

\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2068/2014

HARDEV SINGH AKOI

..... Petitioner

Through: Mr. Amit Sharma and Mr. Ajoy B.
Kalia, Advs.

versus

GOVERNMENT OF NCT OF DELHI

..... Respondent

Through: Ms. Zubeda Begum, Standing
Counsel for GNCTD.
Mr. Paramvir Singh and Mr. v.
Bharathydasan, Wildlife Inspectors.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **06.04.2015**

1. This writ petition seeks to challenge the order dated 8.10.2013, passed by the respondent. By this order the petitioner's application dated 8.10.2003 stood rejected on the ground that he does not have the necessary *locus standi*. The operative directions contained in the impugned order read as follows:-

“Declaration of such animal articles as are not under one's control, custody or possession has got no meaning in terms of Form annexed to the Declaration of Wild Life Stock Rules, 2003, leave alone granting of Ownership Certificate in respect of those animal articles.”

2. A perusal of the petition would show that a raid was conducted by the Forest and Wild Life Department, Government of NCT of Delhi, on 9.1.2003, at the premises of the petitioner whereby a seizure was made with

regard to a live python and three trophies, found in possession of the petitioner.

3. It appears that the live python, was released to its natural habitat by the respondent herein.

4. It is not disputed before me, that the, petitioner sought to make a declaration with respect to the trophies in his constructive possession (having been physically possessed by the respondent) which he had acquired via his late father, under the amended provisions of the Wild Life (Protection) Act, 1972 (in short the 1972 Act). The amended provision, under which the petitioner sought to apply, to seek immunity, in a sense, is Section 40A of the 1972 Act. This provision was introduced by Act No.16 of 2003, with effect from 1.4.2003.

4.1 The concomitant rules, that is, the Wild Life Stock Rules, 2003 (in short the Rules) for making such a declaration were notified by the Ministry of Environment and Forest, only on, 18.4.2003.

5. Under the Rules, so framed, the respondent is required to issue notice of hearing qua the application, if preferred, by the person concerned under the provisions of Section 40A of 1972 Act. This is clear upon a bare perusal of Rule 7. The said Rule reads as follows :-

“7. Date and place of hearing to be notified – The Chief Wild Life Warden or the officer authorized by the State Government in this regard shall notify to the parties the date, place and time of hearing of each application, if required.

6. The record shows that on 5.11.2008, the petitioner's application filed under Section 40A of the 1972 Act came up before the concerned officer, i.e. the Chief Wild Life Warden; whereupon it was observed that the said

application, would be disposed of under Rules 5 to 14 subject to orders of the court.

7. I am informed that the criminal proceedings taken out against the petitioner are pending adjudication. The criminal proceedings are registered as: CC No.93/1.

8. I am further informed that the petitioner had filed an action under Section 482 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) for quashing the criminal complaint. The said petition was dismissed by this court vide order dated 6.4.2009.

9. It is not disputed that the impugned order, to which I have made a reference above, came to be passed without issuance of any notice to the writ petitioner. According to me, the impugned order deserves to be set aside on this short ground alone.

10. Ms. Zubeda Begum, who appears for the respondents, seeks to get around this fatal flaw by asserting that the issue as to whether or not the writ petitioner inherited the trophies in issue, is a disputed question of fact, as observed by this court in the order dated 6.4.2009. The learned counsel further submitted that the issue with regard to failure in issuing notice of hearing to the writ petition would arise, only if, the provisions of Section 40A of the 1972 Act are held applicable to the instant case.

10.1. Ms. Zubeda Begum in support of her submissions also sought to place reliance on the averments made in paragraph 5(d) of the additional affidavit, dated 26.11.2014, filed on behalf of the respondent.

11. In my opinion, these are issues which can be addressed only after the respondent passes an order qua the writ petitioner after compliance is made of the provisions contained in Rule 7; which in effect, encompass, in

substance, the principles of natural justice. Since, no notice was issued, the writ petitioner had no opportunity to deal with the objections raised by the respondent. Whether or not Section 40A of the 1972 Act is to apply is, an aspect, that requires to be deliberated upon by the respondent. The impugned order has rejected the petitioner's application, on the sole ground, that he was not in possession of the trophies in issue.

12. The facts, as set out above, would show that the said trophies were taken away from the writ petitioner pursuant to a raid and, therefore, quite naturally, the trophies could not have been in physical possession of the petitioner. The trophies were, thus, in a sense, in the petitioner's constructive possession. I do not wish to make further observations in the matter as the respondent would be required to pass an appropriate order after giving due opportunity to the petitioner.

13. The other aspects, which have been adverted to in paragraph 5(d) of the additional affidavit, cannot be relied upon as the impugned order does not make any reference to those aspect.

13.1 It is well settled law that order of a statutory authority can be sustained, if at all, based on what is found and observed therein and not on the basis of averments made in the counter affidavit filed on its behalf. [See *Mohinder Singh Gill Vs. The Chief Election Commissioner, 1978 SCR (3) 272*, and *The Commissioner of Police, Bombay Vs. Gordhan Das Bhanji, 1952 SCR 135*]. Therefore, this submission of Ms. Zubeda Begum does not impress me.

14. The last submission of Ms. Zubeda Begum, which is, that the aspect of inheritance is a disputed question of fact, is also, an aspect which can only be considered after a proper hearing is granted in the matter, and an

order is passed by the respondent.

15. Consequently, the impugned order is set aside. The respondent will issue notice to the petitioner informing him as to the date, time and venue at which the hearing will be held in the matter. Upon hearing the writ petitioner, respondent will pass a speaking order.

16. The petition is, accordingly, disposed of.

RAJIV SHAKDHER, J

APRIL 06, 2015

s.pal