

A.K.JAYASANKARAN NAMBIAR, J.

&

GOPINATH P., J.

W.P.(C).NO.13204 OF 2021

Dated this the 29th day of March, 2023

O R D E R

A.K. Jayasankaran Nambiar, J.

Pursuant to our last order dated 23.3.2023, when the case was taken up today, several persons including the office bearers of the Chinnakanal and Santhampara Panchayaths as also Members of Parliament elected from the said constituencies got themselves impleaded in these proceedings. Concerns were voiced regarding the safety of the people in the various localities where the elephant in question forages for food. The stand of the government is that a huge contingent of personnel from the forest and wildlife department has been deployed to keep vigil in the areas where the elephant in known to frequent, and *kumki* elephants have also been deployed to assist them. It is stated that the current efforts at preventing the elephant from encroaching into human settlements has been possible only because the *kumki* elephants have shown themselves to be more dominant than the wild elephant in question.

2. On a consideration of the submissions of learned counsel and after interacting with the officers of the forest department (The Chief Conservator of Forests (High Range Circle) and the Veterinary specialist), we find that although several instances have been cited of property damage caused by the wild elephant in the aforesaid areas, it is quite apparent that the animal has not caused any damage to human life in the recent past. Its forays into human settlements in search of food have, however, resulted in a tense atmosphere prevailing among the residents of the area. This is certainly a matter that requires to be addressed immediately for people cannot live under constant fear.

3. As for the animal in question, we find that we are dealing with a bull elephant, currently in *Masth*, and moving in the company of his herd comprising of females and calves. Any attempt at capturing the animal at this stage would be dangerous not only to the personnel deployed for the said exercise but also to the animal in question. We have therefore to explore other options for preventing the animal from straying into human settlements. For that we require data, and the opinion of experts thereon, so that we can rely on the same while issuing directions in the matter. In the meanwhile, however, we are quite clear in our minds that the balance of

convenience would lie in protecting the interests of the wild pachyderm against immediate capture and the prospect of a life in captivity. We are persuaded to hold so because we have come across various instances of cruelty to captive elephants in the State, and also seen the deplorable state in which elephants are held captive in various locations across the State. Adding another wild elephant to that list of hapless 'converts' would run counter to our fundamental duty to protect wildlife and have compassion for living creatures, as envisaged under Art.51A (g) of our Constitution.

4. The people residing in the vicinity no doubt have a threat perception but that is not something that cannot be quelled by deploying the state machinery to protect their homesteads for the time being. We have to balance the rival interests of the people of the locality as well as the animal concerned while searching for a lasting solution to the problem itself. In that process, we would also need to look into the circumstances under which the settlers came to be rehabilitated in areas that we are told were already recognised as elephant corridors at the time of their rehabilitation. To punish an animal for its aggression based solely on a layman's perception of its motives, and nothing more, would not amount to rendering justice to the animal in any sense of the term. On the contrary, the State would

be in breach of its constitutional duty to protect its wildlife. The interests of the people in the locality also will not be safeguarded through targeted and irreversible action against just one elephant when a herd of elephants is stated to be foraging in the area.

5. We are of the view that the interests of justice would require us to avoid resort to quick-fix knee-jerk actions and ascertain the views of the experts as to what steps would best bring about a balance between the conflicting interests of humans and animals in given situations, as also what steps could be put in place to avoid such situations in the future. Concrete steps have thereafter to be taken by the state executive to implement the measures suggested by the experts. The state executive may also have to think of putting in place restrictions as regards the nature of activities that can be carried out by residents in localities that border forest areas of the state as also in those localities that fall in the path of identified elephant corridors in the state. As a first step towards attainment of these objectives, we deem it appropriate to constitute a Committee of Experts (CoE) to advise this court in matters of Human-Elephant conflict situations arising in the State. The CoE shall comprise of the following persons:

- (i) Sri. Arun R.S - Chief Conservator of Forests (High Range

- Circle), Kottayam.
- (ii) Sri. Pramod H - Chief Conservator of Forests & Field Director, Project Tiger, Kottayam
 - (iii) Dr. NVK Ashraf - Chief Veterinarian & Vice-President, Wildlife Trust of India
 - (iv) Dr. P.S. Easa - Chairman of Care Earth Trust, Chennai and former Director of Kerala Forest Research Institute.
 - (v) Sri. Ramesh Babu - learned Senior Counsel, and the Amicus Curiae appointed by this court, who shall function as the convener of the Committee.

6. For finding a solution to the present situation, the CoE shall immediately, and at any rate within the next three days, convene to consider the data available with the Forest and Wildlife department of the State as regards the nature and habits of the wild elephant that goes by the name of 'Arikkomban'. The consideration and analysis of the data shall be for the purpose of advising this court as to whether or not there are options, other than the capture and holding in continued captivity of the elephant, that could be explored to avoid situations where the elephant in question causes disturbances in human settlements. The CoE shall keep in mind that the ultimate object of the exercise is to strike a balance between the conflicting interests of the residents of the localities concerned and the animal in question and towards this end they may also take into consideration the views of the people in the localities concerned or their representatives. Their report on the above matter may be placed before us by the next date of

posting ie. 5.4.2023.

In the meanwhile, and pending receipt of the report of the CoE, the personnel and *kumki* elephants currently deployed by the State Forest & Wildlife department shall continue to be deployed for the purposes of safeguarding the persons in the human settlements from the elephant concerned. We hasten to add that in the event of a situation arising where the elephant concerned poses a threat even to the lives of the personnel deployed to prevent it from entering the said settlements, then it shall be open to them to tranquilise the elephant in question and immobilizing it for the limited purpose of fastening a radio collar on it that will help the said personnel keep track of the animal and monitor its movements till the next date of posting when we will have the report of the expert committee to guide us on the next course of action.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
GOPINATH P.
JUDGE