

GAHC010188122022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6107/2022

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
AND HEAD OF FOREST FORCE, ASSAM, PANJABARI, GUWAHATI- 781037.

2: THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND THE HEAD OF
FORESTS FORCE
ASSAM
PANJABARI
GUWAHATI-781037

3: THE CHIEF WILDLIFE WARDEN
ASSAM
ARANYA BHAWAN
GUWAHATI- 781037

VERSUS

THE UNION OF INDIA AND 6 ORS.
MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE
(PROJECT ELEPHANT DIVISION), INDIRA PARYAVARAN BHAWAN, JOR
BAGH ROAD, ALIGANJ, NEW DELHI- 110003.

2: THE CHIEF SECRETARY TO THE GOVERNMENT OF TAMIL NADU
SECRETARIAT
CHENNAI- 600009.

3: THE ADDL. CHIEF SECRETARY TO THE GOVERNMENT OF TAMIL NADU
SECRETARIAT
CHENNAI- 600009.

4: THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND THE HEAD OF
FORESTS FORCE
TAMIL NADU
CHENNAI- 600015.

5:THE CHIEF WILDLIFE WARDEN
TAMIL NADU
CHENNAI - 600015.

6:THE DIRECTOR GENERAL OF POLICE
TAMIL NADU
CHENNAI- 600004.

7:GIRIN MORAN
S/O- LATE KANDURA MORAN

R/O- UPAR KACHIJAN VILLAGE

KACHIJAN CHARIALI POST

P.S.- KAKAPATHAR

DISTRICT- TINSUKIA
ASSAM

Advocate for the Petitioner : MR. D SAIKIA

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

16.09.2022

Heard Mr. D. Saikia, learned Advocate General, Assam assisted by Ms. R. Baruah, learned counsel appearing for the writ petitioners.

Invoking the extraordinary jurisdiction of this Court under Article 226(2) of the Constitution of India, the State of Assam, through the three senior officials of the Forest Department, have approached this Court espousing the cause of an elephant named 'Joymala' which is allegedly held captive in a temple in the State of Tamil Nadu. As per the case projected in the writ petition, it appears that the elephant 'Joymala' was transported to the State of Tamil Nadu on the

basis of an NOC and Transit Pass issued by the State of Assam on 08.09.2011 permitting the animal to be retained in the Nachiyar Temple, Srivilliputhur, Tamil Nadu for a period of three years. However, after the expiry of the term of the NOC, the elephant has not been returned back to Assam. On the other hand, the petitioners have received information from reliable sources that the elephant in question has been meted out brutal treatment by the persons holding the animal in captivity. However, the officials under the State of Tamil Nadu are showing reluctance to render assistance in rescuing the elephant.

Mr. Saikia, learned Advocate General, Assam, submits that the State Government had made arrangements for the return of 'Joymala' as well as 8 (eight) other elephants belonging to the State of Assam which are now in the State of Tamil Nadu. Initially, the Forest Department of the State of Tamil Nadu had issued NOC for return of the elephant, and had also requested the Assam Government to make payment of the cost for keeping the elephants in custody till their return back to Assam. The Assam Government had also agreed to bear such cost. However, since then, there has been no response from the departmental officials.

Mr. Saikia further submits that a high level team constituted under the Chairmanship of the Additional Principal Chief Conservator of Forest, Assam has been camping at Chennai since 03.09.2022 so as to take a stock of the health condition of 'Joymala'. However, due to complete lack of cooperation from the officials of Govt. of Tamil Nadu, the team of the Government officials of the State of Assam has not been able to inspect the elephant till today.

By relying upon the decision of the Supreme Court rendered in the case

of **Oil and Natural Gas Commission vs. Utpal Kumar Basu and others** reported in **(1994)4 SCC 711** as well as decision in the case of **Union of India vs. State of Rajasthan** reported in **(1984) 4 SCC 238** Mr. Saikia submits that this is not a Center State dispute nor is it a dispute between the two States over boundary etc. but the petitioners are aggrieved by the lack of cooperation by the officials of the State of Tamil Nadu in a sensitive issue of this nature. As such, Article 131 of the Constitution of India would not have any application in this matter. It is also the submission of Mr. Saikia that since the elephant belongs to the State of Assam and the Transit Pass/NOC was also issued by the Assam Government, hence, part of the cause of action did arise within the territorial jurisdiction of this Court. Therefore, this Court would have the jurisdiction under Article 226(2) to issue necessary direction in the matter.

Mr. H. Gupta, learned Central Govt. Counsel appearing for the respondent No.1, has prayed for some time to seek instruction in the matter.

Issue notice of motion returnable on 28.09.2022.

Since Mr. Gupta, learned CGC has entered appearance and accepted notice on behalf of respondent No.1, no formal notice is required to be sent to the said respondent. However, extra copies of the writ petition, requisite in number, be furnished to the learned Central Govt. Counsel within two days from today so as to enable him to obtain instruction.

Petitioners to take steps for service of notice upon the respondent Nos.2 to 7 by registered post with A/D within three days from today.

Heard on the prayer of interim relief.

The said prayer will be considered on the returnable date.

However, as an ad-interim measure, it is hereby provided that the respondent Nos.2 to 6 to ensure that within three days from the date of receipt of a copy of this order, the visiting team of official from the State of Assam, who are presently camping at Chennai, be permitted to inspect the elephant 'Joymala' so as to verify its health condition. The respondent No.6 to also ensure that the team is provided with adequate police protection, as may be justified in the facts and circumstances of the case.

The Registry of this Court to forthwith communicate this order to the respondent Nos.2 to 6 by electronic mode.

JUDGE

Comparing Assistant