

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 7719 of 2009 (H)

PETITIONERS :

- 1. G. GOPALAKRISHNAN NAMBOOTHIRI,
S/O. GOVINDAN NAMBOOTHIRI, ADIMANA ILLOM,
THAKAZHI, ALAPPUZHA.**
- 2. SHAJI K.G., S/O.GOPALAN,
KOYIPPURATHU VEEDU, ITHOTTUVA,
PADINJARE KALLADA, KOLLAM.**

**BY ADVS.SRI.SAJU.S.A
SRI.K.C.KIRAN**

RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO THE FORESTS
(WILDLIFE) DEPARTMENT, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE CHIEF CONSERVATOR OF FORESTS
(WILDLIFE) & CHIEF WILDLIFE WARDEN,
KERALA FOREST HEADQUARTERS, THIRUVANANTHAPURAM.**
- 3. THE DIVISIONAL FOREST OFFICER, RANNI.**
- 4. THE FOREST RANGE OFFICER,
KALLAR RANGE, ACHANKOVIL P.O.**

**R1 TO R4 BY SPL. GOVERNMENT PLEADER SRI. JAMES KURIAN
BY SRI.RENJITH THAMPAN,SPL.GP FOR FOREST**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE APPLICATION DT 10/10/2003 SUBMITTED BY THE PETITIONER.**
- P2: COPY OF THE INVENTORY OF THE STOCK PREPARED BY THE OFFICER ON VISITING THE PREMISES OF THE 1ST PETITIONER ON 29/4/2004.**
- P3: COPY OF THE REPORT DT 25/5/2004 SUBMITTED TO THE DFO, RANNI BY THE RANGE OFFICER, RANNI.**
- P4: COPY OF THE AGREEMENT FOR SALE DT 21/10/2004 EXECUTED BETWEEN PETITIONERS 1 AND 2.**
- P5: COPY OF THE INSURANCE POLICY DT 27/10/2004 FOR A PERIOD OF ONE YEAR FROM 28/10/2004 TO 27/10/2005.**
- P6: COPY OF THE MAHAZAR DT 9/6/2005 PREPARED BY THE FOREST RANGE OFFICER, KALLAR.**
- P7: COPY OF THE POSTMORTEM REPORT OF THE ELEPHANT DT 11/6/2005.**
- P8: COPY OF THE REPORT DT 23/7/2006 SUBMITTED BY THE D.F.O. RANNI.**
- P9: COPY OF THE ADVOCATE NOTICE DT 13/9/2006 ISSUED ON BEHALF OF THE INSURANCE COMPANY.**
- P10: COPY OF THE COMMUNICATION DT 17/1/2006 ISSUED TO THE 2ND PETITIONER BY THE R2.**
- P11: COPY OF THE LETTER DT 31/3/2006 ISSUED TO THE 2ND PETITIONER BY THE R2.**
- P12: COPY OF THE COMMUNICATION DT 21/8/2006 ISSUED TO THE RANGE OFFICER, KALLAR BY THE D.F.O. RANNI.**
- P13: COPY OF THE CONSENT LETTER DT 8/2/2007 AUTHORISING THE 2ND PETITIONER TO RECEIVE THE TUSKS AND INSURANCE CLAIM AMOUNT.**
- P14: COPY OF THE ORDER DT 15/10/2007 ISSUED BY THE R2.**
- P15: COPY OF THE REPRESENTATION DT 7/11/2007 FILED BY THE PETITIONERS BEFORE THE R1.**
- P16: COPY OF THE JUDGMENT IN WPC NO. 33876/2007 DT 16/11/2007.**
- P17: COPY OF THE ORDER OF THE R1 DT 4/7/2008.**

RESPONDENT'S ANNEXURES :

ANNEXURE R2(A): COPY OF LETTER NO. 3625/F2/2008/F&WLD DT 4/7/2008.

//TRUE COPY//

P.A. TO JUDGE

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 7719 of 2009

Dated this the 14th day of October, 2015

J U D G M E N T

The petitioners preferred this writ petition challenging Exts.P14 & P17 orders passed by respondents 1 & 2 on the application submitted by them for ownership certificate of an elephant.

2. The 1st petitioner purchased an elephant by name, 'Manikantan', and submitted an application for change of ownership in terms of Section 40(A) of the Wild Life Protection Act, 1972. He alleges that when the application for transfer of ownership is pending, by an agreement of sale, the elephant was transferred to the 2nd petitioner. While so, the elephant died on 08.06.2005. When claims were made for receiving the insurance amount and also to get the tusks of the elephant as a trophy, the petitioners were directed to produce ownership certificate. They filed a joint application before the Chief Conservator of Forests, which was

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rejected. Challenging the same, the petitioners approached the Secretary, Forest Department, Government of Kerala. The Government also rejected the request of the petitioners. It is with this background, the petitioners have come up before this Court.

3. In the statement filed by the 2nd respondent, it is stated that the sale deed dated 21.10.2004 between petitioners 1 & 2 is null and void in view of Section 40(2) of the Wildlife (Protection) Act, 1972. According to them, in the declaration dated 10.11.2003 made by the 1st petitioner before the Chief Wildlife Warden, it is stated that he had purchased the said elephant on 16.10.2002 from one Babu, who was having no ownership certificate issued by the competent authority. It is further stated that for the said purchase, no permission was obtained from the Chief Wildlife Warden. Therefore, according to them, the possession of the elephant by the 1st petitioner is against law and the petitioners are not entitled to get the tusks of the dead elephant unlawfully possessed by them.

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Therefore, they prayed for the dismissal of the writ petition.

4. Arguments have been heard.

5. The learned senior counsel for the petitioners would submit that there was no dispute with regard to the ownership of the elephant and that is why the transferor and the transferee filed a joint application as suggested by the officers. The communications issued by respondents 2 to 4 would indicate that their request was to produce the ownership certificate so as to release the tusks. According to the learned senior counsel, after having submitted all relevant documents, the 2nd respondent was not justified in rejecting the request for ownership certificate for receiving the tusks of the dead elephant and also for receiving the insurance claim of the dead elephant.

6. The main argument advanced by the learned Government Pleader is that the transfer of the elephant from the 1st petitioner to the 2nd petitioner is void in view of Section 40(2) of the Wildlife (Protection) Act, 1972. As per

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Section 40(2), no person shall, 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 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 skin or such animal, or the salted or dried skin or 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 Wildlife Warden or the Authorized Officer.

7. Even assuming that the transfer of elephant by the 1st petitioner to the 2nd petitioner is void in the eye of law, the possession of the elephant by the 1st petitioner cannot be held invalid. The 1st petitioner submitted an application on 10.01.2003 and a report by the authorized officer recommending transfer was made on 25.05.2004. However, nothing has been done before the death of the elephant on 08.06.2005. It was pointed out that in view of the admitted delay in changing the ownership, the owners

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of the elephant were forced to part with possession on the basis of the agreement for sale. It was also on account of the delay or laches on the part of respondents 2 to 4, the change of ownership of the elephant was not effected. It is evident from Ext.P17 order that the 1st respondent has not properly considered the points arising for determination in the matter. Since the application is filed by the petitioners jointly, the 1st respondent ought to have allowed the request in Ext.P15 representation. Therefore, this Court is of the view that the matter requires a re-look by the respondents.

Therefore, the writ petition is disposed of quashing Exts.P14 & P17 and directing the respondents to consider the issue in the light of what has been stated above after affording the petitioners an opportunity of being heard within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-