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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3713 OF 2024**

Swasthishri Jinsen Bhattark Pattacharya
Mahaswami Sanstha Math (Karveer) Petitioner.
V/s
Union of India and Ors. Respondents.

Mr. Surel S. Shah i/b Mr. Manoj A. Patil for the Petitioner.
Mr. M.M. Chunawala with Mr. P. S. Gunjar for Respondent No.1-UOI.
Mr. N.C. Walimbe, Addl. G.P a/w Mr. S.P. Shetye, AGP for Respondent
Nos. 3 to 5/State.
Mr. Shardul Singh alongwith Ms. Prerna Gandhi & Mr. Ashish S. for
Respondent No.6.

**CORAM: A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

DATE: 13th MARCH, 2024

P.C.:-

1] Leave granted to add Radhe Krishna Temple Elephant Welfare Trust as Respondent No. 6 to the Petition. Amendment be carried out forthwith.

2] The challenge raised in this writ petition is to the order dated 28/12/2023 that has been passed by the 2nd Respondent – High Power Committee whereby it has informed the 3rd Respondent – Chief

Conservator of Forests that the elephant named Mahadevi (Madhuri) stated to be owned by the Petitioner is sought to be transferred to the Radhe Krishna Temple Elephant Welfare Trust. This direction has been issued in the light of the letter received from PETA for transfer of the aforesaid elephant.

3] Acting on the aforesaid order dated 28/12/2023, the 3rd Respondent issued a no objection in that regard on 10/1/2024. On getting information about the same, a representation was made on behalf of the Petitioner on 7/2/2024 to the High Power Committee. In the meanwhile, on 13/2/2024 the 3rd Respondent issued directions for transportation of the said elephant to Jamnagar.

4] It is submitted by the learned Counsel for the Petitioner that the Petitioner owns the said elephant and in terms of Section 40(2) of the Wild Life Protection Act, 1972 it has received a declaration to that effect. Without granting an opportunity of hearing to the owner, its elephant is being transferred. It is further submitted that adequate care of the elephant is being taken by the Petitioner and its transfer is not warranted.

5] The learned Counsel appearing for Respondent Nos. 1 and 3 to 5 seek time to obtain instructions. Mr. Singh, learned Counsel submits that he has instructions to appear on behalf of the Respondent No. 6 - Trust in whose favour the transfer of the elephant has been directed. We find from the record that a declaration has been issued in favour of the Petitioner under Section 40(2) of the Act of 1972. On the basis of the letter issued by PETA, the impugned order has been passed on 28/12/2023. In our view, the opinion of the owner ought to have been gathered prior to transfer of the said elephant inasmuch as it possesses a declaration under Section 40(2) of the Act of 1972 in its favour. Since the representation dated 7/2/2024 has already been made to the High Power Committee and the same is stated to be pending, in our view, the following order will serve the ends of justice :-

(i) The High Power Committee is requested to consider the representation dated 7/2/2024 that has been made to it by the Petitioner by taking a decision thereon within a period of fifteen days after giving opportunity to all concerned parties.

(ii) The learned Counsel appearing for Respondent No. 6 - Trust on instructions submits that till such time the representation is considered and decided, it would not take steps to transfer the said elephant to Jamnagar. In view of this statement made, Respondent Nos. 3 to 5 shall defer their action in this regard till such decision is taken.

(iii) It is clarified that this Court has not expressed any opinion on the representation as made and the High Power Committee is free to consider all relevant aspects while deciding the representation.

(iv) The action as would be proposed to be taken on the basis of the High Power Committee's decision shall be given effect to after seven days from the communication of such decision to the Petitioner.

6] With the aforesaid directions, the writ petition is disposed of.

Parties to act on the authenticated copy of the order.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]