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W.P.No.21639 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 04.08.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE S.SOUNTHAR**

**W.P No.21639 of 2023**

**and**

**W.M.P.No.21013 of 2023**

V.Vivek Ram Thilak

... Petitioner

Vs.

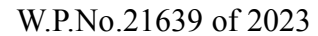
1.The Principal Chief Conservator of Forest  
and Chief Wildlife Warden  
Panagal Maaligai  
Saidapet, Chennai – 600015.

2.The District Forest Officer and  
Deputy Field Director  
Anaimalai Tiger Reserve,  
Pollachi.

... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the First Respondent in Na. Ka. No. 9062/2013 Va. Ou. Dated 23.07.2022 and quash the same and consequently direct the First Respondent to consider the Petitioner's application dated 11.12.2013 for transfer of name in the certificate of ownership based on the Petitioner's application dated 11.12.2013 in accordance with law within a stipulated time limit.

For Petitioner : Mr.A.Natarajan



For Respondents : Mr.P.nandakumar  
Government Advocate

The writ petition is filed challenging the order passed by the 1<sup>st</sup> respondent rejecting the application filed by the petitioner under Section 40 of the Wild Life (Protection) Act, 1972 seeking name transfer after death of his father.

2. It is the case of the petitioner that his grandfather namely V.R.Thirumalaisamy Gounder obtained certificate of ownership from office of the 2<sup>nd</sup> respondent under Rule 36 of the Declaration of Wildlife Stock Rules, 2003 framed under Wild Life Protection Amendment Act, 2002, to hold Elephant Tusk and wildlife articles like some Sambar Antler with skull etc. After death of his grandfather, the father of the petitioner was granted certificate of ownership on 23.12.2004 in respect of two Elephant Tusk and four numbers of Sambar Antler with skull.

3. The petitioner's father died intestate on 26.04.2013 and his death



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certificate was issued on 13.05.2013. In order to apply for transfer of name, the petitioner applied for legal heirship certificate and the same was issued to the petitioner by Tahsildar, Pollachi only on 22.10.2013. Immediately, thereafter, the petitioner submitted an application on 11.12.2023 under Section 40 of the Wild Life (Protection) Act, 1972 seeking name transfer to hold Elephant Tusk and wildlife articles like some Sambar Antler with skull etc.

4. Though the petitioner submitted the application on 11.12.2013, the same was considered and impugned order was passed by 1<sup>st</sup> respondent only on 23.07.2022. In the impugned order, the request for name transfer was rejected mainly on the ground that the application was filed by the petitioner after 229 days from the date of death of his father.

5. Section 40 (2-B) of the Wild Life (Protection) Act, 1972, reads as follows:-

*“(2B) Every person inheriting any captive animal, animal article, trophy or uncured trophy under sub-section (2A) shall, within ninety days of such inheritance make a declaration to the Chief Wild Life Warden or the authorised officer and the provisions of sections 41 and 42 shall apply as if the declaration*



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*had been made under sub-section (1) of section 40:*

*Provided that nothing in sub-sections (2A) and (2B) shall apply to the live elephant.”*

6. Relying on the above said provision, the 1<sup>st</sup> respondent rejected the application filed by the writ petitioner after 10 years. Whether, the time of 90 days prescribed under Section 40 (2-B) of the above said Act, came up for consideration before the Kerala High Court in WP(C).No.13588 of 2012 (W). In the said case law, the Kerala High Court has taken a view that the time limit prescribed under above said Section cannot be treated as a period of limitation. It is also held that where an application is made even after a period of 90 days, such application shall be considered by the Authorities in accordance with law. The relevant observation Kerala High Court reads as follows:-

*“3. Having adverted to Section 40(2B) of the Wild Life Protection Act, 1972, this Court is of the view that 90 days prescribed cannot be taken as a period of limitation. The application for transfer of ownership has to be made within 90 days of inheritance so as to get the legal heir the custody of the inherited captive animal or trophy. It is to be noted that there are other legal heirs for the deceased.*

*4. Therefore, this Court is of the view that a declaration in*



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*terms of Section 40(2B) of the Act, even if the person makes the application after 90 days, will have to be considered by the officer concerned.”*

7. In the case on hand, the petitioner in his affidavit clearly stated that after death his father, he applied for legal heirship certificate and the same was issued to him only on 22.10.2013. If time is calculated from the date of issuance of legal heirship certificate, the application filed by the petitioner is very well within 90 days.

8. In the case on hand, apart from the petitioner, there are other legal heirs. The petitioner submitted legal heirship certificate along with 'No Objection Certificate' by other legal heirs. If the petitioner filed an application without legal heirship certificate, the 1<sup>st</sup> respondent may not be in a position to consider the same. Any person claiming name transfer by inheritance must produced legal heirship certificate to establish his right of inheritance.

9. In such circumstances, the time taken by the petitioner to get legal heirship certificate must be allowed to be excluded while calculating the period mentioned under Section 40 (2-B) of Wild Life (Protection) Act, 1972.



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Therefore, 1<sup>st</sup> respondent ought to have treated the application submitted by the petitioner as the one filed within the period of 90 days and consider it in accordance with law. Therefore, the impugned order passed by the 1<sup>st</sup> respondent is set aside and the matter is remitted back to the file of the 1<sup>st</sup> respondent and the 1<sup>st</sup> respondent is directed to consider the request of the petitioner for name transfer vide his application dated 11.12.2013 in accordance with law after giving opportunity to the petitioner within a period of eight weeks from the date of receipt of copy of this order.

10. With the above direction, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

**04.08.2023**

Index : Yes  
Speaking order: Yes/No  
Neutral Citation: Yes  
dm



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To

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**S.SOUNTHAR, J.**

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