

Eapen Chacko Vs. Collector of Kozhikode

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Court : Kerala

Decided On : Aug-12-1960

Reported in : AIR1962Ker10

Judge : S. Velu Pillai, J.

Acts : [Cattle Trespass Act, 1871](#) - Sections 4; [Constitution of India](#) - Article 226

Appeal No. : O.P. No. 877 of 1959

Appellant : Eapen Chacko

Respondent : Collector of Kozhikode

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : K.K. Mathew,; George Vadakkal and; Annama Alexander,

Disposition : Petition dismissed

Judgement :

S. Velu Pillai, J.

1. The petitioner, who is the lessee of an estate in Malabar and at whose instance a cattle-pound was established with the sanction of the District Collector accorded under Section 4 of the [Cattle Trespass Act, 1871](#), seeks to quash Ext. P-7, by which the Collector ordered its abolition. It appears, that on complaints received, a

notice, Ext. P-6, dated February 6, 1959, was issued to the petitioner, to show cause why the pound should not be abolished. An enquiry was made, and abolition was ordered after the enquiry.

2. The learned Government Pleader raised a preliminary objection, that the order impugned is purely executive and ought not to be interfered with, under Article 226. The objection is well-founded. In *Bir Bikram Deo v. Secretary of State for India*, ILR 39 Cal 615 at page 662, the Privy Council observed, that the

'Establishment and maintenance of cattle-pounds under the superintendence and control of Government officials empowered to obtain the assistance of the police when required may be considered essential for the maintenance of law and order, and the peace and good government of the country, and therefore an act of the Executive Government with which it is not competent for the Civil Court to interfere'.

There is nothing in the provisions of the Cattle Trespass Act to indicate, that the Collector was exercising anything other than executive power and on this ground, this petition is bound to fail.

3 The objection taken on the merits, by the petitioner's counsel was, that remedies have been provided by Chapter V of the aforesaid Act, and that therefore the abolition of the pound was not warranted. Chapter V deals with illegal seizure or detention of cattle, but on a perusal of Ext. P-6 it is seen, that although the charges are, for the most part, against the petitioner described as pound-keeper, the grounds of complaint are not restricted to those dealt with in Chapter V. I come to the conclusion, that Chapter V does not take away the power of the District Collector, who can direct abolition of the pound. The last point was, that the abolition can be, only with the approval of the State Government. This argument was founded upon the language of Section 4 which reads :

'Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the State Government, from time to time-directs.'

The State Government's power is to exercise a general or over-all control over cattle-pounds in the State, and the above provision does not make it incumbent, that it should consider the case of each pound, either in establishing or abolishing it. The petitioner has no case, that the pound in question was established by the District Collector with the approval of the State Government. It therefore follows, that for the abolition of the pound, no express approval of the State Government is necessary. There is therefore no merit in this petition; it is dismissed, but without costs.

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