

Kerala High Court

Court vs Byadvs.Sri.P.Ramakrishnan on 18 January, 2010

IN THE HIGH COURT OF KERALAAT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 1ST DAY OF AUGUST 2016/10TH SRAVANA, 1938

RSA.No. 1061 of 2010 (B)

AGAINST THE JUDGMENT AND DECREE IN AS NO. 153/2006 of PRINCIPAL SUB
COURT,IRINJALAKUDA DATED 18.01.2010

AGAINST THE JUDGMENT AND DECREE IN OS NO.1729/2003 of PRINCIPAL MUNSIFF'S
COURT,IRINJALAKUDA DATED 29.03.2006

APPELLANT(1ST RESPONDENT-1ST DEFENDANT):

PORATHISSERY GRAMA PANCHAYATH
KARUVANNUR, REPRESENTED BY SECRETARY, PORATHISSERY GRAMA
PANCHAYAT, KARUVANNUR.

BYADVS.SRI.P.RAMAKRISHNAN
SMT.PREETHI RAMAKRISHNAN
SRI.T.C.KRISHNA
SRI.C.ANIL KUMAR
SMT.ASHA K.SHENOY
SRI.PRATAPABRAHAM VARGHESE

RESPONDENTS(APPELLANT & 2ND RESPONDENT- PLAINATIFF & 2ND DEFENDANT):

1. ANTHONY, SON OF KUTTIKADAN OUSEPH,
MADAYIKONAM VILLAGE, MAPPRANAM DESOM,
MUKUNDAPURAM TALUK.

2. GOVERNMENT OF KERALA, REPRESENTED BY
THE DISTRICT COLLECTOR, AYYANTHOLE,
THRISSUR DISTRICT.

R1 BY ADVS. SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH
R2 BY GOVERNMENT PLEADER MS.MADHU BEN

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
01-08-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

R.S.A. No.1061 of 2010

Dated this the 1st day of August, 2016

JUDGMENT

Porathissery Grama Panchayat, the 1st defendant in O.S.No.1729 of 2003 before the Principal Munsiff's Court, Irinjalakuda, is the appellant. Panchayat has filed the appeal aggrieved by the reversal of trial court's decree and judgment by the lower appellate court, whereby a suit filed for compensation and damages was allowed by the lower appellate court. Plaintiff and 2nd defendant are the respondents in this appeal.

2. Case in the plaint, stated briefly, is as follows: The plaintiff/1st respondent is a porter in the Food Corporation of India, Ankamaly. On 18.06.2003 at 7.35 a.m., while he was proceeding to a bus stop to attend to his duties, a stray dog attacked him and bit on his leg. He was immediately taken to Medical College Hospital, Mulankunnathukavu, Thrissur. He was required to take anti-rabies vaccination. Since the medicine was not available in the Medical College Hospital, it was brought from Coimbatore at a cost of `14,076/-. He mobilised the amount through his friends and relatives. He was given other medicines and rabipur injection at a cost of `.264/- per day, for three days. He had also incurred travelling expenses and bystander's expenses. According to the plaintiff, he had incurred `20,000/- towards the medical treatment and other expenses. It was the mandatory duty of the Grama Panchayat to render help to the inhabitants of the Panchayat in respect of the functions enumerated in item No.27 to Third Schedule of the Kerala Panchayat Raj Act, 1994 (in short, "the Act"). The 1st defendant did not do anything to fulfill the mandatory duties cast on it by the provisions of the Act and the relevant Rules. According to the plaintiff, he is entitled to get `3,500/- as damages, `5,000/- for agony and tension and `5,000/- for pain and suffering. Though he claimed `13,500/- as special damages, he limited it to `10,000/-. Thus the total compensation claimed by the plaintiff is `30,000/- with interest @ 12% per annum from the date of suit till realisation.

3. First defendant filed a written statement admitting that the plaintiff had been bitten by a stray dog. Immediately after getting a report regarding the incident, the Panchayat convened an urgent meeting and decided to pay `500/- as assistance for the medical aid to persons who were bitten by the stray dog. It was estimated that about 30 persons were bitten by the stray dog. 1st defendant Panchayat also requested the Government for financial assistance. But the Government failed to give any assistance to the Panchayat. The quantum of amount claimed in the plaint is denied by the 1st defendant Panchayat. From the written statement, it can be seen that the Panchayat per se did not deny its liability under the relevant Act and Rules.

4. Second defendant State filed a written statement contending that they have no liability to pay compensation.

5. The trial court after considering the evidence of PWs 1 to 3 and DW1 and after considering Exts.A1 to A7 and B1 to B4 and also X1, dismissed the suit. When the matter was taken up in appeal, the lower appellate court on re-appreciation of evidence allowed the appeal and decreed the suit.

6. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent (plaintiff) and also the Government Pleader.

7. Learned counsel for the appellant contended that the decree passed by the lower appellate court directing the Panchayat to pay compensation is unsustainable for legal and factual reasons. According to him, the Panchayat certainly has the responsibility to see that menace of stray dogs are properly handled. Section 166 of the Act is relevant for our purpose. It deals with the powers, duties and functions of Village Panchayat. Sub-section (1) of Section 166 of the Act says that it shall be the duty of the Village Panchayat to meet the requirements of Village Panchayat area in respect of the matters enumerated in the Third schedule. Proviso to this Sub-section makes it mandatory for the Village Panchayat to render services to the inhabitants in the Village Panchayat area in respect of the matters enumerated as mandatory functions in the Third Schedule.

8. In the Third Schedule, item No. 27 speaks about the issue of licence to domestic dogs and to destroy stray dogs. It is clear from these provisions that it is the mandatory function of the Village Panchayat to meet the requirements in respect of these matters. Ext.B3 resolution taken by the Panchayat immediately after the incident will show that the Panchayat had taken cognizance of the matter and decided to pay compensation to the victims. As per Ext.B4, the Panchayat sought for additional funds from the Government for compensating the injured persons. However, it is an admitted case that the Government did not render any financial help to the Panchayat.

9. Another relevant enactment is the Kerala Panchayat Raj Act (Licensing of Pigs and Dogs) Rules, 1998. Rule 6 says that it shall be the inevitable function of every Village Panchayat to seize and destroy stray dogs and pigs. Yet another relevant piece of legislation is the Animal Birth Control (Dogs) Rules, 2001. This was enacted drawing power from Section 38 of the Prevention of Cruelty to Animals Act, 1960. As per this Rules, dogs are classified into two categories, viz., (i) pet dogs and (ii) street dogs. Rule 7 says how to capture/sterilise/immunize/release the dogs. Rule 9 deals with euthanasia of street dogs. Admittedly, in this case the appellant Panchayat had not discharged any of the statutory duties as per the Act and Rules to dispel the menace of stray dogs.

10. A Division Bench of this Court in Animal Welfare Board of India v. Ombudsman (2006 (2) KLT 91) has taken note of the provisions in the Animal Birth Control (Dogs) Rules, 2001 and ruled that the Dog Rules cannot override the provisions of the Prevention of Cruelty to Animals Act, 1960. The Act of 1960 and the Rules apply only to stray dogs. It is specifically mentioned that it does not apply to dogs afflicted with rabies and other diseases.

11. In this case, there is no evidence to hold that the stray dog which had bitten the plaintiff was a rabid dog. Therefore, the Act of 1960 and the Rules squarely applied. From the above discussion, it is clear that the appellant Panchayat was duty bound to take measures to prevent the danger of stray dogs biting citizens from within its territory. Therefore I find no reason to interfere with the finding

of the lower appellate court that the appellant is liable to pay compensation to the plaintiff/1st respondent.

12. Regarding the quantum of compensation, the plaintiff has produced documents to show that he had incurred `15,000/- towards treatment expenses. Apart from that he has claimed compensation for mental agony and pain and suffering. The lower appellate court correctly quantified the compensation amount and directed the appellant to pay a total compensation of `30,000/- with interest at the rate of 6% per annum from the date of suit till realisation. Considering the factual aspects I do not find any reason to interfere with the finding of the lower appellate court on the quantum of compensation. No substantial question of law arises.

In the result, the appeal is dismissed confirming the impugned judgment and decree of the lower appellate court.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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