



2024:KER:13910

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. A.J.DESAI

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

THURSDAY, THE 22ND DAY OF FEBRUARY 2024 / 3RD PHALGUNA, 1945

WP(C) NO. 7086 OF 2024

PETITIONER:

WALKING EYE FOUNDATION FOR ANIMAL ADVOCACY,
(REG.NO.48/2022), II/263/A
KAIPARAMBU, THRISSUR-680 546. REPRESENTED BY ITS
FOUNDER AND MANAGING TRUSTEE VIVEK.K.VISWANATH,
AGED 32 YEARS S/O K.V.ACHUTHAN, KURUNELLIPARAMBIL
HOUSE, KAIPARAMBU P.O., THRISSUR, PIN - 680 546

BY ADV C.A.ANOOP

RESPONDENTS:

- 1 THE PRINCIPAL CHIEF CONSERVATOR (WILDLIFE) AND
CHIEF WILDLIFE WARDEN, (PCCF)
FOREST HEAD QUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM, KERALA, PIN - 695 014
- 2 THE PRINCIPAL CHIEF CONSERVATOR (WILDLIFE) AND
CHIEF WILDLIFE WARDEN, (PCCF),
GOVERNMENT OF KARNATAKA DEPARTMENT OF FOREST,
ARANYA BHAWAN, 4TH FLOOR, 18TH CROSS,
MALLESHWARAM, BENGALURU, PIN - 560 003
- 3 CHIEF CONSERVATOR OF FOREST NORTHERN CIRCLE
OFFICE OF THE CHIEF CONSERVATOR OF FORESTS
NORTHERN CIRCLE, KANNOTHUMCHAL THANA PO
KANNUR, PIN - 670 012
- 4 DIVISIONAL FOREST OFFICER,
MYSORE ROAD, MANAMTHAVADI, WAYANAD, PIN - 670 645



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- 5 STATE OF KERALA
REPRESENTED BY IT CHIEF SECRETARY
GOVERNMENT SECRETARIATE,
THIRUVANANTHAPURAM, PIN - 695 001
- 6 DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION, KAIRALI NAGAR,
KALPETTA, WAYANAD, PIN - 673 122
- 7 DISTRICT POLICE CHIEF,
WAYANAD ROAD, CIVIL STATION, MADATHUMPADY,
KALPETTA, WAYANAD, PIN - 673 122
- 8 ANIMAL WELFARE BOARD OF INDIA,
NATIONAL HIGHWAY-2, VILLAGE-SEEKRI, BALLABHGARH,
FARIDABAD, HARYANA, PIN - 121 004
- 9 KERALA FOREST RESEARCH INSTITUTE
PEECHI RD, P.O, PEECHI, THRISSUR,
KERALA, PIN - 680 653

OTHER PRESENT:

SR.GP. K.P.HARISH;
SPL.GP. FORESTS NAGARAJ NARAYANAN;
SC FOR AWBI JAISHANKAR V. NAIR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Dated this the 22nd day of February 2024

A.J. Desai, C.J.

The present writ petition, in the nature of public interest, is filed by a trust, the objective of which is to adopt, rescue, treat, and feed stray animals and provide legal assistance in activities involving any kind of animal cruelty. The challenge in this writ petition is against Exhibit P5 order dated 10.02.2024 of the Principal Chief Conservator (Wildlife) & Chief Wildlife Warden, Kerala/1st respondent, issued in exercise of the power under section 11(1)(a) of the Wild Life (Protection) Act, 1972 (for short "1972 Act"), granting permission to drive a Makhna elephant on the rampage back to the forest safely using Kumki elephants, following all the existing guidelines of the Ministry of Environment Forest and Climate Change (MoEF&CC) and the standard operating procedure and failing which, to capture the said elephant by drug shooting or chemical tranquilisation.



2. Along with various other prayers, the petitioner has sought a direction to the respondents/officers of the Forest Department to stop chasing the elephant, since it has already entered deep forest.

3. When a specific question was asked to the learned counsel for the petitioner as to the basis on which the allegation that the elephant is being chased inside the forest and that attempts are being made to tranquilise the elephant, he failed to bring to the notice of this Court any evidence to substantiate the allegation. Instead, the learned counsel submitted that the elephant may die if it is tranquilised and captured by Forest officials and not released thereafter. In support of this submission, the learned counsel relied upon certain past incidents. He, therefore, would submit that appropriate orders may be passed.

4. On the other hand, learned Special Government Pleader appearing for the Forest Department would submit that the very same issue is pending before another Division Bench of this



Court in W.P.(C)No.13204 of 2021 and therein an order has been passed on 19.02.2024, containing certain directions and observations as to the manner in which the issue is to be dealt with. He would submit that in the said proceeding, the petitioner herein has joined as additional respondent No.55. Therefore, the petitioner ought to have informed that Division Bench about the filing of this writ petition. He would further submit that the suggestions of the Division Bench are being seriously considered by the respondent Department. Apart from these aspects, he would submit that the Makhna elephant came from the Karnataka Forest and, after roaming around inside the Kerala border, had killed a native of Wayanad. The incident gave rise to large scale protest and Exhibit P5 order under Section 11 (1) of the 1972 Act was passed by the 1st respondent after considering all relevant aspects. He would submit that this is a premature writ petition since the elephant is neither captured nor tranquilised by the Forest Department. He would submit that the elephant is presently in the forest shared by two States;



Kerala and Karnataka and if Exhibit P5 order is quashed, that may result in more human lives being put to danger. He would submit that the Chief Conservator has only directed to drive the elephant into the forest and if that is not possible, to capture the elephant by drug shooting or chemical tranquilisation. Therefore, he would submit that the petition ought to be dismissed.

5. We heard learned counsel appearing for the respective parties and perused Exhibit P5 order impugned in the petition.

6. Section 11(1) of the 1972 Act reads as under:

“Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of Chapter IV,-

(a) the Chief Wild Life Warden may, if he is satisfied that any wild animal specified in Schedule I has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or cause such animal to be hunted:

PROVIDED that no wild animal shall be ordered to be killed unless the Chief Wild Life Warden is satisfied that such animal cannot be captured, tranquilised or translocated:



PROVIDED further that no such captured animal shall be kept in captivity unless the Chief Wild Life Warden is satisfied that such animal cannot be rehabilitated in the wild and the reasons for the same are recorded in writing.

Explanation. - For the purposes of clause (a), the process of capture or translocation, as the case may be, of such animal shall be made in such manner as to cause minimum trauma to the said animal;

(b) the Chief Wild Life Warden or the authorised officer may, if he is satisfied that any wild animal specified in Schedule II, has become dangerous to human life or to property (including standing crops on any land) or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or group of animals in a specified area or cause such animal or group of animals in that specified area to be hunted.”

7. The translated version of Exhibit P5 order reads as under:

“ORDER OF THE PRINCIPAL CHIEF CONSERVATOR
(WILDLIFE) & CHIEF WILDLIFE WARDEN, KERALA

Subject: Kerala Forest Department – North Wayanad Division – Begur Range – Landing of radio-collared wild Makhna elephant that killed local resident Ajeesh – Permission to shoot drugs – Related.

Hint: Letter no.KFDNC/312/2024-CCFNC/R Dated



10/02/2024 by Chief Conservator of Forest, Northern Circle.

Order No.KFDHQ-1034/2024/CWW/WL1 dated 10/02/2024

The Chief Conservator of the Northern Circle has reported that the death of a local resident named Ajeesh in Padamala area of Begur range in North Wayanad division and the elephant has not gone to the forest and is still stationed near the inhabited area. The death of one person in the attack of the said elephant has led to severe public anger and even forest, police, revenue officers have been stopped and the road has been blocked with the dead body of the deceased.

Although sub-collector, Mananthavady have been declared 144 in the 4 wards of the said area, they are not able to control the people effectively. Northern Circle Chief Forest Conservator has reported that the Makhna was caught from Hassan by the Karnataka Forest Department and released in the forest after wearing a radio collar. The Northern Circle Chief Conservator of Forests has also reported that steps should be taken to drive the problematic elephant from the inhabited area to the forest as soon as possible or issue an order to capture the elephant and release it in the forest area.

Based on the recommendation of the Chief Forest Conservator, Kannur Northern Circle; I, the Principal Chief Conservator (Wildlife) & Chief Wildlife Warden Kerala, D.



Jayaprasad IFS using my power granted by section 11(1)(a) of Wildlife Protection Act – 1972 hereby give permission to drive the said Makhna elephant back to the forest safely using kumki elephants, following all the existing MoEF& CC guidelines and standard operating procedure, and if that fails, to capture the said elephant by drug shooting or chemical tranquilization. Arrangements required as per above permission should be taken by North Wayanad Divisional Forest Officer under the supervision of Kannur Northern Circle Chief Forest Conservator.

Sd/-

Principal Chief Conservator (Wildlife)
& Chief Wildlife Warden, Kerala”

8. The last paragraph of the order, which is highlighted herein above, makes it clear that the Principal Chief Conservator, who is also the Chief Wildlife Warden, Kerala, has directed the officers to first drive the elephant back to the forest, following the guidelines issued by the MoEF&CC, and failing which only to capture the said elephant by drug shooting or chemical tranquilisation. It is not only the case of the respondent but also that of the petitioner that the elephant has now been driven into the deep forest. Admittedly, there is no material to show that, in



spite of being driven into the deep forest, the forest officials are chasing the elephant with the intention to capture it by drug shooting or chemical tranquilisation. It is also pertinent to note that the borders of three States, viz., Kerala, Tamil Nadu and Karnataka, have deep forests, and large number of elephants are roaming around in the forest. The Makhna elephant, which had attacked and killed a person, is being tracked by the officers using a radio-collar fitted on it. If the elephant enters the territory of the State of Kerala again, the Forest officers are supposed to follow the order passed by the Chief Conservator to drive the elephant into the deep forest and if that is not possible, to capture the elephant by drug shooting or chemical tranquilisation. We cannot presume that if the elephant is captured, it will not be released and may die in captivity.

9. Hence, we are of the considered opinion that the order passed by the Chief Wildlife Warden is absolutely in accordance with law, by giving due care for the well-being of the animal and keeping in mind the lives of persons residing in forest area. It is



also pertinent to note that the authorities are following the directions issued by the Division Bench in W.P.(C)No.13204 of 2021, for taking appropriate care to prevent attacks by elephants in future.

Hence, we are of the opinion that at this stage no orders are required to be passed in the matter. Consequently, the writ petition is dismissed.

Pending interlocutory applications, if any, shall stand closed.

Sd/-

A.J. Desai
Chief Justice

Sd/-

V.G. Arun
Judge

vpv



APPENDIX OF WP(C) 7086/2024

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE REGISTRATION
DETAILS OF THE PETITIONER ORGANISATION
ISSUED BY THE NGO DATED 08/03/2023
- Exhibit P2 THE TRUE COPY OF THE AMENDED TRUST DEED
OF THE PETITIONER'S ORGANIZATION DATED
16/10/2023
- Exhibit P3 THE TRUE COPY OF THE INITIAL TRUST DEED
DATED 25/4/2022
- Exhibit P4 THE TRUE COPY OF THE AUTHORIZATION
LETTER ISSUED BY THE TRUSTEES OF THE
ORGANIZATION AUTHORIZING THE MANAGING
TRUSTEE OF THE PETITIONER ORGANIZATION
DATED 15/02/2024
- Exhibit P5 THE TRUE COPY OF THE ORDER OF THE 1ST
RESPONDENT DATED 10/02/2024 AND ITS
ENGLISH TRANSLATION
- Exhibit P6 THE TRUE COPY OF THE COMPLAINT RAISED BY
THE WEFAA NO. F1-002-B/24 DATED
02/02/2024
- Exhibit P7 THE TRUE COPY OF THE COMPLAINT RAISED BY
THE WEFAA NO. F1-004-B/24 DATED
02/02/2024
- Exhibit P8 THE TRUE COPY OF THE NOTICE ISSUED BY
THE 7TH RESPONDENT DATED 06/02/2024
- Exhibit P9 THE COPY OF THE INTERIM ORDER ISSUED BY
THIS HON'BLE COURT DATED 12/02/24 IN
WP(C) NO.13204/2021



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Exhibit P10

**THE TRUE COPY OF THE REPRESENTATION
NO.F1-009-B/24 MADE BY THE PETITIONER
BEFORE THE RESPONDENTS 1,2,4,6 AND 8
DATED 12/02/2024**

Exhibit P11

**THE TRUE COPY OF THE EXPERT COMMITTEE
REPORT DATED 08/01/2024**

Exhibit P12

**THE COUNTER AFFIDAVIT FILED BY THE CHIEF
WILD LIFE WARDEN DATED 29/01/2024**