipality, are not a safe risk. But that as it may, the fear of the respondent in that regard appears to me to be more obstructive to the relief due to the petitioners and rather unfounded. In any case, if the method adopted by the petitioners leads to any hazardous result, then the Gram Panchayats operating in the area where the dead animals are taken are adequately equipped under the law to take stock of the situation and deal with it accordingly. By the auction of the disposal of the dead animals, it can by no means be assumed that the carcass of the dead animals right from the moment its life breath was out, vested in the Municipal committee in place of the owner. It is only by means of abandonment that the owner, on disposal, or required disposal, of the animal at places fixed under S. 154, does lose ownership to the carcass; otherwise he retains ownership over it but subject to obligation of disposal in the manner mentioned in S. 168 of the Act.

5. For the foregoing reasons, these petitions are partially allowed inasmuch as the Committee and respondent 3, the successful bidder, have no right to animals whose dead bodies the owners choose to dispose of at places one mile beyond the limits of the Municipal Committee. The auction held by the Committee to include even these animals as said heretofore is totally without jurisdiction and is equally the auction in favour of respondent 3 to that extent is non est. For partial success of the petitions, the petitioners shall have their costs, counsel fee Rs. 300/-.

Petition partly allowed.