

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2009

CORAM:

THE HONOURABLE MR. JUSTICE K.MOHAN RAM
AND
THE HONOURABLE MR. JUSTICE M.DURAI SWAMY

Writ Petition No.2325 of 2009
and M.P.No.1 of 2009

In Defence of Environment and Animals
Rep. By its Managing Trustee
Elephant G.Rajendran
No.24/51 South Usman Road
T.Nagar, Chennai - 600 017

... Petitioner

Vs.

1. The Principle Chief Conservator of Forest
Panagal Building, Saidapet, Chennai - 15
2. The Commissioner,
Hindu Religious and Charitable Endowment,
Nungambakkam, Chennai - 600 034
3. The Wile Life Warden,
Mudumalai Sanctuary,
Ooty, Nilgiri - Dt.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for the issuance of a writ of mandamus directing the
respondents not to send any ailing domestic elephant to the elephant
camp at Mudumalai or to any other elephant camp in any hill forest
area in the State of Tamil Nadu.

For Petitioner : Mr. Elephant G.Rajendran
For Respondents : Mr. T.Chandrasekaran, Spl. G.P.,
for H.R. & C.E., for R-2
Mr. S.N.Kribanandam, Spl. G.P., (F),
for R-1 & R-3.

O R D E R

(Order of the Court was made by K.Mohan Ram, J.,)

With consent of the learned counsel on either side, the writ
petition itself is taken up for final disposal.

2. The above writ petition has been filed seeking for the issue of a writ of mandamus directing the respondents not to send any ailing domestic elephant to the elephant camp at Mudumalai or to any other elephant camp in any hill forest area in the State of Tamil Nadu.

3. The above writ petition has been filed as a Public Interest Litigation. As per the averments contained in the affidavit filed in support of the writ petition, one elephant by name-Andal was brought to Theppakkadu Elephant Camp from Madurai Kallalagar Temple for treatment on 28.01.2009. According to the petitioner, the age of the elephant is 27 years and it has some physical problem. The petitioner suspected that the elephant might be infected with TB disease but the Camp Doctor has refused to give any details about the real physical condition of the elephant. According to the petitioner, there are three types of elephants, (i) Domestic Elephant, (ii) Captive Elephant, and (iii) Wild Elephant. The domestic elephants are mostly available in the Hindu Temples as a religious custom and with some private persons. The captive elephants are housed in the elephant camps managed by the forest department officials. The wild elephants are those elephants living in the forest. According to the petitioner, the wild elephants are all free from diseases like TB and if the domestic elephants affected with disease like TB are taken to the Elephant Camps there is every chance of TB being spread to other wild elephants in the forest; to avoid spreading of such diseases, it is advisable to keep the domestic animals affected with the diseases in the plains itself and treat them there. It is the further case of the petitioner that it will be a great ordeal to the concerned elephant, if it is to be transported to the height of 7000 feet and then driving them down to another 5000 feet; the petitioner has enclosed a certificate issued by one Dr. Ilona Ottar of Finland. In the said certificate, he has certified as under:-

"Animals and humans get infected by M.tuberculosis when they inhale the mycobacterium. This usually occurs when someone with active tuberculosis of the lungs coughs, causing the release of thousands of bacteria into the air around them. People or animals breathing the same air for prolonged periods are likely to inhale the bacteria. The tuberculosis germ is carried on droplets in the air, and can enter the body through the airway. An animal or a person with active pulmonary tuberculosis can spread the disease by coughing or sneezing to other animals and or people.

What are the symptoms of tuberculosis?

Patients with tuberculosis of the lungs have a prolonged illness with fever, cough, night-sweats, weight loss and may occasionally cough up blood. As the disease

progresses, symptoms get worse and shortness of breath ensues. Untreated disease can be fatal. Tuberculosis is an infectious disease that is transmitted by air droplets to other animals/people."

4. It is further stated in the affidavit that the forest department has allowed this elephant into the dense forest without considering the health of 1000's of wild elephants. It is further stated that the petitioner understands that one elephant named Rajeswari of Sugavaneshwarar Temple at Salem was also affected by the same disease i.e., TB and the same was sent to Kurumpatti Zoo near Salem for treatment and it is further stated in the affidavit that some more diseased elephants from Samayapuram Mariamman Temple, Swamimalai Murugan Temple and an elephant from Nagerkoil are also to be transported to the Theppakkadu Elephant Camp for treatment shortly.

5. According to the petitioner, bringing of the diseased elephants to the dense forest for treatment is dangerous to wild animals. In these circumstances only, the aforesaid relief has been sought for in the writ petition.

6. The first respondent has filed a detailed counter affidavit on his behalf as well as the third respondent.

7. In the counter affidavit it is stated that as per the Government Orders in G.O.(D) No.35, Hindu Religious and Charitable Endowment Department, dated 15.12.2008 and subsequent instructions issued by the Principal Chief Conservator of Forests and Chief Wildlife Warden in No.WL1/10330/2008 dated 05.01.2009, one temple Female Elephant namely 'Andal' has been transported from Arulmighu Kallalagar Koil, Madurai, to Theppakkadu Elephant Camp in Mudumalai Tiger Reserve on 20.01.2009. The Conservator of Forests and Field Director, Ooty had issued suitable instructions to the Forest Veterinary Assistant Surgeon, Theppakkadu, to conduct thorough health check up with a Team of Doctors. In the meantime, the Forest Ranger, Mudumalai Range, has been asked to keep this elephant in total isolation to avoid any kind of incidents till it is declared healthy or disease free and the elephant is also to be got screened by the Senior Advisor, Elephant Tuberculosis Project, Asian Elephant Research and Conservation Centre, against tuberculosis.

8. It is further stated in the counter affidavit that the elephant is aged 58 years and not 27 years as claimed by the petitioner; the biological samples like urine, dung, whole blood and blood smear was collected by a team of doctor from 'Project on Health Assessment of Captive Asian Elephants', Asian Elephant Research Conservation Center, CES, Indian Institute of Science, Bangalore - 560 012, for the laboratory analysis. The serum also

was collected and performed rapid serum test (Elephant TB STAT PAK). This elephant showed positive antibody response to tuberculosis infection either to M.tuberculosis or M.bovis. The required and appropriate veterinary and management intervention has been started. It is further stated that to prevent the spread of any infectious disease from Andal, a captive elephant, from the day of arrival this elephant is being kept in isolation as a quarantine measures at Thorapallay Check Post, in the Southern Boundary of the reserve; the elephant - Andal is not housed along with captive elephants in Mudumalai. In the counter affidavit the view of Dr.Ilona Ottar of Finland about tuberculosis has been accepted as true. In paragraph 16 of the counter affidavit it has been specifically stated that there is no proposal with the Forest Department to send the ailing domestic animal to Mudumalai for treatment now.

9. It is further stated in the counter affidavit that a proposal for setting up of the elephant rehabilitation and rescue centre in Mettupalayam Range of Coimbatore Forest Division for unlicensed, old, diseased and incapacitated temple / private / rescued elephants, with an estimate of Rs.1,17,72,000/- (one crore seventeen lakhs seventy two thousand only) has already sent to Government by the Principal Chief Conservator of Forests and Chief Wildlife Warden vide Ref.No.WL1/6140/2006 dated 02.02.2006. In the tenth meeting of steering of committee held on 18.07.2006, the Government of India has committed to fund the maintenance of rescue centre. Further, details required by the Government have been sent to Government. The proposal is under examination of the Government. The Principal Chief Conservator of Forests and Chief Wildlife Warden has requested the Government to send the proposal to Government of India for necessary sanction. After the establishment of the proposed elephant rehabilitation rescue centre, Mettupalayam in Coimbatore Division, the aged, diseased and other elephants will be sent to the rescue centre.

10. The second respondent has filed a separate counter affidavit. In paragraph 9 of the counter affidavit filed by the second respondent it is stated that before transporting, the elephant was thoroughly checked by the Doctor and the Doctor has certified that the health condition of the elephant - Andal as good; hence the apprehension of the petitioner is unwarranted and false. In paragraph 12 of the counter affidavit it is stated that the Government has permitted to entrust the following elephants to the Forest Department, namely:-

Sl. No.	Name of Elephant	Name of Temple
1.	Mariappan	Arulmighu Mariamman Temple, Samayapuram, Trichy District
2.	Andal	Arulmighu Kallalagar Temple, Azhagar Koil, Madurai District
3.	Gopalan	Arulmighu Dhanumalayan Temple Suchindram, Kanyakumari District
4.	Rajeswari	Arulmighu Sugavaneswarar Temple, Salem Taluk and District

11. In paragraph 13 of the counter affidavit filed by the second respondent it is stated that the proposed transfer of mentally ailing elephants is in the best interest of the elephants and avoid any untoward incidents towards devotees and general public; it will bring a change to the ailing elephants, which are usually kept chained in a shed in the temple premises most of the time; temperate climate and lush vegetation in the area where the camp is situated make an ideal environment for elephants. It is further stated that only taking into consideration all the relevant factors the transportation of ailing elephants was ordered and apart from Elephant Andal of Alagarkoil, the other three elephants are yet to be handed over to the Forest Department as per the order of the Government. According to the second respondent, the entrustment of elephants with Forest Department is only in the interest of wildlife and public interest. On the aforesaid contentions, the second respondent seeks dismissal of the writ petition.

12. Heard the learned counsel on either side.

13. Learned counsel appearing for the petitioner has produced a communication dated 09.02.2009 sent by Dr. Jacob V. Cheeran to Dr. N. Kalaivanan, Forest Veterinary Assistant Surgeon, Mudumalai Tiger Reserve, Theppakkadu, Nilgiris. In the said communication it is stated as under:-

"In response to your request, I sent Dr. David Abraham to perform the rapid serum test (Elephant TB STAT-PAK) on the temple elephant Andal (female, - 55 years old). As per attached result, Dr. David has reported that the elephant showed positive antibody response to tuberculosis infection either by M.tuberculosis or M.bovis. This rapid serum test can detect tuberculosis in the early stages. Our own study (please find attached report) has shown that temple elephants have higher prevalence of tuberculosis infection compared to other elephants. Captive elephants, especially those maintained in temples, are likely to suffer from various other diseases, many of which have

zonotic importance. Unless temple elephants are subjected to strict clinical examination and laboratory tests to make sure that they are free from any disease, they can infect the healthy camp elephants. The camp elephants when let loose in the forest can spill such diseases to free-ranging wildlife. Hence, internationally approved protocols (IUCN) should be followed to protect free-ranging wildlife from major diseases".

14. According to the learned counsel for the petitioner, a perusal of the contents of the said communication shows that the elephant - Andal is suffering from tuberculosis and it can infect the healthy camp elephants. It is further stated therein that the camp elephants when let loose in the forest can spill such diseases to free-ranging wildlife and hence, internationally approved protocols (IUCN) should be followed to protect free-ranging wildlife from major diseases. Learned counsel further submitted that in the light of this communication the averments made by the second respondent in its counter affidavit to the effect that the elephant Andal was checked before the transportation and it was found to be healthy, is incorrect.

15. Learned counsel for the petitioner has also submitted a copy of the report of Asian Elephant Research and Conservation Centre (AERCC), Innovation Centre, Indian Institute of Science, Bangalore - 12. In this report, it has been stated that translocation of non-forest camp elephants to forest camps may be not serve the purpose of improving welfare of such elephants in the long term and reasons for arriving such a conclusion has also been stated in the report. The following are the reasons stated therein:-

" * Such elephants are provided stall feed primarily in their previous locations, with most elephants also being habituated to unnatural foods such as bread / offerings from temple / passers-by; thus, such animals are not experienced in browsing / grazing / chewing of unexposed food such as uncut fodder / branches / tree bark.

* In this context, learning to graze / browse is integral to their survival, as they cannot survive only on forest based foods. Forest camp elephants are allowed to graze / browse in surrounding forests with stall feed acting only as a supplement to the predominantly free-ranging feeding of such animals. Lack of nutrition may result as a consequence of absence of an ability to adapt to grazing / browsing resultant health problems among non-forest camp elephants.

* Introduction of new elephants into an already established social order among FC elephants may cause problems for the new member/s. The new animals have to be

accepted by the camp elephants / other wild elephants. There are instances of such elephants being attacked severely by wild / forest camp elephants. Such attacks could be fatal / very painful / injuries may take a long time to heal / animal may develop a fear of venturing out on its own / it may be psychologically damaging.

* Such elephants are also exposed to new mahouts / new set of daily schedules which needs to be learnt with a new handler. This could be a source of stress to the elephant.

* The damage to the forest from cut fodder collection, diversity loss, loss of food species for other animals, wastage of fodder when the elephant is not able to eat it, leading to accumulation of fodder, decay and decomposition in the same site if hygiene is not maintained".

and some instances have been mentioned in the report in support of the conclusions reached.

16. Basing reliance on the aforesaid report, the learned counsel for the petitioner submitted that it is not advisable to keep the elephant - Andal in the camp but it is advisable to bring it back to the plains and to treat the same by keeping the elephant in the Zoo at Kurumpatti, Salem. Learned counsel further submitted that the petitioner is possessing necessary drugs and injections to treat tuberculosis affected elephants and he is willing to supply the same free of cost for treating the female elephant - Andal if the elephant is brought and kept at Kurumpatti Zoo, Salem. He further submitted that in the light of the difficulty expressed by the learned counsel for respondents 1 and 3 in re-transporting the elephant - Andal from the Theppakkadu Elephant Camp to the plains the learned counsel undertook to bear the expenses involved in re-transporting the elephant if the respondents are willing to re-transport the elephant to the Kurumpatti Zoo, Salem. He further submitted that the elephant need not be transported at a stretch from the Theppakkadu Elephant Camp to Kurumpatti Zoo, Salem, but instead the elephant can be given rest at regular intervals and even such rest is given it may not take more than three days. He fairly submitted that all the expenses incurred for such re-transportation will be borne by him. He also submitted that the transportation and treatment of the elephant can be done under the direct supervision of the Forest Department Officials.

17. Learned counsel for respondents 1 and 3 as well as the second respondent expressed only the difficulty in re-transporting the elephant - Andal from the Theppakkadu Elephant Camp to Kurumpatti Zoo, Salem. They also submitted that proper care is being taken at Theppakkadu Elephant Camp and there is no need to transport the elephant to the plains, but the learned counsel are unable to repel the contentions put forth by the learned counsel for

the petitioner based on the communication sent by Dr.Jacob V. Cheeran to Dr. N.Kalaivanan, Forest Veterinary Assistant Surgeon, Mudumalai Tiger Reserve, Theppakkadu, Nilgiris as well as the report of the Asian Elephant Research and Conservation Centre (AERCC), Innovation Centre, Indian Institute of Science, Bangalore - 12.

18. We have considered the aforesaid submissions made by the learned counsel on either side.

19. The submissions made by the learned counsel for the petitioner which are fully supported by the aforesaid materials placed by him before this Court merits acceptance. It is seen from the report of the Asian Elephant Research and Conservation Centre (AERCC), Innovation Centre, Indian Institute of Science, Bangalore - 12 that temple elephants of Tamil Nadu which were brought into forest camps suffered and five such instances have been narrated in the report, which reads as under:-

- "a. Swaminathan from Swamimalai temple was not grazing due to his inexperience, cut fodder provided was not effective, died following E.Coli infection.
- b. Nataraj, in Pollachi, Annamalai, was attacked by a FC elephant, Lakshman, was not able to run when chased by Lakshman.
- c. Thayalnayaki, from temple, died following TB infection, infected four Forest camp elephants.
- d. Senthilvadivelu, from Thiruvannamalai temple, not able to graze, became physically weak.
- e. Ganesh, from Padalieswaran temple, not exposed to grazing, was severely emaciated."

The aforesaid facts mentioned in the report are not controverted or disputed by the respondents. When admittedly as is evident from the communication dated 09.02.2009 sent by Dr.Jacob V. Cheeran to Dr. N.Kalaivanan, Forest Veterinary Assistant Surgeon, Mudumalai Tiger Reserve, Theppakkadu, Nilgiris, the elephant - Andal is suffering from tuberculosis disease and the tuberculosis germ is carried on droplets in the air, and can enter the body through the airway and an animal or a person with active pulmone tuberculosis can spread the disease to other animals and or people by coughing or sneezing. The above is evident from the certificate issued by Dr.Ilona Otter, DVM, Veterinary Consultant, Indian Project for Animals and Nature (IPAN). Therefore when such scientific materials are available, which supports the contention of the petitioner, we are inclined to entertain the above writ petition and grant the relief sought for.

20. Accordingly the following order is passed:-

The undertaking given by the respondents 1 and 3 in their counter affidavit in paragraph 16 which reads as under:-

'16) It is respectfully submitted that as regards para 12 of the affidavit, there is no proposal with the Forest

Department to send ailing domestic animal to Mudumalai for treatment now.'

is recorded and hence no specific direction need be issued as prayed for in the writ petition.

21. As far as the female elephant - Andal is concerned, the same shall be re-transported to plains and kept at the Zoo located at Kurumpatti at the cost of the petitioner herein but under the direct control and supervision of the Forest Department officials. The respondents 1 and 3 shall workout the cost of re-transportation and intimate the same to the writ petitioner to enable him to deposit the same in advance. Further the said elephant shall be treated for tuberculosis by a trained veterinary Doctor and if necessary the concerned Doctor can avail the offer made by the writ petitioner and utilise the drugs and injections that may be provided by him for treating the elephant. While re-transporting the elephant from Theppakkadu Elephant Camp to Kurumpatti Zoo, Salem, the animal need not be brought at a stretch but necessary rest may be given to the animal at regular intervals and on an each day the vehicle transporting the elephant 'Andal' may not travel more than 75 kms and such transportation shall also be under the direct control and supervision of the officials of the Forest Department. The writ petitioner may be permitted to bring specialised Veterinary Doctors from abroad to treat the animal if necessary and the respondents shall co-operate with the writ petitioner in that regard.

22. With the above directions, the writ petition is disposed of. No costs. Consequently the connected MP is closed.

Srk

Sd/
Asst.Registrar

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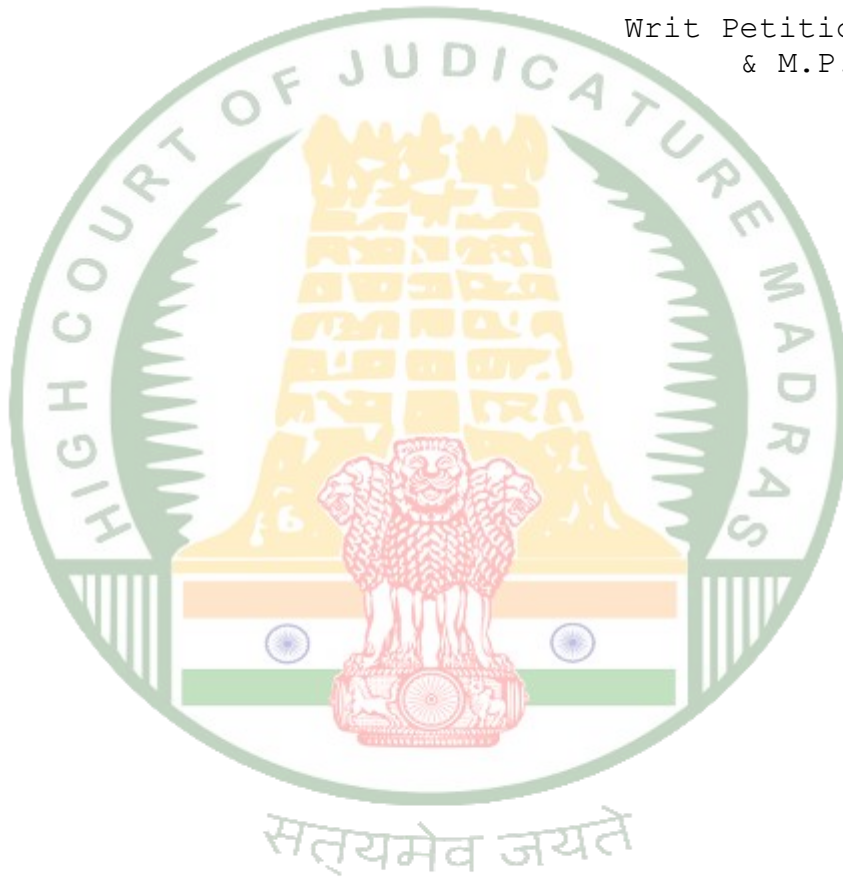
To

1. The Principle Chief Conservator of Forest
Panagal Building, Saidapet, Chennai - 15
2. The Commissioner,
Hindu Religious and Charitable Endowment,
Nungambakkam, Chennai - 600 034

3. The Wile Life Warden,
Mudumalai Sanctuary,
Ooty, Nilgiri.

- 2 ccs to Mr. Elephant Rajendran, Advocate SR No.19821
- 4 ccs to Government Pleader CCSR 20506, 20277, 20018, 19972
- MBS (CO)
- SR/5.5.2009

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