

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 10.09.2020**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P.(MD)No.7655 of 2020**  
**and**  
**W.M.P(MD)No.7151 of 2020**

S.G.M.Shaa @ Sheik Mohammed ... Petitioner

Vs.

1.The Principal Chief Conservator of Forests  
and Chief Wild Life Warden,  
O/o. The Principal Chief Conservator of Forests  
and Chief Wild Life Warden,  
No.1, Jeenis Road, Panagal Building,  
Saidapet, Chennai.

2.The Conservator of Forests,  
O/o. The Conservator of Forests,  
Virudhunagar, Virudhunagar District.

3.The Wild Life Warden, सत्यमेव जयते  
O/o. The Wild Life Warden,  
Srivilliputtur, Virudhunagar District.

4.The District Forest Officer,  
O/o. The District Forest Officer, Theni,  
Theni District.

... Respondents

**Prayer :** Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent in his proceedings in Proc No.WL1/5705/2017, dated 23.03.2020 and quash the same as illegal.

For Petitioner : Mr.M.A.M.Raja  
For Respondents : Mr.S.Angappan  
Government Advocate

**ORDER**

Just solutions to legal issues may sometimes lie outside the formal statutory framework. Judges should therefore boldly think outside the box and not feel inhibited or timid. I say so because in the case on hand that pertains to "Lalitha" a female elephant, I found light not in the provisions of the Wild Life (Protection) Act, 1972 but in the pages of Peter Wohlleben's "The Inner Life of Animals".

2.Lalitha was originally purchased by one G.Thangappan of Thirupuvanam. The department issued certificate of ownership in his favour on 18.11.1988. She then changed hands. Mohammed Aslam bought her on 10.01.1996 and sold her to Kannathu Kunju Mohammed.

The writ petitioner purchased her on 08.05.2000. He then applied in Form 11 on 19.06.2002 seeking transfer of ownership. The said request was kept pending and finally rejected on 23.03.2020. In the meanwhile, the petitioner was visited with penalties for having transported Lalitha from one place to another without prior permission. The petitioner wants this Court to set aside the rejection order and direct the respondents to grant him certificate of ownership in respect of Lalitha.

**3.**The respondents have filed a detailed counter and the learned Government counsel reiterated the contentions set out therein. It is submitted that Sections 39 and 43 of the Wild Life (Protection) Act, 1972 comes in the way of considering the petitioner's request. Since no court can issue mandamus contrary to law, the respondents press for dismissal of the writ petition.

**4.**I carefully considered the rival contentions and went through the materials on record. As per Section 43 (1) of the Act, no person having in his possession captive animal in respect of which he has a

certificate of ownership shall transfer by way of sale or offer for sale or by any other mode of consideration of commercial nature such animal. According to Section 39 (3), no person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorised officer acquire or keep in his possession, custody or control, or transfer to any person, whether by way of gift, sale or otherwise any wild animal falling within the purview of the Act. It is beyond dispute that sale of Lalitha by Thiru.Thangappan was illegal. The subsequent sales are also equally vitiated. The petitioner also did not obtain any prior permission for acquiring her. Therefore, the first respondent rightly rejected the request for issuance of certificate of ownership in the name of the petitioner. I therefore uphold the said order as valid.

**5.**But what is the sequitur?. According to the respondents, the logical consequence is that the petitioner will have to surrender possession of the animal for being shifted to the camp maintained by the Forest Department. The question that arises for my consideration is whether this can be permitted.

6. Martha C. Nussbaum while reviewing the book "Rattling The Cage: Toward Legal Rights For Animals" writes thus :

*"In 55 B.C.E. the Roman leader Pompey staged a combat between humans and elephants. Surrounded in the arena, the animals perceived that they had no hope of escape. According to Pliny, they then "entreated the crowd, trying to win their compassion with indescribable gestures, bewailing their plight with a sort of lamentation." The audience, moved to pity and anger by the animals' plight, rose to curse Pompey - feeling, writes Cicero, that the elephants had a relation of commonality (societas) with the human race."*

Elephants are known to be sensitive and possessed of self awareness. They have passed what is known as "mirror test". The German naturalist Peter Wohlleben, after years of direct, personal observation, says that animals also feel the very same emotions which the humans are capable of. Feelings of love, grief and compassion are equally found in the animals.

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7. Article 51A (g) of the Constitution of India calls upon us to have compassion for living creatures. The Hon'ble Supreme Court in ***Animal***

**Welfare Board of India Vs. A.Nagaraja and others [(2014) 7 SCC 547]** after noting that Chapter 7.1.2 of the guidelines of World Organization of Animal Health (OIE), recognizes five internationally recognized freedoms for animals such as (i) freedom from hunger, thirst and malnutrition; (ii) freedom from fear and distress; (iii) freedom from physical and thermal discomfort; (iv) freedom from pain, injury and disease; and (v) freedom to express normal patterns of behavior declared that they shall be read into Sections 3 and 11 of the Prevention of Cruelty to Animals Act, 1960 and be protected and safeguarded by the Governments.

8. In the light of what the Hon'ble Apex Court has laid down, Lalitha is entitled to express her normal patterns of behavior. Lalitha has been with the writ petitioner for more than twenty years. The State did not intervene and take her away all these years. It is not as if the writ petitioner was keeping her secretly. The department was issuing directives from time to time and they were complied with by the petitioner. Micro chip has been implanted in her body so that her movements can be tracked. She has developed a great bonding with

her caretakers. Forcible relocation in alien surroundings is sure to traumatize her. I therefore felt that the approach that we adopt in child custody cases must be followed in the case of Lalitha also.

**9.**I made a surprise inspection. Lalitha was then in Chockanathan Puthur a few kilometers away from her notified place of stay, namely, Akkaraipatti in Virudhunagar District. When I reached the spot, I found her being sumptuously fed. What pleased me was that she was not at all chained. Subhahani, the petitioner's nephew is her caretaker along with two mahouts. I checked if there are any injury marks on her. There were none. The elephant looked happy and healthy. Subhahani encouraged me to stand close to her and feed her which of course I did. Lalitha exhibited great friendliness. The mahouts in the temples of Tamil Nadu and Kerala would do well to take a leaf out of Subhahani's handling of Lalitha and treat their wards appropriately.

**10.**I questioned the caretakers regarding Lalitha's maintenance.

I was told that Lalitha is taken to some of the well known temples and Dargas of south Tamil Nadu and the organizers of the religious functions

pay for her majestic participation. Lalitha does not beg on the roads. Her dignity is maintained intact.

**11.**In my view, this does not amount to exploitation. Peter Wohlleben in the chapter "In the Service of Humanity", in his Book remarks that when the log-haulers are kind and give rest to their horses, the animals are eager to work. One can find similar human-animal partnership with shepherds and their dogs which also follow verbal commands. This is another example of animals taking pleasure in their work, as we can clearly see if we watch sheepdogs racing around a flock of sheep to round them up (Page 251). The caretakers told me that Lalitha is carefully transported to such religious places and not made to walk on tar roads.

**12.**Lalitha has been accustomed to a certain lifestyle all these years. She changed hands from 1988 to 2000. But she has been in the custody of the petitioner for the last twenty years. She has been attending religious functions. She is being fed well. She is in good health. In fact, the veterinarians appointed by the department have



certified that she is being maintained properly by the petitioner. Removing her from the petitioner's custody is sure to inflict a deep psychological wound on her. It is certainly not in her best interests. Applying the yardstick of what is good for Lalitha, I have to hold that the present arrangement should continue. Lalitha should continue to be with the petitioner and participate in the religious functions hosted in the region.

**13.**Lalitha's usual place of stay is a coconut grove spread over one and half acres. There is a R.O Plant. It is owned by Thiru.Pothiraj. He appeared before me and gave in writing that the land will not be sold or encumbered during the lifetime of Lalitha. She also gets copious amounts of water to drink and to bathe. The ambience is highly conducive.

**14.**Of course, I must justify as to how having sustained the impugned order, I could permit the status quo to continue. I draw inspiration from the following statement of law :

"The courts now recognise that the impact on the administration is relevant in the exercise of their remedial jurisdiction. Quashing decisions may impose

heavy administrative burdens on the administration, divert resources towards re-opening decision, and lead to increased and unbudgeted expenditure. Earlier cases took the robust line that the law had to be observed, and the decision invalidated whatever the administrative inconvenience caused. The courts nowadays recognise that such an approach is not always appropriate and may not be in the wider public interest. The effect on the administrative process is relevant to the courts' remedial discretion and may prove decisive."

(Passage from *Judicial Remedies in Public Law* by Clive Lewis approvingly quoted by the Hon'ble Supreme Court in **(1994) 1 SCC 648 (Shri Malaprabha Co-Operative Sugar Factor Vs. Union Of India and another)**. If there can be cases where after the administrative decision is found to be bad in law, the logical consequences do not follow, the reverse can also equally hold good. In other words, the administrative decision may be found to be valid in law and yet there can be no sequitur. In the case on hand, the rights of the animal are more relevant and they determine the adjudicatory outcome and not the formal validity of the administrative order.

**15.**The writ petition is disposed of by upholding the impugned order passed by the first respondent but by directing the respondents to permit the petitioner to continue to keep custody of Lalitha. The petitioner shall intimate in writing the annual itinerary and the respondents shall give standing permission. The respondents are at liberty to inspect the animal at any time. It is open to the parties to move this Court for variation of this arrangement if the circumstances warrant. No costs. Consequently, connected miscellaneous petitions are closed.

**10.09.2020**

Index : Yes / No  
Internet : Yes/ No  
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**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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**G.R.SWAMINATHAN, J.**

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