

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WA.No. 1650 of 2014 () IN WP(C).17848/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 17848/2014 of HIGH COURT OF
KERALA DATED 28-08-2014

APPELLANT(S)/RESPONDENTS IN WPC :

1. THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
(THE CHIEF WILDLIFE WARDEN), FOREST HEADQUARTERS
VAZHUTHACAUD, THIRUVANANTHAPURAM.

2. ADDITIONAL PRINCIPAL CHIEF CONSERVATOR OF FORESTS
(BIO DIVERSITY CELL), FOREST HEADQUARTERS
VAZHUTHACAUD, THIRUVANANTHAPURAM.

BY SPL.GOVERNMENT PLEADER SRI.M.P.MADHAVANKUTTY

RESPONDENT(S)/PETITIONER IN WPC :

THE SECRETARY
PARAMAKKAVU DEVASWOM, "GEETHANJALI"
PARAMAKKAVU DEVASWOM BUILDING, ROUND EAST, THRISSUR.

BY SRI.N.MAHESH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ALONG WITH
W.A.NO.1961 OF 2014 AND CONNECTED CASES ON 3-03-2015, THE COURT ON
31.3.2015 DELIVERED THE FOLLOWING:

'C.R'

ASHOK BHUSHAN, CJ & A.M.SHAFFIQUE, J

**W.A.Nos.1650, 1961, 1981 and 1995 of 2014
&
W.P(C).No.34517 of 2014**

Dated this the 31st March, 2015

JUDGMENT

Ashok Bhushan, CJ.

These four Writ Appeals and one Writ Petition raise an important issue pertaining to transfer/sale/transaction/transportation of elephants in the State of Kerala. The issue assumes more importance in view of the fact that the State of Kerala is known for its rich wealth of elephants and large number of traditions and rituals being associated with elephants in different ceremonies being performed in temples and other places. W.A.No.1650 of 2014 is being treated as the leading case, facts of which case are being noted in detail.

W.A.No.1650 of 2014

2. This Writ Appeal has been filed against the judgment dated 28.8.2014 in W.P(C).No.17848 of 2014, by

which judgment the Writ Petition filed by the Secretary, Paramekkavu Devaswom, has been disposed of holding that no permission is required from the Chief Forest Conservator to obtain an elephant from outside the State. The petitioner pleaded in the Writ Petition that a devotee Mrs.Vinitha Watson, native of Thrissur and settled in U.S.A, an ardent devotee of the Lord Bhagavathy of Paramekkavu, wants to offer an elephant to the Devaswom, for which she deposited 90,000/- US\$ in the account of the Devaswom. The petitioner made an application to the Principal Chief Conservator of Forests seeking permission for purchasing an elephant from Kerala itself. Copy of the said application dated 25.10.2012 has been produced as Exhibit P1. By Exhibit P2 letter dated 5.11.2012, the petitioner was asked by the Principal Chief Conservator of Forests (Wildlife) & Chief Wildlife Warden to submit an application in the prescribed form. The petitioner again submitted Exhibit P3 representation dated 20.1.2014 making a request to grant

permission to procure male elephant from outside the State of Kerala. The request of the petitioner was rejected by Exhibit P4 order dated 31.1.2014 stating that “sale involving commercial nature for elephant is prohibited as per Section 43(1) of Wildlife (P) Act, 1972”. The petitioner challenged the order dated 31.1.2014 in W.P(C).17848 of 2014 relying on the decision reported in **Venkitachalam v. State of Kerala** (2012(2) KHC 622) praying for the following reliefs:

“i. issue a writ of mandamus or any other appropriate writ, direction or order directing the respondents to give prior permission to the petitioner to procure and transport to the petitioner Devaswom an elephant (tusker) from the state of Assam or Bihar.”

The learned Single Judge by judgment dated 28.8.2014 disposed of the Writ Petition, against which judgment the Writ Appeal has been filed.

W.A.No.1961 of 2014

3. This Writ Appeal has been filed against the judgment dated 23.10.2014 passed in W.P(C).No.27680 of

2014, by which judgment the learned Single Judge, relying on the judgment dated 28.8.2014 in W.P(C).No.17848 of 2014, disposed of the Writ Petition. The Writ Petition was filed by the Parkkadi Kshetra Kshema Samithi. The petitioner claimed to be running activities of the Anjur Sree Parakkadi Bhagavathi Kshethram. It was stated in the Writ Petition that the petitioner is in need of an elephant for performing poojas and rituals in connection with the temple. The petitioner claimed to have approached the Principal Chief Conservator of Forests seeking permission to purchase an elephant from other State like Assam and Arunachal Pradesh. Copy of the said representation dated 25.1.2014 has been produced as Exhibit P1, by which necessary permission was sought for. By Exhibit P2 communication dated 4.2.2014 the petitioner was informed by the Additional Principal Chief Forest Conservator as follows:

"I am to inform that your application for availing an elephant is not permissible as per Section 43(1) of the Wild Life (Protection) Act, 1972".

The petitioner in the Writ Petition has prayed for a mandamus directing the respondents to give prior permission to the petitioner to procure and transport to the petitioner Devaswom an elephant from the State of Assam or Arunachal Pradesh. Another prayer was also made to quash Exhibit P2 order.

W.A.No.1981 of 2014

4. This Writ Appeal has been filed against the judgment dated 17.11.2014 in W.P(C).No.30364 of 2014, which Writ Petition was disposed of by the learned Single Judge by judgment dated 17.11.2014 observing that if the petitioner brings the elephant from outside the State, he has to intimate to the Chief Wild Life Warden or authorised officer within whose jurisdiction transfer or transport is effected in terms of Section 43(2) of the Wild Life (Protection) Act. The petitioner's case in the Writ

Petition was that the petitioner is the owner of an elephant, who has a certificate of ownership dated 13.6.1997, which elephant was purchased from the State of U.P. The petitioner claims to have capacity to maintain an elephant. The petitioner stated in the Writ Petition that he intends to purchase an elephant from the State of Bihar, where an exhibition-cum-sale of elephants was coming in the next month. The petitioner stated that he needs only to inform the Chief Wildlife Warden, in the event he acquires an elephant from outside the State. The petitioner placed reliance on the judgment of the learned Single Judge in W.P (C).No.17848 of 2014 dated 28.8.2014. The petitioner in the Writ Petition prayed for the following reliefs:

- “i. Declare that the petitioner need not get any permission from the respondents to purchase an elephant from any other state in India and to bring the animal to State of Kerala in the light of Section 43(2) of the Wild Life Protection Act, 1972.*
- ii. Issue a writ in the nature of mandamus or any other appropriate writ, order or direction*

directing the respondents not to obstruct the petitioner in transporting or transferring an elephant purchased from any state in India to the State of Kerala on condition that the petitioner will report the transfer or transport of the elephant to the Chief Wild Life Warden or Authorised Officer within whose jurisdiction the transfer or transport is affected.”

W.A.No.1995 of 2014

5. This Writ Appeal has been filed against the judgment dated 20.11.2014 in W.P(C).No.30872 of 2014, by which judgment the Writ Petition was disposed of observing that when the petitioner brings an elephant from outside the State, he shall inform the Chief Wildlife Warden, within whose jurisdiction the transfer or transport is effected. The petitioner's case in the Writ Petition was that the petitioner had acquired an elephant by name 'Bhola' in the State of Bihar. Certificate of ownership dated 6.12.2007 was filed as Exhibit P1. It was pleaded that the elephant was being looked after by one Sri.Ashok Singh, who is now unable to look after the elephant, hence the

petitioner wanted to transfer the elephant to his native home. It is submitted that for transferring the said elephant, the petitioner approached the Chief Conservator of Forests for No Objection Certificate. Reference has been made to the representation dated 3.11.2014, Exhibit P2. The petitioner also placed reliance on the judgment of the learned Single Judge dated 28.8.2014 in W.P(C).No.17848 of 2014. The petitioner by the said Writ Petition prayed for a direction to the second respondent to issue No Objection Certificate to transfer his elephant to Kerala. The following reliefs were made by the petitioner in the said Writ Petition:

- “i. Issue a writ of mandamus or any other appropriate writ, direction or order directing the 2nd respondent to issue No Objection Certificate to transport his elephant to Kerala.*
- ii. To declare no permission is required from the respondent to transfer the elephant in question from out the State.”*

W.P(C).No.34517 of 2014

6. This Writ Petition has been filed by the petitioner, who claims to have submitted a representation to the second respondent for getting No Objection Certificate to procure a male elephant from outside the State of Kerala. Copy of the said representation dated 24.11.2014 has been annexed as Exhibit P2. It was pleaded in the Writ Petition that population of captive elephants in Kerala substantially came down from 2007 onwards. It was further pleaded that most of the temple authorities find it difficult to arrange elephants for performing temple rituals and ceremonies. The owners of the captive elephants in North-Eastern States such as Assam and Arunachal Pradesh find it difficult to maintain their elephants following a ban imposed with regard to the felling of trees. The petitioner also placed reliance on the judgment in ***Venkitachalam's case (supra)*** as well as the judgment in W.P(C).No.17848 of 2014. The following prayers have been made by the petitioner in the Writ Petition:

- “i. Issue a writ of mandamus or any other appropriate writ, direction or order directing the respondents to give No Objection Certificate to the petitioner to procure and for transporting 2 male elephants from the State of Assam or Bihar.*
- ii. To issue a writ of mandamus or any other appropriate writ, direction or order directing the 1st respondent to dispose of Exhibit P1 representation forthwith after hearing the petitioner.*
- iii. To declare no previous permission is required for transfer or transportation of an elephant from the Chief Wild Life Warden.”*

7. We have heard Sri.M.P.Madhavankutty, learned Special Government Pleader appearing for the appellants in the Writ Appeals and respondents in the Writ Petition. We have also heard Sri.N.Mahesh learned counsel appearing for the petitioner in W.P(C).No.34517 of 2014. We have also heard Sri.P.V.Kunjikrishnan and Sri.Millu Dandapani appearing for the respondents in the Writ

Appeals. The parties shall be referred to as have been described in the respective Writ Petitions.

8. Learned Government Pleader appearing for the appellants submitted that the learned Single Judge in the impugned judgments has not correctly interpreted Section 43 of the Wild Life (Protection) Act, 1972 (hereinafter referred to as 'the Act, 1972'). It is submitted that the learned Single Judge has referred to only Section 43(2) of the Act, 1972, whereas the prohibitions as imposed in Section 43(1) have not been looked into. It is submitted that by virtue of the amendments made in Section 43 by Amendment Act 16 of 2003, there is total prohibition on transfer/sale or offer for sale or by any other mode of consideration of commercial nature, and in all the Writ Petitions, except one Writ Petition, where only no objection for transportation is claimed, the petitioners are seeking permission for purchase of elephants from the State of Kerala or outside the State of Kerala. It is submitted that there being prohibition for sale or purchase

of elephant, the applications submitted by the petitioners for seeking permission/no objection have rightly been rejected. It is submitted that the Division Bench judgment in ***Venkitachalam's case (supra)*** has also noted the prohibition on transfer of animals, which judgment was binding and no different view could have been taken. It is submitted that Section 43(2) of the Act, 1972 may be applicable with regard to permissible transfer or transport, but Section 43(2) can in no manner be read as wiping out of prohibition contained in Section 43(1) of the Act, 1972.

9. Learned counsel for the respondents/petitioners, refuting the submissions of the learned Government Pleader appearing for the appellants, contended that interpretation given by the State to S.43 of the Act, 1972 is not correct. He submitted that Section 43(2) clearly permits transfers or transport from the State or transfers or transport from outside the State any such animal, animal article, trophy or uncured trophy and the learned Single Judge rightly

interpreted that the only requirement for such transfer or transport is to intimate the Chief Wild Life Warden, within whose jurisdiction the transfer or transport was effected. It is submitted that there is no total ban on the transfer of elephants and total ban was never intended by the Act, nor it shall serve object of the Act. It is submitted that a person having Ownership Certificate can very well transfer the elephant. Learned counsel for the respondents submitted that in all cases elephants are being sought to be acquired for the purpose of temple rituals, which is necessary and cannot be prohibited. Learned counsel for the parties have placed reliance on various judgments of this Court and the Apex Court, which shall be referred while considering the submissions in detail.

10. From the submissions made by learned counsel for the parties and the pleadings on record, following are the issues, which arise for consideration in this batch of cases:

- I. Whether under Section 43 of the Wild Life (Protection) Act, 1972, sale or purchase of elephant is permissible and only the requirement for sale or purchase of elephant is to intimate the Chief Wild Life Warden as required under Section 43(2), in whose jurisdiction the transfer or transport is effected?**
- II. Whether under the Wild Life (Protection) Act, 1972, any kind of transfer of an elephant is permissible or there is total prohibition of transaction of an elephant under the statutory scheme?**
- III. Whether the learned Single Judge, in the judgment dated 28.8.2014 in W.P (C).No.17848 of 2014 has correctly interpreted Section 43 of the Wild Life (Protection) Act, 1972?**

IV. What is the procedure statutorily prescribed under the Wild Life (Protection) Act or the Kerala Wild Life (Protection) Rules to transport elephants from outside the State or to transport elephants from the State of Kerala to any other State?

11. All the issues being interconnected are taken together. Before we consider the above issues, it is necessary to note the relevant provisions of the Act, 1972 and the statutory scheme, including various amendments made in the Act and their objects and purposes.

12. The Act, 1972 was enacted to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country. It is useful to note paragraph 1 of the Statement of Objects and Reasons of the Act, 1972 which is to the following effect:

“1. The rapid decline of India's wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in this country and others are in the danger of being so. Areas which were once teeming with wild life have become devoid of it and even in sanctuaries and National Parks the protection Act, 1912 (8 of 1912), has become completely outmoded. The existing State laws are not only out dated but provide punishment which are not commensurate with the offence and the financial benefits which accrue from poaching and trade in wild life produce. Further, such laws mainly relate to control of hunting and do not emphasis the other factors which are also prime reasons for the decline of India's wild life, namely, taxidermy and trade in wild life and products derived therefrom.”

13. By Act 28 of 1986, the Wild Life (Protection) Amendment Act, 1986 was enacted. Indian elephant is included in Schedule I as item No.12B. The amendment was enacted with an object and purpose that no one will be permitted to trade in wild animals specified in schedule I or Part II of Schedule II of the Act. It is useful to refer to

the Statement of Objects and Reasons of the 1986 Act, which is to the following effect:

“2. Under the scheme of the Act, trade or commerce in wild animals, animal articles and trophies within the country is permissible and is regulated under Chapter V. Since there is hardly any market within the country for wild animals or articles and derivatives thereof, the stocks acquired for trade within the country are smuggled out to meet the demand in foreign markets. This clandestine trade is abetted by illegal practices of poaching which have taken a heavy toll of out wild animals and birds. The stocks declared by the traders at the commencement of the wild Life (Protection) Act, 1972 are still used as cover for such illicit trade. Attempts to acquire the declared stocks of skins of some wild species have also not met with the desired success, mainly because most traders are not inclined to part with their stocks and thereby lose the ploy for illegal activities. It is, therefore, necessary to suitably amend the Act to prohibit trade in certain specified wild animals or their derivatives. It is, therefore, proposed to provide that no one will be permitted to trade in wild animals specified in Schedule I or Part II of Schedule II of the Act or in any derivatives therefrom after a period of two months from the

commencement of the amending Act or two months from the date on which a wild animal is included in Schedule I or Part II of Schedule II by notification issued under the provisions of the act. All existing licences for internal trade would be invalid thereafter. Further, no fresh licences would be granted for internal trade on such wild animals or their derivatives in future. An exemption is being given to notified Government of India undertakings who can purchase stocks from licensees during the specified period of two months for manufacturing articles from them exclusively for export. The exemption at present available to dealers in ivory under the second proviso to section 44(1) is also being removed so as to enforce a total ban in dealing in Indian ivory and simultaneously to provide for some regulation over the manufacture and trade of articles made out of imported ivory.

3. The bill seeks to achieve the above objects."

14. By Amendment Act, 1986, "Chapter V-A - prohibition of trade or commerce in trophies, animal articles, etc., derived from certain animals" was inserted. Sections 49A, 49B and 49C were inserted in the Act. Section 49B deals with prohibition of dealings in trophies, animal articles etc. The amendment clearly expressed its

intention to prohibit trade or commerce in trophies, animal articles, etc.

15. There were further amendments by Act 44 of 1991 and Act 26 of 1993 and then came the next important amendment made in the Act by Act 16 of 2013. The statement and objects of which are stated as follows:

“The Wild Life (Protection) Act, 1972 provides for the protection of wild animals, birds and plants. The said Act provides, inter alia, for the legal framework for the protection of various species of wild animals, management of their habitats and regulation and control of trade in parts and products derived from various species of wild animals.

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The Wild Life (Protection) Amendment Bill, 2002 proposes:-

(i) to highlight the ecological and environmental objective in the long title of the Wild Life Act;

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(vii) to ban commercial sale of forest produce removed from national parks and sanctuaries for better management of Wild Life;

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(xii) to provide that captive animals and wild animals included in Schedule I and Part II of Schedule

II of the Wild Life Act and their parts and products can be acquired only by way of inheritance;”

16. Substantive amendments have been made by 2003 Amendment Act in Section 40. Section 43 was completely substituted by a new Section. Section 40A was also added by Amendment Act 16 of 2003. Rules were framed by the Central Government, namely, the Declaration of Wildlife Stock Rules, 2003 by notification dated 18.4.2003 to make declaration with regard to any captive animal, animal article, trophy or uncured trophy derived from animals, which made it obligatory for submitting declaration. The Government of Kerala has framed another Rule, namely, the Kerala Captive Elephants (Management and Maintenance) Rules, 2003.

17. The initial statutory scheme as disclosed by the Act, 1972 contained provisions in Chapter V (prohibition of trade or commerce in trophies, animal articles, etc.). Section 40 provides for 'declarations'. Section 42 provides for 'certificate of ownership' and Section 43 provides for

'regulation of transfer of animal etc.'. Sections 40, 42 and 43 are relevant, which are to the following effect:

*“40. **Declarations.**- (1) Every person having at the commencement of this Act the control, custody or possession of any captive animal specified in Schedule I or Part II of Schedule II, or any 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 this 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 derived 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.

(3) Nothing in sub-section (1) or sub-section (2),

shall apply to a recognised zoo subject to the provisions of section 38-I 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 article or trophy (other than a musk of a musk deer or horn of 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.

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

43. Regulation of transfer of animal, etc.-
(1) Subject to the provisions of sub-section(2), sub-section (3) and sub-section (4), a person (other than a dealer) who does not possess a certificate of ownership shall not.

(a) sell or offer for sale or transfer whether by

way of sale, gift or otherwise, any wild animal specified in Schedule I or Part II of Schedule II or any captive animal belonging to that category or any animal article, trophy, uncured trophy or meat derived therefrom;

(b) make animal article containing part or whole of such animal,

(c) put under a process of taxidermy an uncured trophy of such animal, except with the previous permission in writing of the Chief Wild Life Warden or the authorised officer.

(2) Where a person transfers or transport from the state in which he resides to another State or acquires by transfer from outside the State any such animal, animal article, trophy or uncured trophy as is referred to in sub-section (1) in respect of which he has a certificate of ownership, he shall within thirty days of the transfer or transport, report the transfer or transport to the Chief Wild Life Warden or the authorised officer within whose jurisdiction the transfer or transport is effected.

(3) No person who does not possess a certificate of ownership shall transfer or transport from one State to another State or acquire by transfer from outside the State any such animal, animal article, trophy or uncured trophy as is referred to in sub-section (1) except with the previous permission in

writing of the Chief Wild Life Warden or the authorised officer within whose jurisdiction the transfer or transport is to be effected.

(4) Before granting any permission under sub-section (1) or sub-section (3), the Chief Wild Life Warden or the authorised officer shall satisfy himself that the animal or article referred to therein has been lawfully acquired.

(5) While permitting the transfer or transport of any animal, animal article, trophy or uncured trophy, as is referred to in sub-section (1) the Chief Wild Life Warden or the authorised officer-

(a) shall issue a certificate of ownership after such inquiry as he may deem fit;

(b) shall, where the certificate of ownership existed in the name of the previous owner, issue a fresh certificate of ownership in the name of the person to whom the transfer has been effected;

(c) may affix an identification mark on any such animal, animal article trophy or uncured trophy.

(6) Nothing in this section shall apply-

(a) to tail feather of peacock and the animal articles or trophies made therefrom;

(b) to any transaction entered into by a recognised zoo subject to the provisions of section 38-1 or by a public museum with any other recognised zoo or public museum."

18. A perusal of the above provisions as it existed prior to 2003 Amendment Act indicate that a person, who does not possess a Certificate of Ownership could not have sold or offered for sale or transfer by way of sale, gift or otherwise any wild animal or any captive animal without previous permission in writing of the Chief Wild Life Warden or the authorised officer. Under Section 43(2), in case of transfer or transport from the State in which he resides to another State, he was required to report the transfer or transport to the Chief Wild Life Warden. However, under Section 43(3), no person who does not possess a certificate of ownership shall transfer or transport any such animal without previous permission in writing of the Chief Wild Life Warden or the authorised officer. Section 43 clearly contemplates that transfer by sale or by other modes was permissible by a person having ownership certificate as well as a person who does not have ownership certificate. Further, as per Section 44, a person with requisite licence could have carried on business in captive animals also.

19. The Statement and Object of the Act, 2003 as quoted above indicated to create a ban of commercial sale or ban of sale of animals included in Schedule I or Part II of Schedule II. Now the provisions of the Act as amended by the Act, 2003 are to be noted. Section 40 of the Act contemplates for declaration by every person having at the commencement of the Act the control, custody or possession of any captive animal. Further, there was restriction of acquiring, receiving or control of sale without permission of the Chief Wild Life Warden. Section 40(4) empowered by notification requiring any person to declare **any animal article or trophy**, which provision was amended by the 2003 Amendment Act and in place of words “animal article or trophy”, the words “any animal or animal article or trophy” were substituted. The intention, thus, was clear that declaration under sub-section (2) to Section 40 could have been asked for any animal and such declaration was not confined to the declaration of animals at the

commencement of the Act alone. Section 40A was inserted, which empowered the Central Government by notification requiring any person to declare to the Chief Wild Life Warden of any captive animal article, trophy or unsecured trophy derived from animals. Thus, the regulatory regime was brought into force by Act 16 of 2003 to regulate to seek declaration for insisting captive animals in possession or custody of a person. As noted above, the Rules have already been framed by the State Government. Thus, with effect from 2003 all declarations for animals which were not earlier made under Section 40 are required to be made to the Forest Officer. The most important changes which have been brought by substituting Section 43 by Act 16 of 2003 was that prohibition was imposed in transfer by way of sale or by any other mode of consideration of commercial nature. Thus, Section 43(1) prohibited the following transfer by person having certificate of ownership: (1) by way of sale; or (2) offer for sale; or (3) by any other mode of

consideration of commercial nature. Thus, the intendment is clear that sale and purchase of elephant was prohibited. Not only proper sale or offer for sale was prohibited, but any other mode of consideration of commercial nature was prohibited. The object was that elephant need not be subjected to commercial transaction. Sub-section (2) of Section 43, however, contemplates transfers or transportation by a person, who had a certificate of ownership, which obliged him to report within 30 days of the transfer or transport to the Chief Wild Life Warden or the authorised officer within whose jurisdiction the transfer or transport is effected. Sections 43(1) and 43(2) have to be harmoniously construed, so that purpose and object of both these provisions be served. If it is held that for sale or transfer only, the person having ownership certificate has to report to the Chief Wild Life warden, as held by the learned Single Judge the whole purpose and object of regulation of transfer/restriction of restriction of transfer shall frustrate. Section 43(2) shall be applicable only with regard to those

transfers, which are not covered by prohibition under Section 43(1). Thus, those transfers, which are not prohibited under the Act, for them alone report to the Chief Wild Life Warden is contemplated. For example, gift of captive animal is not prohibited by Section 43. Thus, in the event of a person makes a valid gift, he has to report under Section 43(2) to the Chief Wild Life Warden. We however have to sound a note of caution that even if in transfer by gift a commercial transaction is found, the same shall be covered by the provision under Section 43(1).

20. The purpose and object of the Act, 1972 came up for consideration before the Apex Court and this Court in several cases. In ***State of Bihar v. Murad Ali Khan and others*** [(1988)4 SCC 655) the following was laid down by the Apex Court in paragraph 8 of the judgment:

“8. On a careful consideration of the matter, we are afraid, the approach of and the conclusion reached by the High Court is unsupportable. In regard to the first ground, presumably, certain provisions of the "Act" in regard to cognizability and investigation of offences against the Act, relevant to

the matter, had not been placed before the High Court. The policy and object of the Wild Life laws have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalances introduced by the degradations inflicted on nature by man. The state to which the ecological imbalances and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect a last-ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment. The tragedy of the predicament of the civilised man is that "Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he can not repair and cannot foresee." In his foreward to 'International Wild Life Law', H.R.H. Prince Philip. The Duck of

Edinburgh said :

"..... Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that"

.....

".....As usual with all legal systems, the crucial requirement is for the terms of the conventions to be widely accepted and rapidly implemented. Regretfully progress in this direction is proving disastrously slow"

21. Again in ***Indian Handicrafts Emporium v. Union of India*** [(2003)7 SCC 589] the amendments made by Act 16 of 2003 and the object and purpose of the Act, 1972 came up for consideration. The following was laid down in paragraphs 27 and 53 of the judgment:

"27. The provisions of the said Act must be construed having regard to the purport and object it seeks to achieve. Not only inter alia wild animal is to be protected but all other steps which are necessary therefor so as to ensure ecological and environmental security of the country must be enforced. The interpretation provisions as regard 'wild animal' employs the word 'includes' and, thus,

must be assigned a broad meaning. The Amending Acts must be viewed in that perspective. Protection and conservation of wild animal is essential for very existence of human life. A trade in wild animal which is sought to be prohibited with an object to oversee survival of human beings must be given its full effect. The CITES was formulated keeping in view the aforementioned policy. India is a member State of the Convention. It is a signatory to the other treaties and conventions in this behalf. Appendix I of CITES which came into effect from 18th January, 1990 provided for complete prohibition of internal and trans-border trade in ivory. The Parliament enacted the Amendment Act (Act No. 44 of 1991) with a view to save the species of Indian Elephant and to give effect to the said international treaties. Prior thereto, that is 1989, the African Elephant was proposed to be brought in Appendix I of CITES.

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53. It is, therefore, difficult to accept the contention of Mr. Sanghi that protection and preservation of wild life would not be in public interest and/or cannot be extended to imported ivory. Wild Life forms part of our cultural heritage. Animals play a vital role in maintaining ecological balance. The amendments have been brought for

the purpose of saving the endangered species from extinction as also for arresting depletion in their numbers caused by callous exploitation thereof.”

22. A Division Bench of this Court in **Venkitachalam's case (supra)** had occasion to consider Sections 40 and 43 as amended by 2003 Amendment Act. The Writ Petition was filed before this Court seeking a direction to the respondents to take all steps to see that no elephant was transferred to the State of Kerala in contravention of Section 43 of the Act. The Division Bench of this Court noticed the amendments brought to Sections 40 and 43 of the 2003 Amendment Act. The Division Bench held that for considering the question whether there is a total ban as to the transfer of captive elephant in any manner otherwise than by way of inheritance it is necessary to examine the provisions as it existed earlier. After noticing the provisions that existed prior to the 2003 Act the Division Bench made the following observations in paragraphs 17, 18 and 21:

"17. Sub-s.(2) of S.40 prohibits acquisition, receiving, keeping in his control, custody or possession, sell, offer for sale or otherwise transfer or transport any animals specified in Schedule.1 or Part.2 of Schedule.2 and allied things by any person whatsoever. Sub-s.(2A) and (2B) which have been inserted by Act 16 of 2003 read thus:

"(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.1 or Part.2 of Schedule.2, except by way of inheritance.

(2B) Every person inheriting any captive animal, animal article, trophy or uncured trophy under Sub-s.(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 S.41 and 42 shall apply as if the declaration had been made under Sub-section (1) of S.40:

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

(3) Nothing in Sub-section (1) or Sub-section (2) shall apply to a recognised zoo subject to the provisions of S.381 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.1 or Part.2 of Schedule.2 in his control, custody or possession in such form, in such manner, and within such time, as may be prescribed."

18. S.40A provides for immunity in certain cases which is in the following terms:

"40A. Immunity in certain cases. - (1) Notwithstanding anything contained in Sub-sections (2) and (4) of S.40 of this Act, the Central Government may, by notification, require any person to declare to the Chief Wild Life Warden or the authorised officer, any captive animal, animal article, trophy or uncured trophy derived from animals specified in Schedule.1 or Part.2 of Schedule.2 in his control, custody or possession, in respect of which no declaration had been made under Sub-section (1) or Sub-section (4) of S.40, in such form, in such manner and within such time as may be prescribed.

(2) Any action taken or purported to be taken for violation of S.40 of this Act at any time before the commencement of the Wild Life (Protection) Amendment Act, 2002 shall not be proceeded with all pending proceedings shall stand abated.

(3) Any captive animal, animal article, trophy or

uncured trophy declared under Sub-section (1) shall be dealt with in such manner and subject to such conditions as may be prescribed."

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21. Clause (c) of S.49A defines 'specified date' which in relation to ivory imported into India or an article made therefrom would mean the date of expiry of six months from the commencement of Wild Life (Protection) Amendment Act, 1991. The said provision was inserted by Act No. 44 of 1991."

23. In this context, it is also relevant to note the provisions of Section 40. Section 40, wherein sub-sections (2)(A) and 2(B) were inserted by Act 16 of 2003, which contain a proviso that nothing in sub-sections (2A) and (2B) shall apply to the live elephant. Thus, the provisions brought statutory scheme by sub-sections (2A) and (2B) that a person having a certificate of ownership, shall, after commencement of the Wildlife (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 was made

applicable for different various reasons and Section 43(1) prohibiting transfer by sale or any other mode of consideration of commercial nature as noted in Section 43 (1) was prohibited. Thus, the case of transfer regarding elephant is entirely different from the scheme, which was inserted by sub-section (2A) and (2B) of Section 40. Thus, sub-sections (2A) and (2B) of Section 40 have no bearing on the interpretation of transfer of a live elephant. Section 40(2), which provides that no person, after the commencement of the Act, acquire, receive, keep in his control, custody or possession, sell, offer for sale or otherwise transfer or transport any animal, except with the previous permission in writing of the Chief Wild Life Warden or the authorised officer, has to be read along with the provision contained in Section 43(1). In the event Section 40(2) is read to mean that only by having permission of the Chief Wild Life Warden sale is permissible, the same is directly in conflict with the purpose and object by which Section 43(1) was

inserted by Amendment Act 16 of 2003. Section 40(2), thus, shall be applicable only in those transfers, which are not hit by Section 43(1). Thus, permission is required from the Chief Wild Life Warden for acquisition transfer or transport of any animal. The Chief Wild Life Warden, if he finds that permission is for sale or offer to sell or transaction of commercial nature, he has to reject the application in view of the law as inserted by Section 43 (1). But in cases where the transfer is not hit by Section 43(1), permission can be granted by the Chief Wild Life Warden.

24. Now coming to the facts in W.A.No.1650 of 2014. The writ petitioner came with the clear case that the petitioner sought permission for purchasing an elephant from Kerala. In paragraph 5 of the Writ Petition it has been stated that “it is respectfully submitted that at that juncture, the petitioner Devaswom approached the 1st respondent herein sought permission for purchasing an elephant from Kerala.”. In W.A.No.1981 of 2014, the

petitioner came with the case that “now the petitioner intends to purchase an elephant from the State of Bihar where an exhibition cum sale of elephants are coming in the next month.” Further, in W.A.No.1961 of 2014, the petitioner approached the first respondent and sought permission for purchasing an elephant, which was specifically stated in paragraph 3 of the Writ Petition. In W.P(C).No.34517 of 2014 the petitioner also came up with the case that he wanted to acquire an elephant and asked no objection certificate for procuring and transporting two male elephants from the State of Assam or Bihar. In the above cases the petitioners have come up with the request permitting purchase of elephants, which is clearly prohibited by Section 43(1) as amended by Act 16 of 2003, the Chief Wild Life Warden, thus, did not commit any error in refusing the above request. The view of the learned Single Judge that by virtue of Section 43(2), only after acquiring an elephant the report is submitted is not correct. Prior permission under Section 40(2) of the Chief

Wild Life Warden is necessary for transfer, which is not hit by Section 43(1). Section 43(2) has to be held to be applicable only to those transfers or transport, which are not hit by Section 43(1) and for which prior permission has been obtained under Section 40(2).

25. Now we come to W.A.No.1995 of 2014, which was a case where the petitioner came up with the Writ Petition seeking a direction to the second respondent to issue no objection certificate to transfer his elephant to Kerala. In the said case the petitioner had Exhibit P1 ownership certificate from the Chief Wild Life Warden. He wants to procure a male elephant from outside the Kerala and he submitted Exhibit P2 representation before the Chief Wild Life Warden, Forest Head Quarter, Thiruvananthapuram for getting no objection certificate to transport an elephant to Thiruvananthapuram from the State of Bihar. The petitioner relied on the judgment dated 28.8.2014 in W.P(C).No.17848 of 2014 and submitted that he was only required to report the transfer or transport of the elephant

to the Chief Wild Life Warden.

26. Transportation of an animal by a person having ownership certificate does not attract Section 43(1), but for transporting an elephant as per Section 40(2), previous permission in writing of the Chief Wild Life Warden is necessary. The object and purpose of incorporating such provision of previous permission is that the Chief Wild Life Warden has to be aware that the animal like elephant is being transported from one State to another State. So that, in case of need, appropriate measures can be taken with regard to elephant inter-transfer. This is to give protection to the animal as well as to the public in general. If the submission made by learned counsel for the writ petitioner is accepted that only a report is sufficient under Section 40(2), the elephant as well as the public in general shall be exposed to great danger.

27. In any view of the matter, there being a specific and clear provision of Section 40(2), which also clearly encompasses transport of any animal specified in

Schedule I or Part II of Schedule II, the said provision cannot be given a go by resorting to Section 43(2). We, thus, are of the view that prior permission from the Chief Wild Life Warden, Thiruvananthapuram is required for transferring an elephant from Bihar to Thiruvananthapuram as requested by the petitioner. Hence, Exhibit P2 application submitted by the petitioner has to be considered and appropriate decision is to be taken.

28. One more judgment, which was relied on by the petitioner, is ***Nakeri Vasudevan Namboodiri and others v. Union of India and others*** (2007(4) KHC 140), where the provisions of Section 43 and the provision introduced against the captive animals were under challenge. Noticing the contentions of the Central Government Pleader that the Act needs amendment, the learned Single Judge held that until the Act is amended, there should be some regulation with regard to sale, transfer and other dealings involving changing of hands of

captive elephants in accordance with the norms prescribed by the Chief Wild Life Warden. The observation made in the judgment has to be read in accordance with the statutory provisions of the Act. The judgment does not interpret the provisions of the Act, Section 40 or 43, nor can be held to be laying down anything else except the provisions as contemplated by Section 40(3). Thus, the said judgment does not help the writ petitioner in any manner.

29. Another judgment dated 5.4.2007 of the learned Single Judge in Crl.M.C.No.1477 of 2007 has been cited by learned counsel for the petitioner in W.P(C).No.34517 of 2014. The said case arose out of a proceeding initiated for the offences under Sections 43 and 51 of the Wild Life (Protection) Act, 1972. In the above case the learned Single Judge held that the offence under Section 43 of the Act is not made out, hence the proceedings initiated is quashed. In the said judgment the Court did not interpret any provision, the said case does not render any

assistance to the writ petitioner in the present case.

30. In view of the foregoing discussions, we answer the above issues in the following manner:

- I. Section 43(1) of the Act prohibits transfer of an elephant by way of sale or offer for sale or by any other mode of consideration of commercial nature and no permission can be granted under Section 40(2) for such transfer. The report of transfer or transportation to the Chief Wild Life Warden as contemplated under Section 43(2) is applicable to those transfers or transportation, which have been effected with permission under Section 40(2). Transfers or transportation, which are effected after previous permission of the Chief Wild Life Warden, are also to be reported under Section 43(2) to the Chief Wild Life Warden within 30 days of the transfer or transportation.
- II. Under the Wild Life (Protection) Act, 1972, all transfers of elephants by way of sale or offer for sale or by any other mode of consideration of commercial nature are

prohibited. Transfer falling in other categories cannot be held to be prohibited and can be made with prior permission of the Chief Wild Life Warden as contemplated under Section 40(2).

- III. The learned Single Judge in the judgment dated 28.8.2014 in W.P(C).No.17848 of 2014 has not correctly interpreted Section 43 of the Act, 1972. The learned Single Judge has erred in taking the view that after transfer or transport the only requirement is to report the transfer or transfer under Section 43(2). Report as contemplated under Section 43(2) is attracted in cases where transfers or transportation are effected with prior permission under Section 40(2). For transportation of an elephant from another State to Kerala or within the State of Kerala, prior permission is necessary under Section 40(2) of the Act, 1972, for which application in prescribed form has to be submitted by the applicant to the Chief Wild Life Warden, who has to consider the nature of transaction and after considering relevant facts and the scheme of the Act, take a decision on the application.

31. In view of the foregoing discussions, we are of the view that the judgment of the learned Single Judge in W.P(C).No.17848 of 2014 dated 28.8.2014, which is the subject matter of challenge in W.A.No.1650 of 2014 is unsustainable. Further, the judgments of the learned Single Judge following the above judgment are also liable to be set aside accordingly.

32. In the result, W.A.Nos.1650, 1961 and 1981 of 2014 are allowed and the Writ Petitions filed by the petitioners are dismissed. W.P(C).No.34517 of 2014 is dismissed. W.A.No.1995 of 2014 is disposed of directing the respondent in the Writ Petition Chief Conservator of Forests to consider Exhibit P2 application dated 3.10.2014 of the writ petitioner for transportation of the elephant from the State of Bihar to Thiruvananthapuram. The said application be disposed of within a period of one month from the date of

production of a copy of this judgment before the respondent.

The parties shall bear their own costs.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M.SHAFFIQUE
JUDGE

vgs