

# FINING A PET IS NOT FINE

The implications of the recent case of a pet owner's triumph against a fine imposed on him for using the lift with his pets



In a judgment that could spell relief for dog lovers, who face the ire of society members for keeping pets, the State Consumer Disputes Redressal Commission (SCDRC) fined a society for wrongfully charging a dog owner for using the lift with his pet.

## WHERE IT ALL STARTED

Sixty-two-year-old Allwyn D'Souza was asked to pay Rs 1000 every month by his society for using the building services, mainly the elevator to take his dogs, a labrador and a mongrel, down from his tenth floor residence. His lawyer, Uday Wavikar, says cases like these are common, where a society discriminates against pet owners purely on prejudice. "I fought the case as it was related to cruelty towards animals. To say that a dog cannot use the lift is ridiculous. Put a penalty if an animal defecates or dirties the elevator, but simply charging someone for keeping pets is discrimination." He adds that even the by-laws do not permit such a thing. "The Animal Welfare Board of India, a statutory body under the Ministry of Environment and Forests, Government of India, does not allow putting restrictions on pets from using the lifts."

## KNOW THE LAW

It can be infuriating to have someone encroach on your freedom to have a pet, however, being patient and playing it by the book helps. A resident of Navi Mumbai, Vikram Gangakhedkar faced a similar issue when he purchased a Weimaraner, but he knew the law which helped

him tackle the issue effectively. "When I

got my dog Bingo, a few residents in my building objected to it and said it was not allowed. I asked them whether the society's by-laws had a clause to prevent pets," recalls the reiki and healing professional, who managed to retain his pet. "I explained it to them that I would discipline my pet, have him trained, and wouldn't leave him alone. The matter was resolved amicably."

Seconding Gangakhedkar, Ramesh Prabhu, chairman of Maharashtra Societies Welfare

association, who advises housing societies on issues, adds further,

"Once the BMC gives permission, and you have a registered pet at your home, I don't think any additional charges should be levied. You cannot stop or fine a person from having a pet."

According to the constitution of India, no society can ban the keeping of animals as it violates the Section 11 (3) which states the Prevention of Cruelty to Animals Act, 1960. Also, article 51 A (g) of the Indian Constitution states that it is the duty of every Indian citizen to have compassion for animals, living creatures and improve the natural environment. "Any decision by a society that is cruel towards animals is unconstitutional." Says lawyer Wavikar

## LANDMARK JUDGMENTS

- A 2008 case where an 11-year-old dog suffering from Osteo-arthritis was prevented from using the society lift had the Thane District Additional Consumer Disputes Redressal Forum rule that the housing society's move to prevent pets from using the apartment lift without any valid reasons amounted to deficiency in service to the members as per section 2 (1) (g) of the Consumers Protection Act.
- Another case in was in Faridabad, where a 10-year-old dog was refused from using the building's lift by the society residents. The resident took a clipping from Times of India about a similar case and lodged a complaint against the Residents association. The police intervened and resolved the matter wherein the dog was allowed to use the lift along with his owner.
- A circular by the Animal Welfare Board of India states that even if the majority of the residents want it, you cannot legally introduce any sort of 'ban' on the keeping of pet dogs by residents. You cannot insist that 'small sized' dog is acceptable, and 'large sized' dogs are not. You cannot cite dog barking as a valid and compelling reason for any ban. Any such 'ban' on pets is interfering with a fundamental freedom guaranteed to the citizens of India i.e. the freedom to choose the life they wish to live, which includes facets such as living with or without companion animal.