

W.P.No.16765 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.16765 of 2017

and WMP Nos. 18206 and 18207 of 2017 and 12211 of 2018

The Kennel Club of India,
Represented by its Secretary
C. Sudarshan

Registered Office at Old No.89, New No.28,
AA Block First Street,
Anna Nagar,
Chennai – 600 040

.... Petitioner

-VS-

1. The Union of India,
Rep by its Secretary,
The Government,
Department of Environment Forest and Climate Change
Indira Paryavaran, Jor Bargh Road, New Delhi

2. The State of Tamil Nadu,
Rep by its Secretary,
Department of Animal Husbandry,
Fort St, George,
Chennai

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Declaration declaring that the Prevention of Cruelty to Animals (Dogs Breeding and Marketing) Rules 2017 is illegal and void.

For Petitioner : Mr.R. Srinivas
For R.1 : Mr.G.Karthikeyan
Asst. Solicitor General
For R.2 : Mr.Kamalesh Kannan
Govt. Advocate

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

We have heard learned counsel for the petitioner; learned Assistant Solicitor General for Union of India, learned Government Advocate for State and learned counsel for intervenor.

2. The challenge raised is to the Rules framed under Section 38 of The Prevention of Cruelty to Animals Act, 1960 by the Central

Government contending that it clearly amounts to an incompetent exercise of framing a delegated legislation which is constitutionally impermissible keeping in view the nature of the definition of Entries as contained in Entry – 15 of List II of the Seventh Schedule of the Constitution of India which is exclusively a State subject. It is in contrast to Entry 17 and Entry 17B of the Concurrent List i.e., List III and therefore, it is urged that breeding not being a defined cruelty under Section 11 of the Prevention of Cruelty to Animals Act, 1960, there is no competence with the Central Government to frame any such Rules. Thus, the challenge is on the ground of total incompetence with a further contention that it even travels beyond the boundaries contained in the Prevention of Cruelty to Animals Act, 1960.

3. On the other hand, learned counsel for the respondents have come up with a plea that breeding *per se* may not be cruelty, but, breeding in violation of certain norms relatable to dignified animal existence of pets may be excessive and it is in order to regulate such contingencies which may amount to cruelty that Rules can be framed and thus, saved under List III Entry 17B of the Seventh Schedule of the Constitution of India read with Section 38 of 1960 Act.

4. Other submissions are also sought to be raised, but, we find that it will be appropriate that the matter is proceeded with after the Union of India also files its counter affidavit. The learned Assistant Solicitor General submits that counter affidavit has been prepared and ready which shall be served on the learned counsel for the petitioner by tomorrow.

5. Learned counsel for the petitioner may file a re-joinder to the same .

6. Learned counsel for the parties may also assist the court with respect to any such challenge having been raised in any other Court and orders passed in relation thereto as well as such other expert material and research documents that may be necessary in order to weigh the nature of the arguments that are sought to be advanced with regard to breeding and possession of animals *vis-a-vis* cruelty in the light of impugned Rules.

7. Learned counsel for the petitioner submits that he will file a re-joinder within two weeks upon receipt of the counter affidavit.

8. During the interregnum period, keeping in view the COVID situation existing as on today, particularly, in the State of Tamil Nadu, we find it expedient and in the interest of justice to provide interim relief to the effect that pursuant to the impugned Rules, no further action to physically seize dogs from their owners shall be undertaken by the respondent State subject to any further orders in this regard.

List the matter on 21.08.2020.

(A.P.S., CJ.)

(S.K.R., J.)

22.07.2020

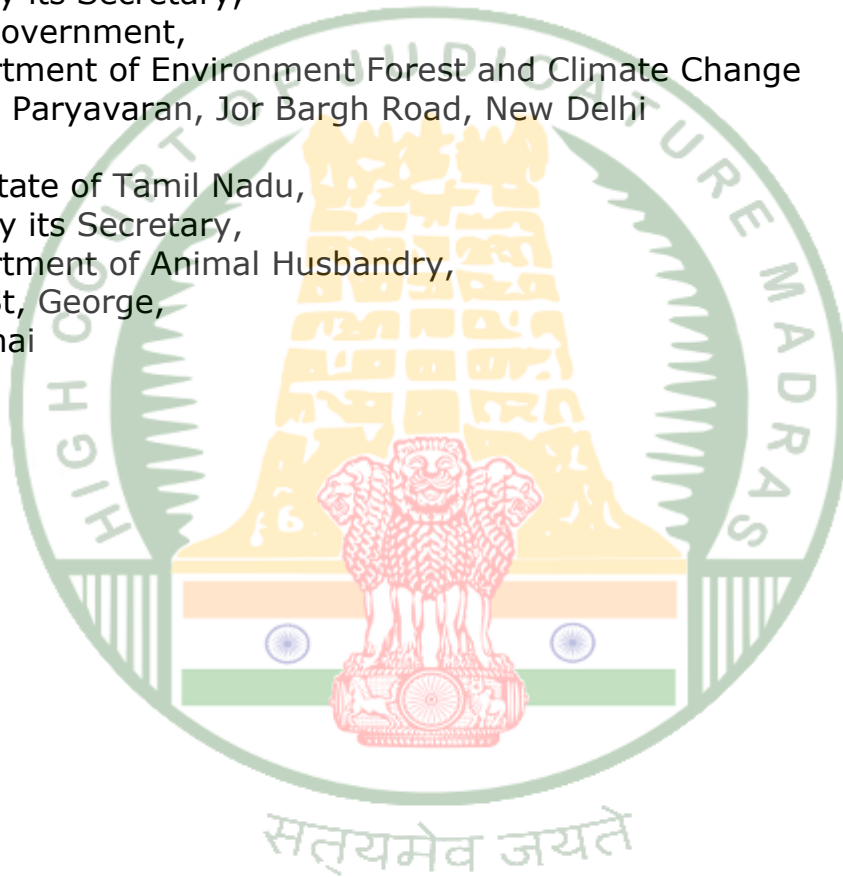
Index : Yes/No
sr

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To

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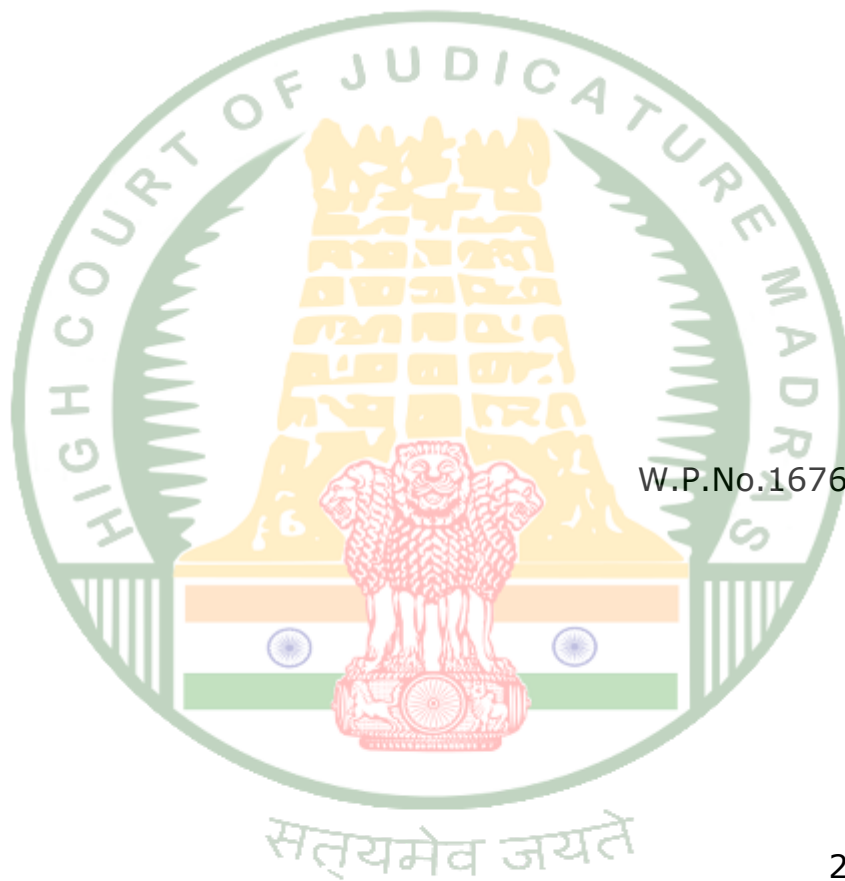


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The Hon'ble Chief Justice
and
Senthilkumar Ramamoorthy, J.

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