



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

WEB COPY

W.P. (MD) No.1835 of 2020

and

W.M.P (MD) Nos. 1547 and 1549 of 2020

S.Mohammed Yousuf (Died)
Joharal Beevi

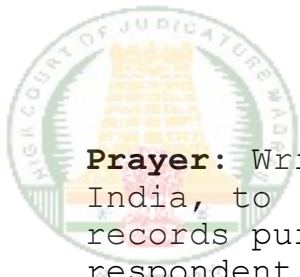
... Petitioner

Vs.

- 1.The Principal Chief Conservator of Forests and
Chief Wild Life Warden,
Panagal Buildings,
Saidapet,
Chennai.
 2. The Additional Chief Conservator
of Forests - Madurai Range,
K.K.Nagar, Madurai - 625 020.
 3. The Chief Conservator of Forests,
Virudhunagar Circle,
Virudhunagar, Virudhunagar District.
 4. The Wild Life Warden,
Grizzled Squirrel Wild Life Sanctuary,
Srivilliputhur,
Virudhunagar District.
 5. The Chief Conservator off Forest and Field Director,
Anamalai Tiger Reserve,
No:365/1, Meenakarai Road,
Pollachi Division, Pollachi.
 6. The Ranger,
Anaimalai Tiger Reserve, Pollachi.
 7. The Ranger,
Forest Range Office,
Topslip,
Pollachi.
- ... Respondents

[Petitioner substituted vide Court order, dated
05.08.2021 in W.M.P(MD)No.9194 of 2021 in WP(MD)
No. 1835 of 2020 by RSKJ]

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Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pursuant to records pertaining to order passed by the 1st respondent in Ref.No.WL1/50937/2018, dated 15.04.2019, and quash the same, further direct the respondents to issue order of ownership of the female elephant "Rohini".

For Petitioner : Mr.T.S.Mohameed Mohideen

For Respondents : Mr.R.Suresh Kumar
Government Advocate

ORDER

Prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the first respondent in Ref.No.WL1/50937/2018, dated 15.04.2019, and quash the same and to further direct the respondents to issue order of ownership of the female elephant "Rohini" to the petitioner herein.

2.That this case was filed by the petitioner, one Mohammed Yousuf, who was the original petitioner, since he died during the pendency of the writ petition, in whose place, his wife, one, Joharal Beevi has become the present petitioner. That one Elephant called "Rohini", belongs to the Government of Karnataka Forest Department had been given for ownership to one M.Kannaraja, Secretary, Sri Arulmigu Bhagavathi Amman Temple Trust, Theni and by order, dated 03.03.2001, the elephant was released from the Sacrebyle Elephant Camp of Wildlife Division, Shimoga of Karnataka to the said Kannaraja.

3.Thereafter, the certificate of ownership was issued by the Government of Karnataka Forest Department to and in favour of the said Kannaraja in respect of the said Elephant 'Rohini', by order, dated, 20.01.2003. Therefore, the said Kannaraja become the owner of the Elephant 'Rohini'.

4.In this context, it is the case of the petitioner that, the said Kannaraja, in order to maintain the Elephant, had appointed the original petitioner as 'Mahuth' and since then, he had been maintaining the Elephant properly.

5.Since for a long period the Elephant had been in the custody and maintenance of the petitioner, and the said Kannaraja had not taken any care about the Elephant, and since he had no objection with regard to the transfer of ownership of the Elephant, the petitioner had made the request to the Forest Department, that is, the respondents herein, for ownership of the captive Elephant 'Rohini', and in this regard, already, some litigations had been filed by way of Writ Petitions and Writ Appeals before this Court.



6.Ultimately, by the order of the Principal Chief Conservator of Forests and Chief Wildlife Warden, that is, the first respondent, dated 15.04.2019, the application filed by the petitioner for ownership of the captive Elephant 'Rohini' was rejected. The said order reads thus:

"With reference to your application vide reference 2nd cited, it is informed that the request for transfer of Ownership of Captive Elephant named "Rohini" has been examined in detail and as per the ownership Certificate issued by the Principal Chief Conservator of Forests (Wildlife) & Chief Wildlife Warden, Karnataka in No. C1/CWL/CR-41/2002-2003, dated 20.01.2003, the Ownership Certificate has been issued in the name of Sri M.Kannaraja, Secretary, Sri Arulmigu Bhagavathi Amman Temple Trust, Theni and the order specifically mentions that the elephant will not be sold or bartered or any type of exchange effected including gift to any other individual / temple / concern. Clarification has been issued by the Project Elephant Division, Ministry of Environment, Forests & Climate Change, Government of India in F.No.2-7/1998-PE, dated 17.12.2018, that Section 43(1) of the Wildlife (Protection) Act, 1972, prevents any transfer to Schedule-I animals, hence, any request for transfer by way of gift is not in the spirit of the Section, which prohibits any such transactions. Therefore, the request for transfer of ownership of the "Rohini" elephant cannot be complied with.

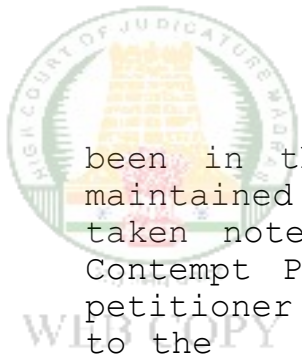
Sd/-Sanjay Kumar Srivastava,
Principal Chief Conservator of Forests
and Chief Wildlife Warden"

Challenging the same the present writ petition has been filed.

7.During the pendency of the Writ Petition, the original petitioner, S.Mohammed Yousuf died, therefore, his wife, Joharal Beevi was substituted, who alone, now maintain this Writ Petition.

8.During the hearing, it has been brought to the notice of this Court that, subsequent to the death of the petitioner, and even prior to that, the Elephant in question, by the orders passed by this Court, had been handed over to the respondents, that is, the Forest Department of Government of Tamilnadu, and according to the present instructions received by the learned Government Advocate, appearing for the respondents, the Elephant is in the custody and maintenance of the Anaimalai Animal Sanctuary of Government of Tamilnadu.

9.However, Mr.T.S.Mohameed Mohideen, learned counsel appearing for the petitioner, would submit that, eventhough the elephant had



been in the custody of the said sanctuary, it is not properly maintained by the said sanctuary Administrators, and this has been taken note by this Court, in an order passed by this Court in Contempt Petition(MD).No.406 of 2019, dated 03.01.2020, which the petitioner counsel has heavily relied upon and would state that, due to the deteriorating condition of the health of the Elephant as it lost 1000 kgs., of weight, and there are some diseases developed at its body, it shows that there has been no proper maintenance of the Elephant, and therefore, that is one of the ground, the original petitioner as well as the present petitioner sought for ownership of the Elephant.

10.In so far as the claim of the ownership of the Elephant is concerned, whether the said rejection order, which is impugned herein, is sustainable or not, is the only question to be decided here.

11.While giving certificate of ownership to one Kannaraja, as stated above, on 20.01.2003, the Principal Chief Conservator of Forest and Wild Life and Chief Wildlife Warden, Karnataka, Bangalore, has stated that, the certificate of ownership is given for the Elephant 'Rohini' to and in favour of M.Kannaraja, Secretary, Sri Arulmigu Bhagavathi Amman Temple Trust, Theni, with so many conditions. Once the ownership stands in the name of the said Kannaraja, unless he comes forward to transfer the ownership in favour of any third party, the question of transferring the ownership to the petitioner, that is, the present petitioner or the erstwhile petitioner, that is, the husband of the present petitioner does not arise.

12.In this context, the reason cited by the first respondent in the impugned order states that, there has been a clarification issued by the Project Elephant Division, Ministry of Environment, Forests and Climate Change, Government of India, dated 17.12.2018, that Section 43(1) of the Wildlife (Protection) Act, 1972, prevents any transfer of Schedule-1 animals, therefore, the request for transfer the ownership of the said animal, that is, Elephant 'Rohini', by way of gift is not in consonance with the said provision of the Act, referred to above. When there has been a prohibition under the provisions of the Wildlife (Protection) Act, 1972, and moreover, the ownership certificate is only with the said Kannaraja, who is not before this Court, and who has not come forward to change the ownership of the Elephant concerned, to and in favour of any third party including the petitioner, the plea raised by the petitioner to get the ownership of the said Elephant does not arise. Therefore, the said plea raised by the petitioner has to be rejected, therefore, it has been rejected by the first respondent, through the impugned order, dated 15.04.2019, ofcourse correctly, therefore, that order does not require any interference from this Court.



13. However, it has been brought to the notice of this Court by the learned counsel appearing for the petitioner that, since the present petitioner's husband, the original petitioner was the 'Mahuth', who had lived with the said Elephant for several years, and therefore, after coming to know the treatment meted out by the Elephant, at the hands of the Wildlife Sanctuary people, where the Elephant lost 1000 kgs., of weight and has become so sick, only in order to protect the elephant, he had approached the respondents to get a ownership certificate, where, he suffered with the impugned order, hence, he had filed the present Writ Petition seeking such a relief, and presently the wife of the Mahuth/Mohammed Yousuf, as he was no more, had come forward to take in-charge of the Elephant only in the interest of the welfare of the Elephant and not for any other purpose.

14. Be that as it may, such a laudable object of the erstwhile petitioner and the present petitioner can be appreciated, but, at the same time, in so far as the ownership of the Elephant is concerned, it cannot be granted in favour of the petitioner for the reasons stated above. However, insofar as the maintenance of the Elephant is concerned, since it has been observed by a Division Bench of this Court in the afore-stated order, dated 03.01.2020, the Elephant seems to have been suffered with some diseases, and there has been a loss of weight to the extent of 1000 kgs and if such is the position, that would be a serious matter, therefore, the respondents, especially, the Administrators of the Elephant Wildlife Sanctuary, where, the Elephant in question is presently maintained, shall take due care to protect this animal also, along with the other Elephants/animals being maintained by the said Sanctuary.

15. With these observations and directions, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

PJL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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7. The Ranger,
Forest Range Office,
Topslip, Pollachi.

+1 CC to M/s.T.S.MOHAMED MOHIDHEEN, Advocate (SR-29979[F] dated 22/09/2021)

+1 CC to M/s.SPL. GP (SR-30011[F] dated 23/09/2021)

W.P. (MD) No.1835 of 2020
22.09.2021

MGJ(06.12.2021) 6P 10C