

ITEM NO.2

COURT NO.5

SECTION PIL(W)

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

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)

(With appln.(s) for bringing on record the additional facts and directions and impleadment and intervention and permission to bring addl. Facts and permission to file additional documents and office report)

Date : 18/08/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s)

Ms. Aparna Bhat, AOR
Ms. Shibani Ghosh, Adv.
Ms. Tanima Kishore, Adv.

For Respondent(s)

Mr. Ranjit Kumar, SG
Mr. Rana Mukherjee, Sr. Adv.
Ms. Morita, Adv.
Mr. Shreekant N. Terdal, AOR

Intervenor
(IA 4)

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

Applicant

Mr. Siddharth Ludhra, Sr. Adv.
Ms. Supriya Juneja, AOR
Mr. Viraj Gandhi, Adv.
Ms. Mehaak Jaggi, Adv.

Mr. C.A. Sundaram, Sr. Adv.
Mr. Ajit Sharma, AOR

Signature Not Verified

Applicants

Digitally signed by

Gulshan Kumar Arora

Date: 2015.08.21

15:13:50 IST

Mr. L.N. Rao, Sr. Adv.

Reason:

Mr. K. Rajeev, AOR

Mr. Sinoj K. Narayanan, Adv.

Mr. Mukti Choudhary, AOR

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Kerala

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

Rajasthan

Gp. Capt. Karan Singh Bhati, Adv.
Mr. T. Gopal, Adv.
Ms. Neha Meena, Adv.
Mr. R. Hemendra Sharma, Adv.
Ms. Madurima Ghosh, Adv.
Mr. K.S. Bhati, Adv.

Ms. Ruchi Kohli, AOR
Ms. Nidhi Jaswal, Adv.
Ms. Monika Sharma, Adv.

Punjab

Mr. Sanchar Anand, AAG
Mr. Anant Kvttsya, Adv.
Mr. Apoorv Singhal, Adv.

Mr. Gopal Singh, Adv.
Mr. Chandan Kumar, Adv.

Mr. Subramonium Prasad, Sr. Adv.
Mr. B. Balaji, AOR
Mr. Rakesh Sharma, Adv.
Mr. R. Shase, Adv.

Mr. Mohan Parasaran, Sr. Adv.
Mr. K. Rajeev, Adv.
Mr. Shinjoj K. Narayanan, Adv.

Mr. Suryanarayana Singh, AAG
Ms. Pragati Neekhra, Adv.

Mr. Devendra Singh, Adv.

Mr. A Raghunath, Adv.

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

The present IAs relate to the cruelties meted to the elephants in the State of Kerala and how they are required to be curbed.

There is no cavil over the fact that the State of Kerala has number of elephants owned by private individuals. Section 40 of the Wild Life (Protection) Act, 1972 (For brevity, 'the 1972 Act') deals with declarations. The said provision reads as follows :

"40. Declarations.-- (1) Every person having at the commencement of this Act the control, custody or possession of any captive animal
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specified in Schedule I or Part II of Schedule II, or animal article, trophy or uncured trophy derived from such animal or salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, shall, within thirty days from the commencement of this Act, declare to the Chief Wild Life Warden or the authorised officer the number and description of the animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept.

(2) No person shall, after the commencement of this Act, acquire, receive, keep in his control, custody or possession, sell, offer for sale or otherwise transfer or transport any animal specified in Schedule I or Part II of Schedule II or any uncured trophy or meat derived from such animal, or the salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, except with the previous permission in writing of the Chief Wild Life Warden or the authorised

officer.

(2A) No person other than a person having a certificate of ownership, shall, after the commencement of the Wild Life (Protection) Amendment Act, 2002 acquire, receive, keep in his control, custody or possession any captive animal, animal article, trophy or uncured trophy specified in Schedule I or Part II of Schedule II, except by way of inheritance.

(2B) Every person inheriting any captive animal, animal article, trophy or uncured trophy under sub-section (2A) shall, within ninety days of such inheritance make a declaration to the Chief Wild Life Warden or the authorised officer and the provisions of sections 41 and 42 shall apply as if the declaration had been made under sub-section (1) of section 40:

Provided that nothing in sub-sections (2A) and (2B) shall apply to the live elephant.

(3) Nothing in sub-section (1) or

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sub-section (2) shall apply to a recognised zoo subject to the provisions of section 38I or to a public museum.

(4) The State Government may, by notification, require any person to declare to the Chief Wild Life Warden or the authorised officer [any animal or animal article] or trophy (other than a musk of a musk deer or horn of a rhinoceros) or salted or dried skins derived from an animal specified in Schedule I or Part II of Schedule II in his control, custody or possession in such form, in such manner, and within such time, as may be prescribed."

The term 'captive animal' has been defined under Section 2(5) which is to the following effect.

2(5) "captive animal" means any animal, specified in Schedule I, Schedule II, Schedule III or Schedule IV, which is captured or kept or bred in captivity;"

Section 12(b) of Schedule I refers to Indian elephants (Elephus maximus)

It is submitted by Mr. Sundaram, learned senior counsel appearing for the Animal Welfare Board of India, that some captive elephants owned by private persons are not declared or registered.

At this juncture, Mr. Basanth, learned senior counsel appearing for the State of Kerala, taking a stand in oppugnation, submitted that there has been declaration by all owners. However, learned senior counsel would submit that there is no justification for registration of the elephants unless they are covered under Section 21 or 22 of the Prevention of cruelty to Animals Act, 1960 (for short, 'the 1960 Act').

Mr. Ranjit Kumar, learned Solicitor General of India has drawn our attention to Section 42 of the 1972 Act which reads as

follows:

"42. Certificate of ownership.-- The Chief Wild Life Warden may, for the purposes of section 40, issue a certificate of ownership in such form, as may be prescribed, to any person who, in his opinion, is in lawful possession of any wild animal or any animal article, trophy, uncured trophy and may, where possible, mark, in the prescribed

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manner, such animal article, trophy or uncured trophy for purposes of identification.

Provided that before issuing the certificate of ownership in respect of any captive animal, the Chief Wild Life Warden shall ensure that the applicant has adequate facilities for housing, maintenance and upkeep of the animal."

It is urged by him that unless an animal is performing, it need not be registered under the 1960 Act. As far as the registration with the Animal Welfare Board of India is concerned, the said facet shall be addressed at a later date.

As far as the present issue is concerned, we are inclined to direct that the Chief Wild Life Warden shall see to it that all the captive elephants existing in the State of Kerala are counted and in the absence of obtainment of requisite certificate under Section 42 of the 1972 Act and the declaration made under Section 40, appropriate action shall be initiated against the owners.

At this juncture, we may note with profit that a set of Rules, namely, Kerala Captive Elephants (Management and Maintenance) Rules, 2012 (for short, 'the Rules') has been framed by the State Government in exercise of power conferred by sub-section (2) of Section 64 of the 1972 Act. Rule 4 of the said rules deals with upkeep and veterinary care of Elephants. Rule 8 provides for duties and responsibilities of owner. Sub-rule (13) of Rule 6 which is relevant for the present purpose is as follows :

"8(13) Every owner shall maintain an Elephant Data Book as specified by the Chief Wildlife Warden for each captive elephant."

The purpose of referring to the said Rule is that an owner of an elephant, apart from following the other statutory enactments and the procedure laid down therein, is also required to maintain an elephant data book, as defined in Rule 2(f) of the Rules specified by the Chief Wild Life Warden for each captive elephant. The said Rule shall be religiously followed failing which the authorities shall take appropriate action against the said person. Rule 9 deals with transport norms for elephants. Rule 10 provides for constitution of the District Committee. As we find, the purpose of the said Rule is to deal with the cases of cruelty meted out to the captive elephants and the constitution of the Committee is heterogeneous nature. We have been apprised that in addition to the members as per 2012 Rules, at present (from January 2015), a representative of the Animal Welfare Board of India has been included apart from other authorities. Sub Rule

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(4) of Rule 10 which is extremely pertinent for the present purpose is reproduced below :

"(4) The District Committee shall take necessary

measures, to ensure that the Festival Committee constituted for the smooth conduct of festivals or the persons organizing such functions in which elephants are exposed, shall adhere to the following:-

- (i) There shall be sufficient space between elephants used in processions and parades.
- (ii) No elephants in musth shall be used in connection with festivals.
- (iii) Elephant which is sick, injured, weak or pregnant shall not be used.
- (iv) Chains and hobbles with spikes or barbs shall not be used for tethering elephants.
- (v) Elephants shall not be made to walk on tarred roads during hot sun for a long duration without rest.
- (vi) Making an elephant stand in scorching sun for long durations or bursting crackers near the elephants for ceremonial purpose shall not be permitted.
- (vii) It shall be ensured that sufficient food and water for the elephants are provided.
- (viii) The Committee shall ensure that the flambeaus (Theevetry) are held away from elephants.
- (ix) There shall be facility to keep elephants under shade during hot sun.
- (x) It shall be ensured that adequate protection to the elephants taking part in celebrations through volunteers provided for the purpose.
- (xi) Services of Veterinary Doctor from the elephant squads shall be ensured in cases where five or more elephants are engaged
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in the festivals.
- (xii) It shall be informed to the nearest Forest Range Officer/Police Officers about the proposed festivals/Police Officers about the proposed festival/celebrations at least 72 hours in advance.
- (xiii) During the time of procession the elephants shall have chains (Idachangala and Malachangala) tied to their leg.
- (xiv) It shall be ensure that the mahouts are not intoxicated while handling elephants.
- (xv) The weaned calf below 1.5 m. height shall not be engaged for festival purposes.
- (xvi) Sufficient rest has to be given to the

elephants which are engaged for "Para procession". Para procession shall be restricted to 6 a.m. to 11 a.m. and 4 p.m. to 8 p.m. only.

(xvii) During night time, generators shall be provided to avoid any contingency due to failure of general power supply.

(xviii) It shall be ensured that elephants are brought under public liability insurance scheme for an amount of Rs.3.00 Lakhs to each elephant."

On a perusal of the aforesaid Rule, it is clear as crystal that it obliges the District Committee to take necessary measures to ensure that the festival committee constituted for smooth conduct of the festivals or the persons organizing such functions in which elephants are exposed are required to adhere to many a measure. The District Committee is bound by the Rules and see to it that the festival committees follow the same.

At this juncture, a question arose whether the temples or the Devaswom shall get themselves registered with the district committee so that there would be effective and proper control. We think that they should be registered with the Committee and accordingly is is directed that the registration shall be done within a period of six weeks from today. The temple and Devaswom shall, apart from other formalities, also mention how many elephants it is going to use in any festival. It will be the obligation of the State to see that the registration is carried

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out. It shall be the duty of the State, the District Committee, Management of the Devaswom, the Management of the Temple and the owners of the elephants to see that no elephant is meted with any kind of cruelty and, if it is found, apart from being lodging of criminal prosecution, they shall face severe consequences which may include confiscation of the elephants to the State.

The IAs are disposed of.

Let the writ petition be listed after eight weeks. Pleadings shall be completed by then.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master