

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF JUNE, 2022

PRESENT

THE HON'BLE MR. RITU RAJ AWASTHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE ASHOK S.KINAGI

WRIT PETITION NO.10688 OF 2022 (GM-FOR-PIL)

BETWEEN:

MURULY M.S.

... PETITIONER

(BY SRI RAMESH T., ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
REPRESENTED BY ADDITIONAL CHIEF SECRETARY
FOREST, ECOLOGY AND
ENVIRONMENT DEPARTMENT (FEE)
KARNATAKA GOVERNMENT SECRETARIAT
ROOM No.448, 4TH FLOOR, GATE No.2
M.S. BUILDING, BENGALURU – 560 001.
- 2 . CENTRAL ZOO AUTHORITY
MINISTRY OF ENVIRONMENT, FORESTS AND
CLIMATE CHANGE
B-1 WING, 6TH FLOOR
PT. DEENDAYALA ANTYODAYA BHAWAN
CGO COMPLEX, LODHI ROAD
NEW DELHI – 110 003.

3 . RADHA KRISHNA TEMPLE ELEPHANT WELFARE TRUST
C/O RADHA KRISHNA TEMPLE
RELIANCE GREENS
MOTI KHAVDI
JAMNAGAR – 361 142.

... RESPONDENTS

(BY SRI VIJAYAKUMAR A. PATIL, AGA FOR R-1 AND
DR. SUJAY N. KANTAWALA, ADVOCATE FOR
MS. N.G. DEVISREE, ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, DIRECTING THE RESPONDENT NO.1 NAMELY THE STATE OF KARNATAKA TO ISSUE GUIDELINES DIRECTING THAT NO PERSON CAN SELL OR TRANSFER OR TRANSLOCATE ELEPHANTS FROM THE STATE OF KARNATAKA TO THE RESPONDENT NO.3 TRUST AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

This public interest litigation has been filed seeking intervention of this Court in the matter of transfer of some Elephants from State of Karnataka to respondent No.3 Trust which was reported in the media. A direction has been sought to the State Government to issue guidelines directing that no person can sell or transfer or translocate Elephants from the State of Karnataka to the respondent No.3 Trust. A direction has been sought to respondent No.3 Trust to send back the 4 Elephants that were transported to the said Trust and also send back all the Elephants which have been taken by the Trust, back to the

respective Forest Department of the States from which these Elephants were obtained.

2. Notice for respondent No.1 has been accepted by learned Additional Government Advocate, whereas Dr. Sujay N. Kantawala has put in appearance on behalf of respondent No.3. With the consent of learned counsel for the parties, we propose to dispose of the writ petition at the admission stage without calling for counter affidavit / statement of objections.

3. The case of the petitioner in brief is that the Elephants cannot be entrusted with private individuals or organizations and must be reclaimed by the State Government. His case is that by allowing organizations like the respondent No.3 to give refuge to Elephants, the State Governments or the Central Government is abdicating its responsibility. A perusal of documents annexed to the writ petition indicates that 4 Elephants were rescued from a Circus couple of decades ago. The Court, acting on a petition filed by animal rights activists, had directed the Forest Department to take over the Elephants. After the Court order, the Mysore Royal Family volunteered to take

care of the Elephants and they were accordingly sent to the Mysore Palace. The Elephants were a tourist attraction at the Palace and were used for Elephant Safaris. The Forest officials has informed that in 2017, the Royal Family wrote to the Forest Department that the handlers were not taking proper care of the animals. However, the animals were not shifted due to administrative issues. These 4 Elephants have been given to respondent No.3 Trust by way of Gift Deeds for their better care. The permission was given by the Forest Department for transportation / translocation of these animals.

4. Learned counsel for the petitioner has contended that respondent No.1 should not allow the transfer of Elephants from Karnataka. The forest authorities had wrongly granted permit in favour of respondent No.3 to transfer the Elephants from Karnataka to Jamnagar, Gujarat. It is also contended that the preference is being given to respondent No.3 in getting the wild animals on extraneous considerations. It is submitted that the animals which are transferred or translocated shall be sterilized. The counsel for the petitioner has argued that there is a strong apprehension that these animals would be

put to commercial use and the respondent No.3 may misuse these animals by opening a breeding centre.

5. The respondent No.3 has vehemently opposed the petition. We have perused the counter affidavit. The preliminary objections regarding maintainability of the writ petition has been raised, which are as under:

i. The instant writ petition is not maintainable either in law or on facts and hence the petition to be dismissed at the outset.

ii. The Respondent No.3 is a separate, distinct and independent organization in the form of a Public Trust and has no legal association with Reliance Industries Limited as is confused in many news reports attached with the Petition.

iii. The Petitioner has suppressed material facts and made false statements in this writ petition and averments contained in the instant writ are clearly aimed at misleading this Hon'ble Court and therefore the Petitioner is not entitled to any relief as claimed in this writ petition.

iv. It is submitted that instant writ petition is clearly an abuse of process of this Hon'ble Court and hence the Writ Petition is to be dismissed at the very outset.

6. Learned counsel for respondent No.3 submits that the Respondent No.3 began as an informal association of like-minded persons who have immense passion and a deep sense of attachment to the well-being of Elephants and large mammals, especially those who were and are victims of circumstances (injured in train accidents, fell in water tunnels etc.) from the wild and victims of abuse in captivity (circus, street begging etc). Though there is no specific date from which its activities of helping Elephants began, the first few efforts taken for the welfare of Elephants began from 2013-2014. The Respondent No.3 began to provide shelter to rescued, diseased, old aged Elephants from around 2014.

7. The Respondent No.3 Trust was formally registered as a Public Charitable Trust under the Gujarat Public Trust Act, 1950 on 30th September 2019. The objects for which the Trust is formed is to promote welfare of animals and to establish buildings, maintain shelters and provide state of the art facilities for animals who are rescued, hurt, ill, of advanced age, victims of human - animal conflict, victims of human abuse or compulsions or are abandoned.

8. The Respondent No.3 both before and after its incorporation has been tirelessly working for the cause of Elephants. The Respondent No.3 has established a very large facility in the green belts alongside Jamnagar Refinery along with use of over 50 acres of land for large shelters, ponds, grazing areas, playing areas, eating areas, hospital and care Camps, for Elephants. The Respondent No.3 also received a formal permission from the Principal Chief Conservator of Forest (Wildlife) and Chief Wildlife Warden, Gujarat on 9th July 2020 for the Elephant Care Camp at Jamnagar.

9. Since the beginning and until now, the Respondent No.3 has:

a. Created state of the art shelters and enclosures for Elephants up to the capacity of 300 with potential to increase the intake capacity depending on the fact if the Respondent No.3 is called upon to rehabilitate and/or rescue more Elephants.

b. Received up to 153 sick, abandoned and victimized Elephants from past owners, possessors, mahouts, handlers, circuses or rescued or from State Government and other agencies.

c. *Employed 237 Mahouts, 8 veterinarians, 8 para-veterinarians and further 22 care takers and trained staff members for the round the clock care and attention of the Elephants.*

d. *Established a supply chain of diet appropriate foods and medicines for the Elephants.*

e. *Established a State of the Art Elephant Hospital equipped with a first of a kind restraining device for treatment of Elephants, endoscopy machine, surgery facility, hydraulic crane and cataract surgery facilities.*

f. *Established an exercise and rejuvenation regime for all the Elephants by using technology and created a software that ensures Elephants have adequate exercise.*

g. *Established walking and grazing tracks for the Elephants.*

h. *Established ponds and hydrotherapy water bodies for the Elephants.*

j. *Employed mahouts of a large number of Elephants who were working as mahouts prior to the Elephant's rescue so as to rehabilitate mahouts as well.*

10. Respondent No.3 has taken all steps without any compromises to ensure the wellbeing of each and every

Elephant which has been sent to its Camp. It is a matter of satisfaction that all of the said 153 Elephants as on date have been treated and kept in the most appropriate and conducive conditions which is evident from the fact that large number of Elephants have integrated and formed themselves into herds and are enjoying a peaceful retired life.

11. The Respondent No.3 facilities are open to all Elephants. The Respondent No.3 is a no-profit organization. The Respondent No.3 does not intend to convert the Camp into any sort of zoo or carry out any commercial activity whatsoever.

12. It is contended that there is no prohibition or restriction on the respondent No.3 carrying out the non-profit activity of taking care of the rescued Elephants. It is also contended that the respondent No.3 is not involved in any commercial activity with these animals and they have been kept only for rehabilitation and proper care. It is also contended that respondent No.3 is not having any breeding centres for these animals. The respondent No.3 is only concerned with the care and rehabilitation of Elephants and

other animals. The Elephants who form themselves into herds in a natural course of their nature and behavior may intend to breed. However, the respondent No.3 does not use any artificial means of breeding of the animals.

13. The counsel for respondent No.3 vehemently submits that the writ petition has been filed with ulterior motive and malafide intentions to malign the respondent No.3 which is involved in pious work of animal care due to animal love and affection and its Trustees.

14. We have considered the submissions made by the learned counsel for the petitioner as well as learned counsel for respondent Nos 1 and 3.

15. We have also perused the Wild Life (Protection) Act, 1972 (said Act). The Indian Elephant - *Elephas Maximus* stands at Sr. No.12B of Schedule I of the said Act. Section 40 of the said Act deals with Declarations to be made by persons in possession of animals or animal article. The portion of Section 40 relevant to us reads as under:

"(2) No person shall, after the commencement of this Act, acquire, receive, keep in his control, custody or possession, sell, offer for sale or otherwise transfer or transport any

animal specified in Schedule I or Part II of Schedule II or any uncured trophy or meat derived from such animal, or the salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, except with the previous permission in writing of the Chief Wild Life Warden or the authorised officer.

[(2A) No person other than a person having a certificate of ownership, shall, after the commencement of the Wild Life (Protection) Amendment Act, 2002 (16 of 2003) acquire, receive, keep in his control, custody or possession any captive animal, animal article, trophy or uncured trophy specified in Schedule I or Part II of Schedule II, except by way of inheritance.]

[(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 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.]”

16. Thus while no person other than one having a certificate of ownership can acquire, receive or keep any animal from Schedule I in his possession as per Section 40(2A), the proviso in the Section carves out exception in case of live Elephants. This permits private individuals to have ownership over live Elephants. Next Section 43 states

that no person having in his possession any captive animal shall transfer the animal by way of sale or transaction of a commercial nature.

17. The case of the Petitioner that the 1st Respondent should not have allowed transfer of the 4 Elephants from Karnataka is based on an article from a news paper website. The article when read itself shows that the four female Elephants mentioned therein belonged to a private family. We find from the article itself that the private family had first acquired the Elephant in pursuance of their offer to take care of them as they were then circus Elephants. Since the handlers were unable to look after them they were sought to be returned. The Respondent No.3 appears to have given them refuge. We do not find any transaction of a commercial nature in this. Even otherwise it is not the case of the Petitioner that the transaction was of a commercial nature.

18. In such cases where the Elephants are or were private owned, the question of involvement of Forest Authorities in minimal and limited only to the extent of granting a transfer permit in accordance with Rule 125-e of

the Central Motor Vehicle Rules. We therefore find nothing wrong with the relocation of the Elephants to the Respondent No.3. We also do not see anything wrong in other instances of transfers private Elephants which are loosely stated in the Petition. In fact the only aspect relevant for relocation of an Elephant which is privately owned is the consent of the person in whose possession the Elephant is, such consent having been given without any element of commercial transaction. Once such consent is given it is incumbent on authorities to grant transfer permits in accordance with law.

19. The Petitioner's case about preference being given to Respondent No.3 Trust and its capability required attention. We have gone through the Counter and the presentation submitted across the Bar. We have also perused photographs of the Elephants themselves and the facilities of the Respondent No.3 Trust. We are satisfied that the Respondent No.3 is a bonafide Trust which is carrying out a laudable object. To satisfy our conscience, we intend to bind the Respondent No.3 to its statements made in the Counter and also across the Bar and give directions in this regard at the end of our judgment.

20. The Petitioner has alleged preference being given to the Respondent No.3 Trust. We find that the said allegation is without any data or basis. In so far private Elephants are concerned, we have already expressed our view as above. In so far as Elephants which are possession of the Central or State Government is concerned, we find that there is no bar in the forest or wildlife authorities of the Central or State Governments in reolocating Elephants as per their choice. This is for the reason that the bar of Section 43 of the said Act applies only to private persons. Also, the decision to relocate Elephants would be purely a policy decision affecting no rights of any party. We are fortified in holding so by a judgment of this Court in Writ Petition No.18442-443 of 2012 decided on 13th March 2013 in which it was held as under:

"4. During the course of submission, the petitioner's counsel has placed reliance on Section 43 of the Wild Life (Protection) Act, 1972 which deals with regulation and transfer of animals. We have perused the said section. It states that no captive animal in respect of which a person has certificate of ownership can transfer by way of sale or offer for sale or by any other mode of consideration of commercial nature. Sub-section (2) of the said provision also states that where a person transfers or transports from the State in which he resides

to another State or acquires by transfer from outside the State, any such animal in respect of which he has a certificate of ownership, then he must intimate to the Chief Wild Life Warden or the authorized officer within whose jurisdiction the transfer or transport is effected. The said section, in our view, deals with the transfer of captive animal by the owner or a private person. Section 2(24) of the above Act defines a 'person' to include a 'firm'. The expression 'person' cannot encompass within its meaning a 'State Government.'

5. In the instant case, the State Government in its wisdom has taken a policy decision for the translocation of the Elephants having regard to the expenditure to be incurred in maintaining the said Elephants and other considerations. These are matters within the realm of the State Government. This Court, in exercise of its jurisdiction under Article 226 of the Constitution cannot sit in judgment over the decision of the State Government to translocate the Elephants concerned."

21. The Petitioner's case that restrictions must be brought in to prevent sterilization of Elephants is a contention that only requires to be stated to be rejected.

The Hon'ble Apex Court in *Shanti Prasad Nayak vs. Union of India*¹ in which the following observations were made:

"18. At this juncture, we are obliged to take note of the submission made by Mr. Tapesh Kumar Singh, learned counsel appearing for State of Jharkhand that State of West Bengal has decided to take a regressive step by introducing contraceptives so that the

¹ (2014) 15 SCC 514

Elephants do not procreate and consequently the accidents of the present nature are avoided. If it is so, it is absolutely impermissible and also condemnable. Mr. Avijit Bhattacharjee, learned counsel appearing for the State of West Bengal shall take instructions in this regard and file an affidavit of the competent authority. However, as advised at present, we restrain the authorities of the State of West Bengal from taking any steps to administer any kind of contraceptives or introducing any method of sterilization which hinders natural procreative process of the Elephants or any wildlife."

22. In view of the above words of the Hon'ble Apex Court, we find that the last request of the Petitioner is condemnable to say the least. In this regard, we record the submission of the Respondent No.3 Trust that it does not promote breeding and it does not intend to be a breeding centre. However we intend to bind the Respondent No.3 with the added responsibility that in cases where Elephants at their facility by natural procreative process produce any calves, the Respondent No.3 shall report the same to the local authorities within 48 hours and the Respondent No.3 shall give an undertaking to the local authorities that they shall provide for and take care of the said calves.

23. The Petitioner's case regarding execution of gift deeds without ascertaining source etc. is a frivolous

argument with no material facts pleaded. The Respondent No.3 is a public trust of which according to us the Elephants are beneficiaries. The relationship between them is of trustee and beneficiary.

24. In view of what we have held above, we do not see the need of formal documentation for a privately owned Elephant, especially which is in need of rescue or adoption. In fact the law does not require any documentation. According to us, any document with any nomenclature is sufficient as long as it shows consent and absence of commercial transaction.

25. We see no reason whatsoever as to why the 153 Elephants, which we would like to refer as adoptee Elephants, in custody and care of Respondent No.3 should be disturbed by anyone especially since they are getting good care, good facilities and seem integrated and well adjusted.

26. As stated by us above, in order to satisfy our conscience, we wish to give following directions to the Respondent No.3. The Learned Counsel for Respondent

No.3 has agreed and undertaken on behalf of Respondent No.3 to abide by these directions:

(i) The Elephants that are in the custody and care of the Respondent No.3 Trust, shall till the end of their respective lives, be continued to be given the same care and facilities as specified in the Counter filed in these proceedings.

(ii) In case any more Elephants are relocated to the Respondent No.3's facility by private individuals, organizations, Central or any State Governments or their departments and agencies, the same care and facilities as specified in the Counter filed in these proceedings shall be provided to them for the rest of their respective lives.

(iii) The Respondent No.3 shall not enter into any commercial transaction referred to in Section 43 of the Wild Life (Protection) Act, 1972.

(iv) The Respondent No.3 shall before receiving any further Elephants, ensure that the same infrastructure as present is available and sufficient for the new adoptee Elephants.

(v) The Respondent No.3 shall not use its facilities for any commercial purpose.

(vi) The Respondent No.3 shall not promote breeding by use of any scientific methods. However

only if as a result of natural procreative process any calves are born, the Respondent No.3 shall report the same, to the local forest authorities in whose jurisdiction they are situate, within 48 hours and the Respondent No.3 shall give an undertaking to the local forest authorities that the Respondent No.3 shall provide for and take care of the said calves.

(vii) The Respondent No.3 shall submit an annual report of its activities and facilities for the Elephants under its care to the local forest authorities in whose jurisdiction they are situated.

27. With the aforesaid directions, we hereby dispose of the writ petition.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**