



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2022

CORAM

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)No.4024 of 2022

and

W.M.P. (MD)No.3447 of 2022

WEB COPY

P.Pradeep Kumar

... Petitioner

vs.

1.The Principal Chief Conservator of Forests and
Chief Wild Life Warden,
Panagal Maaligai, Chennai.

2.The District Forest Officer and Wild Life Warden,
Kanyakumari Division, Nagercoil,
Kanyakumari District.

3.The Assistant Conservator of Forests and Assitant
Director, Kanyakumari Division,
Nagercoil, Kanyakumari District.

4.The Forest Range Officer,
Kulasekaram Forest Range,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to forbear the first respondent herein from taking any steps to dispossess the Captive Elephant namely Monimola bearing Microchip No.961001000005791 which is maintained by the petitioner in the light of the interim order passed in Writ Petition (Civil)743/2014 dated 04.05.2016 by the Hon'ble Supreme Court of India and on the basis of the representation made by the petitioner before the first respondent herein by RPAD dated 13.01.2022.

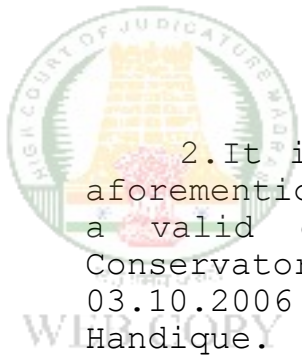
For Petitioner :Mr.B.Brijesh Kishore

For Respondents :Mr.T.Amjad Khan

Government Advocate

O R D E R

This Writ Petition has been filed for a Mandamus seeking for a direction to the first respondent to forbear them from taking any steps to dispossess the captive elephant, namely Manimola, Microchip No.961001000005791, which is maintained by the petitioner in the light of the interim order passed in Writ Petition (Civil)743/2014 dated 04.05.2016 by the Hon'ble Supreme Court of India and on the basis of the representation made by the petitioner before the first respondent herein by RPAD dated 13.01.2022.



2.It is the case of the petitioner that he is maintaining the aforementioned captive elephant, which is aged about 31 years having a valid certificate of ownership issued from the office of Conservator of Forests, Eastern Assam Circle, Jorhat, dated 03.10.2006 in favour of Mr.Honto Handique, S/o.Sri Panchadhar Handique.

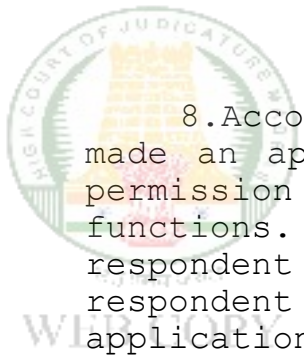
3.According to the petitioner, for the proper management of the said elephant, it was transported from Bihar to Kanyakumari vide valid transit permission issued by the Wild Office of the Chief Conservator of Forest-cum-Chief Wildlife Warden, Bihar, Patna, dated 08.11.2007 and the custody of the elephant was given to the petitioner on 14.11.2007.

4.According to the petitioner, he has complied with the procedure required under Section 43(2) of Wild Life (Protection) 1972. It is the case of the petitioner that he had also made a declaration under Section 40 and 40A of the Act before the second respondent on 23.11.2009. According to the petitioner, the fourth respondent conducted an enquiry and prepared inventory on 04.06.2010 under Section 41 of the Act. The second respondent in his proceedings, dated 05.05.2010 recommended to grant permission to possess and maintain the aforesaid elephant under the custody of the petitioner and participate in the customary rituals.

5.The petitioner also states that the Conservator of Forests, Tirunelveli, in his proceedings, dated 05.08.2010, forwarded the required documents for issuing ownership certificate and accordingly, all the required documents were sent by the petitioner to the first respondent and the same is pending as on date for issuing ownership certificate for the said elephant.

6.The Government of Tamil Nadu by exercising power conferred under Section 64 of the Act, framed Rules, namely, Tamilnadu Captive Elephants (Management and Maintenance), Rules, 2011. As per Rule 11 of the said Rules, the owners of the captive elephants should maintain the records and registers regarding the maintenance of captive elephants and the same should be produced before the Officer authorised by the Government in this behalf for inspection from time to time as may be called for.

7.The case of the petitioner is that he submitted quarterly reports regarding maintenance of his elephant for every three months to the District Welfare Committee, which was formed as per the aforementioned Rules. According to the petitioner, the District Welfare Committee has also maintained the data sheet for the petitioner's elephant from the year 2019. It is also the case of the petitioner that his elephant has also participated in some temple functions as per the aforementioned rules.



8. According to the petitioner on 21.12.2021, the petitioner made an application before the second respondent to grant transit permission and to grant permission to participate in temple functions. The second respondent forwarded the same to the first respondent along with the Demand Drafts for transit pass. The first respondent in his proceedings, dated 25.01.2021 returned the application and requested him to send back the aforesaid captive elephant to the original owner and intimated him that if it is not done, legal action will be initiated against him for illegally possessing the elephant.

9. The petitioner has relied upon the interim directions given by the Honourable Supreme Court in W.P.(C)No.743 of 2014, dated 04.05.2016 and 01.11.2018, with regard to the captive elephant. As per the interim direction given by the Honourable Supreme Court, the captive elephant cannot be transported from State to State and in case, the ownership certificate is not available, provisional ownership certificate can be issued to the person, who is having custody of the captive elephant. According to the petitioner, therefore, the letter sent by the first respondent, dated 25.11.2021 to the petitioner requesting him to send back the elephant to the original owner is contrary to the interim directions issued by the Honourable Supreme Court referred to supra.

10. The petitioner has made a representation on 13.01.2022 to the first respondent requesting him to permit the petitioner to retain custody of the captive elephant and issue provisional ownership certificate for the said elephant in the light of the interim direction given by the Honourable Supreme Court on 04.05.2016 and 01.11.2018 in W.P.(C)No.743 of 2014. Since the said representation has not been considered till date, the petitioner has filed the present Writ Petition.

11. Heard Mr.B.Brijesh Kishore, learned Counsel for the petitioner and Mr.T.Amjad Khan, learned Government Advocate for the respondents.

12. The learned Counsel for the petitioner drew the attention of this Court to the interim direction given by the Honourable Supreme Court on 04.05.2016 and 01.11.2018 in W.P.(C)No.743 of 2014. He relied upon the following in the respective orders:

(a) Order, dated 04.05.2016, *"That apart, the persons who are in possession of elephants shall not transfer the elephants outside the state nor shall they part with the elephants by way of transfer in any manner"*.

(b) Order, dated 01.11.2018, *"As far as the second prayer is concerned namely conducting a survey, we are of the view that Chief Wild Life Warden of each State must ascertain and identify elephants in captivity in that particular State and whether the owners of these elephants have an ownership certificate. If they do not have*

the ownership, then after following the mandatory procedures required by law, the ownership certificate may be granted provisionally subject to the final decision."

13.Relying upon the aforesaid interim directions, the learned Counsel for the petitioner would submit that since the petitioner has already applied for provisional ownership certificate, the possession of the said elephant in his favour should not be disturbed till the final orders in the application seeking for provisional ownership certificate are passed. He would also submit that the captive elephant cannot be transported outside the State as per the interim direction given by the Honourable Supreme Court referred to supra and therefore, it is impossible for the petitioner to transport the elephant back to its original owner, who is now at Bihar.

14.Mr.T.Amjad Khan, learned Government Advocate appearing for the fourth respondent would submit that on 09.10.2019 in a meeting regarding illicit trading of captive elephant, the Government of India has passed a resolution that "No elephant can be gifted or sold and the ownership can only be by way of inheritance or acquisition by Government agency, by captive transfer, etc. Therefore, according to him, since the petitioner is not having a ownership certificate, he cannot retain custody of the captive elephant, which is subject matter of this Writ Petition. According to him, the captive elephant will have to be transferred back to the original owner by the petitioner and therefore, the first respondent has rightly issued the order calling upon the petitioner to return back the elephant to its original owner.

15.As seen from the affidavit filed in support of the Writ Petition, it is contended by the petitioner that he has been maintaining the captive elephant diligently ever since 2007, when he got the same from the original owner. It is also not the case of the respondents, as seen from the order, dated 25.12.2021, that the petitioner has not maintained the elephant properly. The only stand that the respondents have taken is that the petitioner cannot retain custody of the elephant, since he does not possess ownership certificate and therefore, the said elephant will have to be returned back to its original owner. The captive elephant should not be made to suffer because of the dispute raised by the respondents till the representation of the petitioner to retain the custody of the captive elephant is considered on merits and in accordance with law.

16.The petitioner has given a representation on 13.01.2022 requesting the respondents to permit him to retain custody of the captive elephant in the light of the interim directions given by the Honourable Supreme Court on 04.05.2016 and 01.11.2018 in W.P(C) No.743 of 2014.

17.No prejudice will be caused to the respondents, if the petitioner's representation is considered on merits and in accordance with law, after affording a fair hearing to the petitioner including granting him the right of personal hearing.

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elephant should not be made to suffer and therefore, since no complaint has been made against the petitioner with regard to the non maintenance of elephant, it can be retained by the petitioner till the final orders are passed in the petitioner's representation referred to supra.

18. Accordingly, this Court directs the first respondent to consider the petitioner's representation, dated 13.01.2022 seeking to retain the custody of the captive elephant, namely, Manimola, Microchip No.961001000005791, in the light of the interim order passed in Writ Petition (Civil)743/2014 dated 04.05.2016 by the Hon'ble Supreme Court of India and pass final orders on merits and in accordance with law after affording a fair hearing to the petitioner including granting him the right of personal hearing within a period of twelve weeks from the date of receipt of a copy of this order. Till final orders are passed, status-quo as on date shall be maintained.

19. With the above observation, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

Cmr

To

1. The Principal Chief Conservator of Forests and
Chief Wild Life Warden,
Panagal Maaligai, Chennai.
2. The District Forest Officer and Wild Life Warden,
Kanyakumari Division, Nagercoil,
Kanyakumari District.
3. The Assistant Conservator of Forests and Assistant
Director, Kanyakumari Division,
Nagercoil, Kanyakumari District.
4. The Forest Range Officer,
Kulasekaram Forest Range,
Kanyakumari District.

+1 CC to M/s.B.BRIJESH KISHORE, Advocate (SR-10228[F] dated 04/03/2022)

+1 CC to M/s.SPL GP (SR-10321[F] dated 07/03/2022)

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