

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2013

CORAM:

THE HON'BLE MR.JUSTICE N.PAUL VASANTHAKUMAR

AND

THE HON'BLE MR.JUSTICE P.DEVADASS

W.P.No.34211 of 2013

AND

M.P.No.1 & 3 OF 2013

S.Jayachandran ... Petitioner

Vs.

- 1.The Secretary to Government of Tamil Nadu
Hindu Religious and Charitable Endowment Department,
Secretariat,
Fort St. George,
Chennai- 600 009.
- 2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam,
Chennai-600 034.
- 3.The Additional Chief Secretary,
Government of Tamil Nadu,
Environment and Forest Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 4.The Principal Chief Conservator of Forest,
Panagal Maligai,
Saidapet, Chennai-15.
- 5.The Field Director,
Mudumalai Tiger Reserve,
Ooty, The Nilgris.
- 6.The Field Director,
Aanamalai Tiger Reserve,
Pollachi,
Coimbatore District.
- 7.Elephant G.Rajendran
Advocate

"A"Block, D.No.7, III Floor,
Silver Park Apartments,
No.36, Thanickachalam Road,
T.Nagar, Chennai.
(impleaded as per order in
M.P.No.2 of 2013, dated 19.12.2013)

...Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents herein not to take camp elephants from Mudumalai Tiger Reserve and Aanamalai Tiger Reserve to the elephant rejuvenation camp at Mettupalayam scheduled to be held from 19.12.2013 to 04.02.2014.

For Petitioner : Mr.R.Srinivasan for
Mr.M.Santhanaraman

For Respondents: Mr.A.L.Somayaji,
1 to 6 Advocate General,
Asst. by Mr.M.K.Subramanian,
Spl. Govt. Pleader (Forest)

7th Respondent Mr.Elephant G. Rajendran
(party in person)

O R D E R

P.DEVADASS, J.,

The writ petitioner, a naturalist having interest in preservation of wildlife came forward with this Public Interest Litigation(PIL), for a direction to respondents 1 to 6 not to take camp elephants from Mudumalai Tiger Reserve and Aanamalai Tiger Reserve to the elephant rejuvenation camp being held at Thekkampatti in Coimbatore District from 19.12.2013 to 04.02.2014.

2. Annually during December-January, the Tamil Nadu Government conducts rejuvenation camp for elephants. Now, for the current year 2013-2014, such a camp is being held in a vast area adjacent to Bhavani river bed in Thekkampatti in Mettupalayam Taluk in Coimbatore District. This rejuvenation camp is for domesticated elephants in certain temples, mutts and captive elephants in Mudumalai Tiger Reserve and in Aanamalai Tiger Reserve camp also known as 'camp elephants'.

3. The grievance of the petitioner is that the domesticated elephants are afflicted with certain contagious diseases such as Tuberculosis, herpes, haemorrhagic septicemia, foot and mouth etc., because of their human habitation. However, since the camp elephants are allowed to live in natural habitation, they are free

from such diseases. In such circumstances, conducting rejuvenation camp for both type of elephants together will result in camp elephants acquiring such diseases. It is not in the best interest and preservation of camp elephants. Thus, he wants that the camp elephants should not be sent to the rejuvenation camp.

4. Mr.R.Srinivasan, the learned counsel for the petitioner would contend that published findings of certain researches on elephants is that the temple elephants are prone to contagious diseases such as Tuberculosis, herpes, haemorrhagic septicemia, foot and mouth etc and thus they shall not be brought close and kept along the Forest Camp elephants. This has also been considered when such a situation was brought to the notice of this Court in W.P.No.2325 of 2009 (ELEPHANT RAJENDRAN Vs. PRINCIPAL CONSERVATOR OF FOREST, CHENNAI AND ORS). The captivated elephants are to be kept in forest area also has been recently emphasized by a Division Bench of this Court in W.P.No.24189 of 2013 (E.SESHAN Vs. UNION OF INDIA AND ORS.) The learned counsel for the petitioner would further contend that it is the duty of the State to protect the well being of the wild animals like elephants, an endangered species coming under Schedule-1 of the Wildlife Act. In this respect, the learned counsel cited T.N.GODAVARMAN THIRUMULPAD vs. UNION OF INDIA AND ORS. [2012 (4) SCC 362].

5. On the other hand, the learned Advocate General submitted that as the State is bound to take care of their well being and health thus the rejuvenation camp is being held. The Government issued G.O.Ms.No.298, Tourism, Culture and Charitable Endowment Department, dated 22.11.2013. This rejuvenation camp is for certain temple elephants as well as for camp elephants. As per the Tamil Nadu Captive Elephants (Management and Maintenance) Rules, 2011, permission from the concerned authority has been obtained to transport the elephants. Elephants having diseases and unfit for transportation are not sent to the rejuvenation camp. After eliminating such elephants, 31 temple elephants and 18 camp elephants were already sent to the rejuvenation camp. Before transporting them, they were examined and certified by Veterinary Doctors, only fit elephants were sent to the said camp. All the conditions prescribed in the said Rules are strictly complied with. The temple elephants and the camp elephants are kept separately. Both will not be mingled. At the camp, necessary nutritious food and medical care are being provided to them. The learned Advocate General pointed out that even in GODAVARMAN (supra), the Hon'ble Apex Court held that the conservation of biological diversity ought to be protected in its natural habitat. That is being observed and not violated. This rejuvenation camp is a temporary measure. As soon as the camp is over, the elephants will be re-transported to their prior place.

6. Mr.G.Rajendran, an Advocate, who in view of his abiding interest in the life and welfare of elephants became popular as Elephant Rajendran, came on record as 7th respondent. He has submitted that animals including the elephants have legal right to be protected. It is good to send the elephants to rejuvenation camp, because there they will be fed well, treated well by Veterinary Doctors. It is a misnomer that the domesticated elephants will have contagious diseases. Foot and mouth disease will eventually kill the elephants but not the T.B as it is curable. There is no material to show that either the temple elephants or the camp elephants have any disease much less contagious diseases. A good thing is being done to the elephants. Every one who is really interested in them must welcome it. To say otherwise is doing disservice to these elephants.

7. In reply, the learned counsel for the petitioner would contend that G.O.Ms.No.298, dated 22.11.2013 stated supra grants permission for sending 33 numbers of temple elephants and 10 numbers of Mutt elephants, totalling 43 elephants. The G.O. does not include the camp elephants. Thus, without proper permission, camp elephants are also being sent to the rejuvenation camp. This is against law.

8. In this connection, the learned Advocate General referring to para-7(vii) of the G.O. replied that the camp elephants, which are under the control of the Forest Department are sent to rejuvenation camp. Necessary permission to transport them to the camp also has been obtained from the competent authority as provided under 2011 Rules (supra). Prior decisions of this Court quoted by the learned counsel for the petitioner are not applicable to the facts of this case.

9. We have anxiously considered the arguments of the learned counsel for the petitioner, learned Advocate General and the submissions of the party-in-person, perused the averments in the affidavit filed in support of the writ petition, counter filed by the Government and the party-in-person and the decisions cited.

10. There is no slightest doubt that all kinds of animals are legally entitled to be protected. They includes wild animals and endangered species. It is the duty of every citizen to protect them. Such a duty is heavily on the State. Elephants are a kind of wild animals which has engaged the attention of the State Government.

11. Thus, elephants are being taken care of annually in a camp called rejuvenation camp is in vogue in this State. Such a camp is being held for the current year 2013-2014 in a vast area adjacent to the Bhavani river bed situate in Thekkampatti in Mettupalayam Taluk in Coimbatore District. It is the subject matter in this petition.

12. The Government is conducting the said rejuvenation camp for certain number of temple elephants and camp elephants from Mudumalai Tiger Reserve and Aanamalai Tiger Reserve from 19.12.2013 to 04.02.2014 for 48 days.

13. In its counter, in para 3, the Government lists the following as objects in conducting the said rejuvenation camp:

(i) to rejuvenation and address the health and welfare needs of captive elephant;

(ii) to improve their health standard by providing systematic and nutritious food and other facilities;

(iii) to provide health support by providing natural habitat with adequate water facilities;

(iv) to conserve the health of the captive elephant;

(v) to provide health support through camps and routine veterinary service; and

(vi) to build capacity among the owners of captive elephant on management of elephant in captivity.

14. The petitioner is not objecting to holding of the rejuvenation camp. His objection is that the temple elephants which are carriers of certain contagious diseases such as tuberculosis, herpes, haemorrhagic septicemia, foot and mouth etc., will spread them to camp elephants and that will endanger their life, therefore, no rejuvenation camp to camp elephants along with temple elephants.

15. Elephants are wild animals. In some temples, mutts and in certain religious institutions elephants are seen. With proper Government permission, even individuals are also owning elephants. Elephants are being used in the circus, zoos etc. These elephants lives among us. They are domesticated. They have human habitation. They are fed with artificial food also.

16. The petitioner says that the temple elephants are afflicted with certain contagious diseases such as tuberculosis, herpes, haemorrhagic septicemia, foot and mouth etc.

17. His such submission is based on his bookish knowledge. It is not based on reality of the situation. There is no material to show that the temple elephants having diseases are also sent to the rejuvenation camp.

18. It has been repeatedly submitted by the learned Advocate General that no elephants with diseases has been sent to the rejuvenation camp. In this connection, it is relevant to note the following para Nos. 4 and 10 in the counter filed by the Government:

"4. It is respectfully submitted that the Government in G.O.Ms.No. 299, Tamil Development Hindu Religious Endowment and Information Department, dated 22.11.2013 issued orders to the Commissioner of Hindu Religious and Endowment Department for conducting the elephant rejuvenation camp at Thekkampatti, Mettupalayam Taluk, Coimbatore District, duly complying with the provisions of Wild Life (Protection) Act, 1972, instructions of the Chief Wildlife Warden and that the following type of elephants will not be taken to the camp 1) affected by disease, 2) affected by musth, 3) affected by infectious and contagious diseases and the elephants which is not co-operating to move to camp site."

"10. It is respectfully submitted that no ailing or infected or disabled or musth or pregnant affected elephant is selected for camp. The elephant which are free from diseases are only taken to the camp. The elephant camp is conducted in a systematic manner duly taking into account the experiences of the past five years elephant camps. Elephant's health has been assessed primarily in the place of origin. The elephants were also checked at the camp point and given anti-viral spray before joining the camp. Thus all preliminary precautions for elephant rejuvenation camp including deworming of the elephants were carried out. Sufficient number of veterinary doctors of Animal Husbandry Department along with the Veterinary doctors of Forest Department are utilized in this camp. Medical officers are also engaged to take care on the health of the Elephant men and others in the camp itself."

19. It has been submitted by the learned Advocate General that at the rejuvenation camp, Veterinary Doctors, feeding arrangements, resting place, care takers for the elephants have been made and the camp is conducted in the best interest of the elephants.

20. In this connection, it is relevant to note the following in para 5 of the counter filed by the Government:-

"5. It is respectfully submitted that there are many administrative arrangements which have to be made for conducting the Elephant Rejuvenation Camp, such as Veterinary Doctors, systematic arrangement for transport facilities, experienced staff to manage the transport, feeding during the transit, resting place, shelter for the management staff etc. It cannot be done in so many places. After taking into account various administrative issues, the elephant camp is conducted at Thekkampatti, Mettupalaym Taluk, Coimbatore District, in the best interest of elephant. It is just and lawful."

21. The camp elephants are elephants under the control of the forest department. They are kept in a forest like area such as Mudumalai Tiger Reserve and Aanamalai Tiger Reserve. These captive elephants were allowed to habitate in forest area within the said restricted area. They are under the control of State Forest Department. They are fed by the department and were also allowed to have feed from the forest sources in the said area. These captive elephants are came to be called camp elephants. They are also governed under the Tamil Nadu Captive Elephants (Management and Maintenance) Rules, 2011. Now these camp elephants are also sent to the rejuvenation camp. As already seen in the rejuvenation camp, these camp elephants also will have all the benefits and facilities extended to the temple elephants. It is good for them. It is not against their well being.

22. Rule 9 of the 2011 Rules prescribes necessary permission to be obtained from the Chief Wild Life Warden or the authorised Officer of the Government to transport the elephants. It applies to transportation of all type of elephants. It has prescribed various conditions which includes health certificate from Veterinary Doctors, loading, feeding, watering, rest during their transportation and type of vehicle to be used.

23. The learned Advocate General pointed out that the necessary transport permit under the rules have been obtained from the Chief Wild Life Warden. This has also been specifically stated in their counter. This aspect has not been denied to by the petitioner.

24. Rule 7 of the 2011 Rules prescribes minimum feed supply per day for the captive elephants. In para 14 of their counter, the Government stated that as per the prescribed norms the elephants are being fed at the rejuvenation camp. It is also stated that they are provided with water and green fodder and they are not put to strain and are being taken care of in a systematic manner. These aspects were not contraverted by the petitioner.

25. The learned Advocate General repeatedly submitted that the temple elephants and the camp elephants are segregated and are kept separately and they will not be mingled and separate arrangements have been made for both type of elephants.

26. In this connection, it is pertinent to note para 18 of the counter, which runs as under:-

"18. It is respectfully submitted that the temple elephants and the camp elephants will be kept in separate places during the rejuvenation camp. There is no possibility for mingling of temple elephants and camp elephants for causing any difference in rearing and behavioral pattern of temple and camp elephants. All the grounds stated by the petitioner already considered and addressed by the respondents. The elephant rejuvenation camp is only with the object of rejuvenating and addressing the health and welfare needs of captive elephant and to conserve and to improve their health in scientific and systematic manner."

27. As already stated, this rejuvenation camp is only for 48 days. Thereafter, necessarily they have to be re-transported to their original places, namely, temple, mutts, zoos, camps, as the case may be. This has also been confirmed by the learned Advocate General in his submissions to this Court. The petitioner is also not at variance on this aspect.

28. Thus, it is seen that this rejuvenation camp is a temporary measure and it is also intended for the well being of the elephants.

29. In G.O.Ms.No.298, Tourism, Culture and Charitable Endowments Department, dated 22.11.2013, Government have accorded permission to hold the rejuvenation camp and also allotted funds. In para No.7 (i) of the said G.O. it is mentioned that certain number of elephants from temples(33 Nos.) and mutts (10 Nos.) in all numbering 43 are to be sent to the rejuvenation camp. In para 7 (ii), Rs.2,10,000/- per head for the said elephants have been sanctioned.

30. As already seen, the camp elephants are under the control of the State Forest Department. Since in para 7(vii) of the said G.O., the concerned Administrative Department has been directed to meet the rejuvenation camp expenses for the camp elephants out of their budgetary allocation, no separate funds has been allotted for the camp elephants. As regards the transportation of the camp elephants to the rejuvenation camp, already necessary permission has been obtained from the competent authority as provided in Rule 9 of the 2011 Rules.

31. Thus, the argument of the petitioner that no permission has been obtained for sending the camp elephants to the rejuvenation camp has no substance.

32. Earlier when similar rejuvenation camp was conducted during 2009, W.P.No.2325 of 2009 (ELEPHANT RAJENDRAN VS. PRINCIPAL CONSERVATOR OF FOREST, CHENNAI AND ORS.) was filed in this court by elephant G.Rajendran, now party-in-person (7th respondent) herein. In that writ petition it was proved by medical certificate and other materials that the temple elephant Andal was suffering from tuberculosis, in such circumstances, a Division Bench of this Court ordered her re-transportation. That is not the fact situation before us. Further, in the said case, it was not decided that there shall not be mingling of temple elephants and the camp elephants as contended by the petitioner herein.

33. When certain wild elephants from near a forest area in Thiruvannamalai went on a rampage damaging the crops and injuring human beings, they were captured and captivated in Mudumalai Tiger Reserve and Aanamalai Tiger Reserve. To free them and let them to forest area W.P.No.24189 of 2013 (E.SESHAN Vs. UNION OF INDIA AND ORS.) was filed in this Court. A Division Bench of this Court directed the department to make periodical assessment of those captivated elephants in the camp as to their need and as and when they became fit to be relocated in any forest areas it shall be carried out. That is not the fact situation before us.

34. Thus as rightly submitted by the learned Advocate General and Elephant Rajendran, the party-in-person, both SESHAN (supra) and ELEPHANT RAJENDRAN (supra) are not applicable to this case before us.

35. In GODAVARMAN (2012 (4) SCC 362), the issue before the Hon'ble Apex Court was whether sandalwood (*Santalum album* linn) is an endangered species. Incidentally the Hon'ble Apex Court referred to the duty of everyone to protect and improve the natural environment, wildlife including forest, lakes, rivers and wildlife and our compassion for living creatures imposed on us as a Fundamental Duty under Article 51-A of the Constitution of India and in para 40 of its judgment, the Hon'ble Apex Court high lighted the need to identify and protect the threatened species, duty of the State to formulate policies, legislation and pass appropriate laws to curb practices which results in their extinction and the State is also bound to protect its natural habitat.

36. The measures taken by the Government in this case are to take care of the well being of the elephants by holding rejuvenation camp. Some good thing is being done to the elephants. It is a temporary measure. After 48 days of the camp, they will be relocated to their original places. Thus, nothing has been gained by the petitioner in this case by quoting GODAVARMAN (supra).

37. In view of the foregoing, there is no illegality in having sent the camp elephants from Mudumalai Tiger Reserve and Aanamalai Tiger Reserve to the rejuvenation camp, now being held in Thekkampatti in Coimbatore District for 48 days which has already commenced on 19.12.2013.

38. Thus, this Writ Petition fails and it is dismissed. However, in the circumstances, no order as to costs. Consequently, connected M.Ps. are closed.

Sd/-
Assistant Registrar

/true copy/

Sub. Assistant Registrar

rrg/vsg

To

- 1.The Secretary to Government of Tamil Nadu
Hindu Religious and Charitable Endowment Department,
Secretariat, Fort St. George, Chennai- 600 009.
 - 2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam, Chennai-600 034.
 - 3.The Additional Chief Secretary,
Government of Tamil Nadu,
Environment and Forest Department,
Secretariat, Fort St. George,
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 - 4.The Principal Chief Conservator of Forest,
Panagal Maligai, Saidapet, Chennai-15.
 - 5.The Field Director,
Mudumalai Tiger Reserve, Ooty, The Nilgris.
 - 6.The Field Director,
Aanamalai Tiger Reserve, Pollachi,
Coimbatore District.
- + 1 cc to M/s. M. Santhanaraman, Advocate Sr.66441
+ 1 cc to Special Government pleader SR.66441
+ 1 cc to M/s. Elephant, G. Rajendran, Advocate Sr.66352
+ 1 cc to the Special Government Pleader Sr.66409

W.P.No.34211 of 2013

MP (CO)

Eu 07.01.2014