

S U P R E M E C O U R T O F
R E C O R D O F P R O C E E D I N G S

I N D I A

I.A. 19 and 21/2015 in Writ Petition(s)(Civil)

No(s). 743/2014

WILDLIFE RESCUE AND REHABILITATION CENTRE AND OTHERS

Petitioner(s)

VERSUS

UNION OF INDIA AND OTHERS

Respondent(s)

(for directions and office report)

Date : 29/03/2016 This application was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s) Ms. Aparna Bhat, AOR

For Respondent(s) Mr. Ranjit Kumar, SG
Ms. Movita, Adv.
Mr. Akhila J., Adv.
Mr. S.N. Terdal, Adv.

Mr. V. giri, Sr. Adv.
Mr. K. Parameshwar, AOR

Mr. Ajit Sharma, AOR

Mr. Ankolekar Gurudatta, AOR

Mr. A. Raghunath, AOR

Mr. Balaji Srinivasan, AOR

Mr. B. Balaji, AOR
Mr. Muthuvel Palani, Adv.

Signature Not Verified

Digitally signed by

Punjab
GULSHAN KUMAR
ARORA
Date: 2016.03.29Mr. Sanchar Anand, AAG
Mr. Apoorv Singhal, Adv.17:17:23 IST
Reason:

Mr. Devendra Singh, AOR

Mr. Gopal Singh, AOR
Ms. Vimla Sinha, Adv.
Mr. Manish Kumar, Adv.

Mr. R. Basant, Sr. Adv.
Mr. Jogy Scaria, AOR

Ms. Beena Victor, AOR

Mr. K. Rajeev, AOR

Ms. Vishnu Shankar Jain, Adv.
Ms. Mukti Chowdhary, AOR

Ms. Pragya Baghel, AOR

Gp. Capt. Karan Singh Bhati, Adv.
Mr. T. Gopal, Adv.
Mr. Dillip Kumar Nayak, Adv.
Ms. Ruchi Kohli, Adv.

Mr. Sidharth Luthra, Sr. Adv.
Ms. Supriya Juneja, AOR
Mr. Aditya Singla, Adv.
Ms. Ambika Nijjar, Adv.
Ms. Mehak Jaggi, Adv.
Mr. Viraj Gandhi, Adv.

Mr. Gurudatta Ankalekar, Adv.
Ms. J. Shreshta, Adv.

R.4 Mr. Arjun Bobde, Adv.
Ms. Richa Relhan, Adv.
Ms. Sanyya Pawar, Adv.

Haryana Mr. Anil Grover, AAG
Mr. Sanjay Kumar Visen, Adv.
Mr. Satish Kumar, Adv.

Nagaland Ms. K. Enatoli Sema, Adv.
Mr. Edward Belho, Adv.
Mr. Amit Kumar Singh, Adv.

Mr. Vivek Rorigues, Adv.
Mr. Shivraj Gaonkar, Adv.

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Ms. Mahalakshmi Pavani, Sr. Adv.
Ms. Satyasiddiqui, Adv.
Mr. Ankolekar Gurudatta, AOR
Ms. Shiva Vijaya Kumar, Adv.
Mr. Mukesh Kumar Singh, Adv.
Mr. S. Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

I.A. No.19 of 2015

In pursuance of our order dated 02.02.2016, the Animal Welfare Board of India was required to file the report. It is submitted by Mr. C.A. Sundaram, learned senior counsel appearing for the Animal Welfare Board of India that the report will be filed after serving a copy thereof on the counsel for the States and on the learned counsel who represent the two resorts, namely, "Tropical Spice Plantation" and "Jangal Book". Needless to say, the same has to be

served on learned counsel for the petitioner also.

Though we have directed copies of the report to be furnished to the contesting parties, we think it appropriate to refer to a part of the report. The Animal Welfare Board of India has mentioned 10 aspects which pertain to apparent violations of animal protection laws and guidelines. Thereafter, it has given certain recommendations. The violations which are 10 in number read as follows :

- "1. TSIP does not have the legal ownership certificate for any of the three elephants in their custody. For male elephant Babu, the ownership certificate was issued on 05/11/2008 in the name of Mr. Mahant Ramkishan Dasji, Dist. Rajkot (Gujarat) (Annexure - 2), for female elephants Laxmi (Annexure - 3) and Manki (Annexure -4), the

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ownership certificates were issued on 22/01/1999 in the name of Mr. N.A. Zacharia, Andaman and Nicobar Islands, Port Blair and 30/11/2002 in the name of Mr. Man Singh Shanti Kunwarsen, Dist. Chappra (Bihar) respectively. As per law, ownership can be issued only within 30 days of enactment of Wild Life (Protection) Act, 1972 or during the amnesty period (i.e. 18 April 2003 to 18-10-2003, when the central government issued declaration of Wild Life Stock Rules, 2003). All ownerships issued on date other than these (30 days and 180 days) are apparently illegal. This is an apparent violation of Section 40(1) of the Wild Life (Protection) Act, 1972 which mandates within 30 days of enactment of Act wildlife should be declared, Section 41, under which Chief Wild Life Warden (CWLW) should conduct an enquiry after declaration of an animal, and Section 42, under which ownership certificate has to be issued (after meeting the provisions of Section 40 & 41). Since these three elephants do not have a valid ownership certificate, so they seems to have been captured from the wild and traded illegally which is an apparent violation of section 9, that prohibits hunting/capture of schedule I animals such as elephants.

2. TSP failed to produce appropriate transportation permission for transporting Laxmi and Maniki. This is in apparent violation of Section 48 - A of the Wildlife Protection Act, 1972 which states that "no person shall accept any captive elephants for transportation except after exercising due care to ascertain that permission from the Chief Wildlife Warden or any other officer authorised by the State Government

in this behalf has been obtained for such transportation."

3. All the three elephants under the custody of the TSP were obtained apparently illegally as none of the gift deeds had been vetted by/registered with the CWLW of the state which had issued the ownership certificates. Moreover, female elephant Maniki was sold by Mr. Man Singh and Mr. Shanti Ram to Mr. Kunwant Sen for an amount of Rupees Seven Lakh twenty five thousand on 20 October 2007 (Annexure - 4). As this was a commercial

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deal, it is an apparent violation of the Section 43 of Wild Life (Protection) Amendment Act, 2002 which prohibits the sale of wildlife.

4. As TSP is using all three elephants for tourist rides but none of the elephants in their custody are registered with Animal Welfare Board of India (AWBI) as per the provisions of Performing Animals (Registration) Rules (PARR), 2001, the PARR, 2001 is apparently being violated. No necessary permissions have been obtained from AWBI under this rule. The order of the Hon'ble High court of Kerala in W.P.No. (C)10424 of 2014, Idukki SPCA Vs State of Kerala & others states "However, they (Forest and Wildlife Department) shall ensure the implementation of provisions of the PARR 2001 referred above and take appropriate action in the matter as and when it is warranted." (Annexure-5)
5. During the inspection of elephants at TSP, it was observed that the housing (elephants were chained on the concrete floor), maintenance (balanced ration was not fed to elephants and the vaccination was not done against Tetanus, Rabies and Foot & Mouth Disease) and upkeep were found to be inadequate. This is in apparent violation of section 42 of the Wild Life (Protection) Amendment Act, 2002. As per this the CWLW can revoke the ownership certificate and confiscate the elephants.
6. All the three elephants kept for the joy rides in the TSP are deprived of necessary veterinary treatment and care which is exhibited by the physical health issues such as untreated wounds, cataract, and skin lesions. Similarly, the inspection team discovered that TSP management have failed to provide appropriate shelter, sufficient food and water facilities for the elephants in apparent violations of Section 11(1)a, 11(1)(f) and 11(1)(h) of the Prevention of Cruelty to Animals (PCA) Act, 1960.
7. Moreover, the inspectors found spiked hobbles at the staging area of the elephants which can inflict pain and induce fear to restrain them. Section 11(1)(a) of PCA Act,

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1960 states that it is cruelty to an animal and a punishable offence if any person "beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes, or being the owner permits, any animal to be so treated". Use of the spiked chain are prohibited as per the "Guidelines for care and management of captive elephants issued by Ministry of Environment & Forests, Project Elephant, No 9-5/2003-PE dated 8-1-08".

8. The female elephants were tethered with one foreleg and one hind leg using nylon ropes tightly tied to the trees, while the male elephant was kept in place using heavy chains. All three elephants suffered great discomfort and were unable to move freely, rest or exhibit any natural behaviour. Section 11(1)(f) states that that it is cruelty to an animal and a punishable offence if any person "keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord".
9. Before the issue of the transport permit, the CWLW or the authority issuing the permit would be required to obtain a no objection certificate (NOC) from the CWLW of the state where the elephant is to be transported about the availability of adequate housing at the place where the animal is to be kept. The TSP failed to produce any such NOC during the inspection. Not having NOCs would make the transportation of all the three elephants in apparent violation of the "Guidelines for care and management of captive elephants issued by the Ministry of Environment & Forests, Project elephant, No 9-5/2003-PE dated 8-1-08".
10. As there were no records maintained for the feeding, work, vaccination, movement, disease and treatment etc. by TSP, so this is the violation of the "Guidelines for care and management of captive elephants issued by Ministry of Environment & Forests, Project Elephant, No 9-5/2003-PE dated 8-1-08".

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The recommendations which are four in number, are enumerated

below :

- "1. As all the three elephants are apparently being kept by TSP illegally AWBI may advise the CWLW of Goa to seize these elephants immediately and humanely transport them to a suitable elephant care and rehabilitation centre where they will not be made to live in chains.
2. As there is violation of the PARR, 2001 and the elephants are being used for giving

joyrides to tourists without taking permission and registering the elephants with AWBI under the provision of PARR, 2001, AWBI may initiate necessary legal actions against TSP.

3. Since the elephants are suffering both mentally and physically they need immediate veterinary care in a more enriching environment to avoid further physical and mental damage, and AWBI may advise CWLW of Goa to ensure the same.
4. AWBI may advise CWLW's of Gujarat, Bihar and Andaman & Nicobar Islands may take disciplinary actions against the erring officials who issue the illegitimate ownership certificate and other documents related to transfer of custody and transport of elephants."

Mr. Arjun Bobde, learned counsel appearing for the State of Goa has filed a reply in this I.A. It is submitted by the learned counsel that the steps are being taken under the Prevention of Cruelties to Animal Act, 1960 and other relevant laws.

Mr. Vivek Rodrigues, learned counsel appearing for the Jangal Book had filed the counter affidavit. He is at liberty to file any objections to the report submitted by the Animal Welfare Board.

The State of Goa shall file an affidavit indicating the details

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about the affirmative steps it has taken so that animals are not treated with cruelty.

Ms. Mahalakshmi Pavni, learned senior counsel appearing for the Tropical Spice Plantation shall file the counter affidavit within two weeks hence.

Be it noted, Mr. Sundaram, learned senior counsel has raised three fundamental issues, i.e., (i) after the Act has come into force, whether any person can keep an elephant in his custody as the owner; (ii) assuming there is no prohibition for keeping an elephant, what Rule should govern the upkeep of the animal; and (iii) who are the authorities to regulate the health, upkeep and the manner in which the elephants are to be treated and used.

Mr. Sidharth Luthra, learned senior counsel appearing in the I.A. which pertains to the State of Kerala would contend that after coming into force of the Wild Life (Protection) Act, 1972 and the Rules framed thereunder, the State of Kerala should not have issued any kind of amnesty scheme which includes ownership certificate.

Issue notice on the I.A.

As Mr. Jogy Scaria, learned counsel accepts notice on behalf of the State of Kerala, no further notice need be issued.

Mr. Jogy

Scaria, learned counsel for the State shall file the reply within three weeks hence.

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I.A. No.25 in WP No.743 of 2014

Issue notice.

A copy of the I.A. be served on Mr. Jogy Scaria, learned counsel for the State of Kerala. Reply, if any, be filed within three weeks hence.

A copy of the report submitted by the Animal Welfare Board of India and copies of the I.A. Nos.19, 21 and 25 of 2016 be served on Mr. Parameshwar, learned counsel appearing for the Kerala Elephant Owners Association.

Let the matter be listed on 27.04.2016.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master