

Bal Kishan Khanna and others v. State of Punjab and others
(M. M. Punchhi, J.)

Qadir and Sons (2) went to the extent of laying down that an application for setting aside an *ex parte* decree can be filed in the trial Court under Rule 13 of Order 9 even in those cases where an appeal had been filed from the impugned *ex parte* decree. It seems, that aspect of the matter had not been highlighted in *Anjan Kumar Katakji's case* (supra). With greatest respect to the learned Judge I have not been able to persuade myself to concur with the ratio of that decision. I am of the considered view that the application under Rule 13 of Order 9 of the Code of Civil Procedure is competent and maintainable to set aside an *ex parte* decree and Section 28 does not in any way prohibit this course. The question raised is answered in the affirmative.

(9) On merits, the conclusion reached by the learned trial Judge are based on correct facts and do not call for any interference. The revision petition has no merit and is dismissed with costs. Counsel fee Rs. 200.

N.K.S.

Before : M. M. Punchhi, J.

BAL KISHAN KHANNA AND OTHERS,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 4572 of 1985

December 9, 1985.

Punjab Municipal Act (III of 1911)—Sections 154 and 168—Disposal of dead animals—Public auction—Such auction including those animals whose bodies were disposed of by their owners at places one mile beyond limits of Municipal Committee—Ownership of animals so disposed of—Whether vests in the Municipal Committee—Auction in regard to such animals—Whether valid.

Held, that owners of cattle who disposed of dead bodies of the animals at a place one mile beyond the limits of municipality, by

(2) 1924 Lahore 224.

process of burial are on surer footing for Section 168 of the Punjab Municipal Act, 1911 gives them this alternate right to which the municipality can in no event object. The municipality and the State cannot claim 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. There is no occasion for them 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 the dead body by burial or otherwise. Even otherwise in places earmarked under section 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. If the carcasses so placed at places fixed under Section 154, are a safe risk for the populace of the town. There is no reason to assume that disposal of animals, even by the same process at a distance of one mile beyond the limits of municipality are not a safe risk. In any case, if the method adopted by the owners 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 section 154, does lose ownership to the carcass; otherwise he retains ownership over it but subject to obligation of disposal in the manner mentioned in Section 168 of the Act. The successful bidder in the auction has no right to animals whose 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 is totally without jurisdiction and sequally the auction in favour of the successful bidder to that extent is nonest.

(Paras 4 and 5).

WRIT PETITION UNDER ARTICLES 226 and 227 Constitution of India praying that this Hon'ble Court may be pleased to:—

- (i) *issue a writ in the nature of certiorari, quashing the order Annexure P. 2 passed by the respondent No. 1 and restoring that of the passed by the Respondent No. 2, i.e., Annexure P. 1;*
- (ii) *issue any other appropriate writ order and/or directions as this Hon'ble Court deems fit;*

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(iii) dispense with filing of certified copies of Annexure P. 1 and P. 2;

(iv) exempt from serving prior notices upon the petitioners in view of paucity of time and urgency of the matter;

(v) award the costs of the petition to the petitioners;

and

Further praying that during the pendency of the petition, further operation of the impugned order may kindly be stayed in the interests of justice.

Ravinder Chopra, Advocate, for the Petitioner.

G. S. Grewal, A.G. Punjab with H. S. Nagra, Advocate for the State.

J. S. Chahal, Advocate, for respondent No. 3.

T. S. Doabia, Advocate, for respondent No. 2.

JUDGMENT

M. M. Punchhi, J. (Oral)

(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 26th March, 1985 observed a sham public auction for disposal of the dead bodies of animals for the year 1985-86 declaring Kala respondent No. 3 as the highest bidder for Rs. 41,000. Since 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 petitions is to cut the action at the very roots on the

strength of section 168 of the 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 section 154 for the disposal of the dead bodies of animals or to any place at least one mile beyond the limits of 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 an animal under clause (b) of sub-section (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, horse ponies, asses, mules, deer; sheep; goats, swine and other large animals.
- (4) Any person bound to act in accordance with sub-section (1) of this section shall, if he fails so to act, be punishable with fine which may extend to five hundred rupees.”

This section figures in Chapter IX of the Punjab Municipal Act which is titled as “Powers for sanitary and other purposes” section 154 to which reference is made in the said section is quoted hereafter:—

- “154. *Removal and deposit of offensive matter.*—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 or dead bodies of animals may be removed along any street and deposited at such places.”

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(3) A joint reading of the two sections, but predominantly to discern the object and attainment of section 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 to 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 matters have, as the title of the Chapter suggests, sanitation in view and other decencies and desirabilities. Section 168, however, expresses the concern of the town-living folk 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 section 154, is that of the person who was incharge of that animal. In case he fails and neglects to carry out this direction, sub-section (4) of section 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, incharge 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-section (1) of section 168 to give notice of the death of the animal to the Committee, whenupon the Committee, duty bound as it is, would cause the carcass disposed of and for such disposal it is entitled to a fee as prescribed in sub-section (2) of section 168. It is obvious from such scheme of things that the Committee, when it takes upon itself to dispose of the carcass under sub-clause (b), would utilise the place earmarked for the purpose under section 154. Failure to report attracts penal action under sub-section (4). So far as these obligations of the person incharge 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 section 154. It is obviously reasonable to infer such right, if a carcass has been deposited at a place earmarked under section 154 or a carcass has been brought by the Committee to that place in discharge of its statutory obligations. In either situations, the owner of the carcass by conduct has for saken ownership of it by its deposit at the fixed place or

permitting its removal to that place. I see no difficulty then the Municipal Committee, being incharge of the fixed place under section 154, assuming the ownership of the carcass and disposing it off 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 section 154. And if the auction held in favour of respondent No. 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 incharge 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 section 168 gives them 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 respondents 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 incharge of the dead animal would safely dispose of its dead body, by burial or otherwise. Secondly, even in places earmarked under section 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 carcasses so placed at places fixed under section 154 are a safe

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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 limits of municipality, are not a safe risk. But here the petitioners claim that they bury their animals and do not flay them for their hides. Be that as it may, the fear of the respondents 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 animal, 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 section 154, does lose ownership to the carcass; otherwise he retains ownership over it but subject to obligation of disposal in the manner mentioned in section 168 of the Act.

(5) For the foregoing reasons, these petitions are partially allowed inasmuch as the Committee and respondent No. 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 sequally the auction in favour of respondent No. 3 to that extent is *non est*. For partial success of the petitions, the petitioners shall have their costs. Counsel fee Rs. 300.

N.K.S.

Before S. S. Kang, J.

SURINDER SINGH,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 172 of 1985

December 10, 1985.

Constitution of India 1950—Articles 14 and 39—Notification issued granting preferential treatment and concessions to Co-operative Labour and Construction Societies in execution of P.W.D. contract—Said concessions providing that certain categories of construction work undertaken by the department be entrusted to the said