

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 6.2.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.Nos.16769 & 16770 of 2017
and
W.M.P.Nos.18210, 18211 and 37124 of 2017

Prema Veeraraghavan

Petitioner

Versus

1 State of Tamil Nadu rep. by
the Secretary to Government
Environment & Forest Department
Secretariat Fort St. George
Chennai- 600 009.

2 The Chief Wild Life Warden
Forest Department
Government of Tamil Nadu
Panagal Maaligai Saidapet
Chennai - 600 015.

3 Animal Welfare Board of India
13/1 Third Seaward Road
Valmiki Nagar, Thiruvanniyur
Chennai - 600 041.

Respondents

Mr.S.Muralidharan

Intervenor

Prayer: Writ Petition No.16769 of 2017 filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus forbearing the 1st and 2nd respondent from being wild elephants into life long captivity, as Wildlife Protection Act, 1972 explicitly bans the captivity of wild animals.

Writ Petition No.16770 of 2017 forbearing the 2nd respondent from brutally taming the wild elephant calf that has been lodged in Kraal (Wooden enclosure at Varagailar Camp) in to being a Kumki (Tamed Elephant) and to consequentially direct respondent and anyone acting on their behalf, to release the said elephant in its native forest (Mankarai, Coimbatore) from where it was captured.

For petitioner : Mr.Sathish Parasaran (in Both)

For RR1 and 2 : Mr.Vijay Prashanth, (in Both)
Special Government Pleader (Forest)

For R3 : Mr.Jayesh B.Dolia

COMMON ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

These PIL writ petitions were filed by the petitioner, Prema Veeraraghavan, Daughter of P.S.Narayanan, Co-Founder, ELSA Foundation, claiming to be an Animal Lover, for the captured elephant calf lodged in Kraal, based on a news article in 'The Hindu' dated 23.4.2017.

2. According to the petitioner, the said elephant calf of 3 years age was captured from Athimathaiyanur near Coimbatore on 16.4.2017 and was lodged in a Kraal (Wooden Enclosure) at the Varagaliar (Anamalai) Forest Department Camp. The petitions were filed by the petitioner seeking a direction against the respondents, Forest Department and Animal Welfare Board on the basis that there were no reasons for the second respondent, Forest Department to keep the elephant calf in captivity and train it as Kumki (trained and domestic elephant).

3. Upon issuance of notice, the respondents have put in appearance and filed counter to the said petitions.

4. One Mr.S.Muralidharan, who claims to be an animal lover, has filed an Application in W.M.P.No.37124 of 2017 seeking to intervene in the matter.

5. In the Counter Affidavit filed by the second respondent, Forest Department by Mr.T.P.Raghunath, I.F.S., Principal Chief Conservator of Forests and Chief Wildlife Warden, Panagal Maaligai, Saidapet, Chennai, it is stated that adequate and proper medical care was provided to the said elephant calf. It is stated in para 11 of the said Counter Affidavit filed by the second respondent that there is no plan to tame the male calf into a Kumki elephant and the calf is treated by a medical team of veterinary officers headed by Senior Forest Veterinary Officer and the animal is recuperating well.

6. It is further stated in para 23 of the Counter Affidavit that decision to keep the animal in a Kraal (Wooden enclosure at Varagaliar Camp) after consultation with the Senior Forest Veterinary Officer Dr.N.S.Manoharan, Chief Conservator of Forests, Annamalai Tiger Reserve and Sathyamangalam Tiger Reserve and the Principal Chief Conservator of Forests and Chief Wildlife Warden of Tamil Nadu State. It is submitted on behalf of Respondents that section 11(1)(a) of the Wildlife (Protection) Act, 1972 empowers the competent authority to capture any animal, in case it becomes a potential threat to public due to its unnatural behaviour and using that power, the

said animal calf was captured and sent for rehabilitation at Varagaliyar Camp. It is further stated that proper medical treatment and due care is provided to the said animal calf and it is kept in the camp maintained by the Forest Department.

7. It is submitted by the learned counsel for the respondents that in view of the animal calf's habitation in the said camp for a considerable period, at this stage, it is not possible to set free the said elephant in the wild.

8. After hearing the learned counsels on the last date viz., 30.1.2019, we passed the following order:-

"Heard the learned counsels appearing for the parties in the presence of Mr.Ajay Desai, Scientist/Member, Expert Committee, Belgaum, Mr.Sanjay Srivatsava, I.F.S., Additional Principal Chief Conservator of Forest (Wildlife), Chennai and Mr.V.Ganesan, I.F.S., Field Director and Chief Conservator of Forest, Annamalai Tiger Reserve, Pollachi.

2. Having perused the Counter Affidavit dated 29.1.2019, signed by T.P.Raghunath, IFS, Principal Chief Conservator of Forests and Chief Wildlife Warden, Panagal Maaligai, Saidapet, Chennai, we are, prima facie, satisfied that the Elephant Calf in question has been given proper care and necessary medical treatment and the requisite facility is being provided in the Camp which the respondents maintain at Anamalai and it is not advisable to send him back to the Wild after so many years.

3. A copy of the counter has been supplied to the learned counsel for the petitioner, who prays for some time to verify the averments made in the said Counter Affidavit and respond to the same.

List on 6.2.2019. The Officials need not remain present in the court on that day."

9. The learned counsel for the petitioner today submitted before us that the petitioner can be allowed to have an independent examination of the animal calf again after 3 months by an expert in the field viz., Dr.Kushal Sharma, Elephant Veterinarian, Professor of Surgery and Radiology, College of Veterinary Science, Gauhati, Assam at the cost of the petitioner. This suggestion of the learned counsel was however, opposed by the learned counsel appearing for the intervenor, who also submitted that earlier, the same name was suggested for conducting medical examination of the elephant calf in question and the said person was found by the officials of the Forest Department as not an expert in the field.

10. Having examined the materials placed on record, and the Report submitted by the Committee appointed by this court, we are satisfied that the stand taken by the respondents is satisfactory and the animal calf in question is being properly taken care in the said camp maintained by the Forest Department. Therefore, we are not inclined to pass any further direction in the matter, at this stage.

11. However, we give liberty to the petitioner to have an independent assessment of the medical and physical condition of the elephant calf in the said Varagaliar (Anamalai) Forest Department Camp after a period of three months on a pre-notified date to the Forest Department which will be permitted by the respondent-Department. If the report given by such independent Doctor viz., Dr.Kushal Sharma, whom the petitioner claims to be an Elephant Veterinarian and Professor of Surgery and Radiology, College of Veterinary Science Gauhati, Assam, at the cost of the petitioner only and if the Report is found to be significantly contradicting with the Report placed before us by the three experts viz., (1)Dr.Rajeev T.S., Assistant Professor and Project Leader, Centre for Studies on Elephant, College of Veterinary and Animal Sciences, Mannuthy Thrissur Kerala; (2) Dr.Arun Zackaria, Wildlife Veterinarian, Kerala Forest Department; and (3)Mr.Ajay A.Desai, Elephant Scientist, Belgaum, which has been filed in the court on 18.1.2019, then, the petitioner is at liberty to first make a representation to the second respondent Chief Wildlife Warden, Forest Department, Government of Tamil Nadu, Panagal Maaligai, Saidapet, Chennai, who will pass appropriate orders on such information given by the independent Doctor viz., Dr.Kushal Sharma and in case, the petitioner still feels aggrieved by such order, passed by the second respondent, he can make a proper application praying for further direction in the matter.

12. As of now, we are satisfied that no further directions need to be passed by us. Therefore, we close these PIL writ petitions without any further orders. The connected miscellaneous petitions are also closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssk.

To:

- 1 State of Tamil Nadu rep. by
the Secretary to Government
Environment & Forest Department
Secretariat Fort St. George
Chennai- 600 009.

2 The Chief Wild Life Warden
Forest Department
Government of Tamil Nadu
Panagal Maaligai Saidapet
Chennai - 600 015.

3 Animal Welfare Board of India
13/1 Third Seaward Road
Valmiki Nagar, Thiruvannamiyur
Chennai - 600 041.

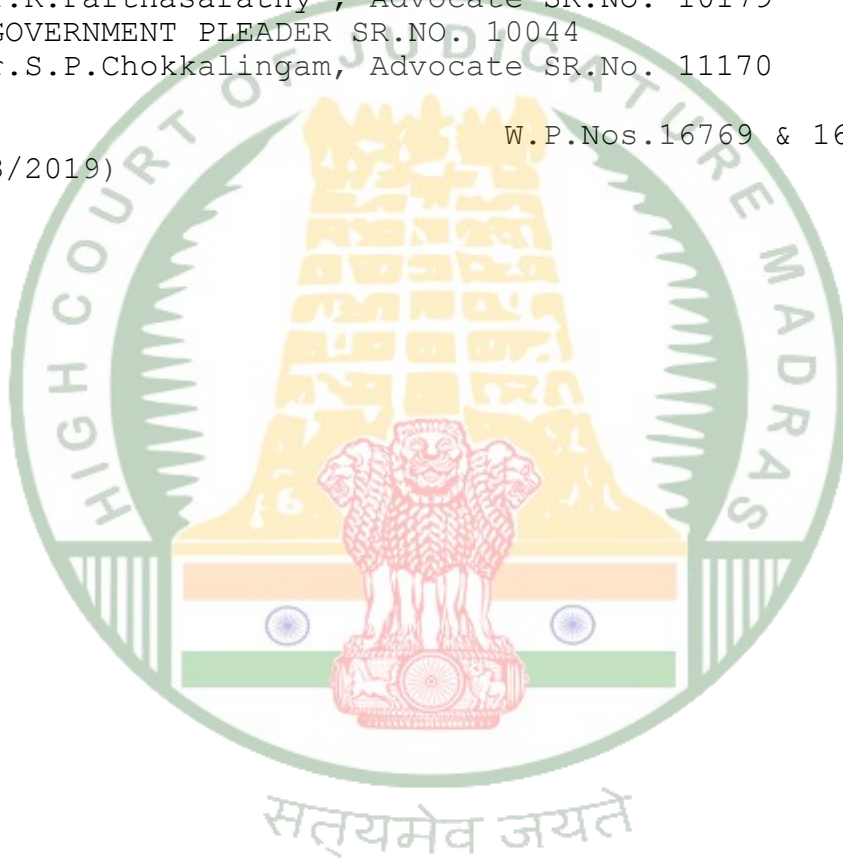
+1cc to Mr.R.Parthasarathy , Advocate SR.No. 10179

+1 CC TO GOVERNMENT PLEADER SR.NO. 10044

+1cc to Mr.S.P.Chokkalingam, Advocate SR.No. 11170

W.P.Nos.16769 & 16770 of 2017

A.SK(18/03/2019)



WEB COPY