

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27TH DAY OF JULY 2011

PRESENT

THE HON'BLE MRS. JUSTICE MANJULA CHELLUR
AND
THE HON'BLE MR. JUSTICE S.N. SATYANARAYANA

WRIT APPEAL NO. 3552 OF 2010 (GM-FOR)
C/W
WRIT APPEAL NO. 2485 OF 2010 (GM-FOR)

IN W.A.NO.3552/2010:

BETWEEN:

Compassion Unlimited
Plus Action (CUPA)
Rep. by its President
Smt. Suparna Bakshi Ganguly
257, I Cross, HAL II Stage
Indiranagara
Bangalore-560 038

... APPELLANT

(By Sri. E. Massilamani and Smt. Brindha.M, Advocates)

AND:

1. Union of India
Rep. by its Secretary
Ministry of Environment and
Forest Pariyavaran Bhavan
CGO Complex, Lodi Road
New Delhi-110 003

2. The State of Karnataka
Rep. by its Principal Secretary
Forest Environment and Ecology
Multi-Storied Building
III Stage, 4th Floor
Dr. B. R. Ambedkar Veedhi
Bangalore-560 001
3. The Additional Principal
Chief Conservator of
Forests (Wild Life) and
Chief Wild Life Warden
Karnataka Aranya Bhavan
II Floor, 18th Cross
Malleswaram
Bangalore-560 003
4. The Principal Chief
Conservator of Forests
(Wild Life) and Chief Wild
Life Warden, Kerala
Forest Head Quarters
Vazhuthacaud
Thiruvananthapuram-14
5. The Deputy Conservator
of Forests, Shimoga
Wild Life Division
Shimoga
6. Animal Welfare Board of
India, Rep. by its Secretary
111, Seaward Road
Valmiki Nagar
Thiruvanmiyur
Chennai-600 041

7. Jalahalli Sree Ayyappa
Temple Trust
Jalahalli West
Bengaluru-560 015
Rep. by its Secretary
Sri. N. S. Unnikrishnan Aithal

8. Sri. Jacob Abraham
S/o Sri. Abraham
Aged about 55 years
R/at Puthupparamvi Veedu
Mundakayam
Kottayam District
Kerala

... RESPONDENTS

(By Sri. S. Kalyan Basavaraj, Advocate for R1)
(Sri. Basavaraj Kareddy, Pri. Govt. Adv. for R2-5)
(Sri. T. V. Vijaya Raghavan, Advocate for R7 & 8)
(R6 is served & unrepresented)

This writ appeal is filed under Section-4 of the Karnataka High Court Act praying to set aside the order passed in W.P. No.28798/2009 dated 2.2.2010 only in so far as some of the directions contained in paragraph-13 of the said order etc.,

IN W.A.NO.2485/2010:

BETWEEN:

1. Jalahalli Sree Ayyappan
Temple Trust, Jalahalli West
Bangalore-560 015
Represented by its
President Mr. S. Sivarajan

2. Sri. Jacob Abraham
S/o Sri. Abraham
Aged about 54 years
Residing at "Puthupparambil Veedu"
Mundakayam
Kottayam District Kerala ... APPELLANTS

(By Sri. T. V. Vijaya Raghavan, Advocate)

AND:

1. Compassion Unlimited
Plus Action (CUPA)
Represented by its
Vice President
Smt. Suparna Bakshi Ganguly
No.257, 1st Cross
H.A.L. 2nd Stage
Indiranagar, Bangalore-38
2. Union of India
Represented by its Secretary
Ministry of Environment and
Forest, Pariyavaran Bhavan
CGO Complex, Lodi Road
New Delhi 110 003

(R-2 deleted vide order dated 12.4.2011)
3. The State of Karnataka
Represented by its
Principal Secretary
Forest Environment and Ecology
Multi-storeyed Building
3rd Stage, 4th Floor
Dr. B. R. Ambedkar Veedhi
Bangalore-560 001

4. The Additional Principal Chief Conservator of Forests (Wildlife) & Chief Wildlife Warden, Karnataka Aranya Bhavan, Second Floor 18th Cross, Malleswaram Bangalore-560 003
5. The Principal Chief Conservator of Forests (Wildlife) & Chief Wildlife Warden, Kerala, Forest Hq.Vazhuthacaud Thiruvananthapuram-14
6. Deputy Conservator of Forests Shimoga Wildlife Division Shimoga
7. Animal Welfare Board of India Represented by its Secretary III, Seaward Road, Valmiki Nagar, Thiruvanmiyur Chennai 600 041

... RESPONDENTS

(By Sri. E. Massilamani, Advocate for R1)
(Sri. Basavaraj Kareddy, Prl. Govt. Adv. for R3-6)
(R2 is deleted v/o dated 12.4.2011)
(R7 is served & unrepresented)

These writ appeals are filed under Section 4 of the Karnataka High Court Act, praying to set aside the order passed in W.P. No.28798/2009 dated 02.02.2010.

These appeals are coming on for preliminary hearing this day, **Manjula Chellur J.**, delivered the following:

J U D G M E N T

Heard the learned counsel for the appellant and the respondents in both the appeals as well as the learned Government Advocate.

2. The entire dispute revolves round the tusker in question which is called '*Girija Prasad @ Manikantan*'. The brief facts that lead to the filing of these two appeals are as under:

Appellant No.2 in Writ Appeal No.2485/2010 - Mr. Jacob Abraham said to be the owner of tusker in question, gifted the same in favour of Appellant No.1 in Writ Appeal No.2485/2010 - Jalahalli Sree Ayyappa Temple Trust. According to the submissions of the learned counsel Mr. Vijaya Raghavan, Mr. Jacob Abraham had the ownership certificate issued by the authorities of Kerala in the year 1999 and he gifted the tusker to the temple in question which was a conditional gift that in case appellant/temple is not in a position to look after or manage the tusker, it

has to be given back to the owner. Subsequent to the said gift, in order to transfer the ownership of the tusker in favour of the appellant/temple, they approached the concerned authorities in the State Government i.e Chief Conservator of Forests, Aranya Bhavan, Bangalore. By virtue of certificate of ownership dated 25.2.2002, the ownership of this tusker came to be bestowed to the Secretary of Sree Ayyappan Temple Trust, Bangalore. All the details of the tusker in question were also mentioned in the said certificate of ownership.

Subsequent to this certificate of ownership, it is not in dispute that the tusker was in the custody of the appellant/temple. Subsequently, several complaints were lodged against the temple that as the temple is housed in a residential locality, there were several problems faced by the neighbours, who are residents of the locality and also that the elephant was treated inhumanly. On these complaints, the Chief Wildlife Warden seized the elephant from the temple precincts on the ground of public safety

and also to protect the tusker, which was in distress. At the time of securing the custody of the tusker, they also found that the certain injuries were caused to the elephant by the miscreants. In that situation, the elephant was transferred to Bannerghatta forest. This came to be questioned by the appellant - temple in W.P. No.49209/2004 seeking to quash the order passed by the Conservator of Forests seizing the elephant on 30.4.2004. Meanwhile, the other appellant - Compassion Unlimited Plus Action (CUPA), the Non-governmental Organisation filed W.P. No.7276/2005 for cancellation of ownership certificate dated 25.2.2002 issued by the Chief Conservator of Forests in favour of Jalahalli Sree Ayyappan Temple Trust on the ground that the Temple Trust did not have the required space and facilities to look after the tusker in question as contemplated under Wild Life Protection Act, 1972 ('Act' for short). This Court allowed both the writ petitions and sent back the matter to the Prl. Chief Conservator of Forests (Wild Life) to take a decision

in the matter of continuity of custody of the elephant with the Forest Department or should it go back to the temple.

In the above writ petitions, the observation of the High Court was the authority must take into consideration paramount interest of the animal and certainly not its owner or any other party while considering the custody of the tusker. During the interregnum period, the tusker was shifted to Sakkarebailu Forest area in Shimoga. When the matter came up for adjudication before the Conservator of Forests, all the parties were heard and ultimately an order was passed indicating that the gift made in favour of the temple/appellant by the private party/appellant was not a valid gift and therefore the ownership certificate issued in favour of the temple was revoked. As the private appellant Mr. Jacob Abraham lost the ownership over the said tusker on account of cancellation of the ownership certificate, the authority proceeded to impose certain conditions on Mr. Jacob Abraham and proceeded to say that only on satisfying

those conditions, possession of the tusker can be handed over to Mr. Jacob Abraham. The said order came to be questioned in W.P. No.28798/2009.

3. After hearing the learned counsel Mr. Vijaya Raghavan at length, who even went to the extent of offering bank guarantee for a sum of Rs.5,00,000/- for the safety of the elephant, ultimately the learned Single Judge after referring to Section-40 of the Act proceeded to discuss the declarations contemplated under the Act. According to sub-section (2) of Section-40 of the Act, no person can acquire, receive, keep in his control, custody or possession, sell, offer for sale or otherwise transfer or transport any animal specified in the Schedule-I or Part II of the Schedule II without the previous sanction in writing of the Chief Wild Life Warden or any Authorised Officer. After referring to several provisions of the Act, the learned Judge proceeded with the consideration of the controversy about the certificate of ownership over the tusker as contemplated under Section-42 of the Act.

4. Ultimately, the learned Judge said at paragraph-12 that the paramount consideration would be in respect of animal and not that of the ownership. According to the learned Judge, the authority who passed the order impugned before the learned Single Judge did not consider all these aspects and was not justified in saying that once the gift was made by the private appellant in favour of the appellant/temple was invalid, automatically the elephant should be returned to Mr. Jacob Abraham. According to the learned Judge, Mr. Jacob Abraham is required to produce the certificate of ownership before taking possession of the elephant in question. As on the date of disposal of the matter, as the private appellant did not have such certificate of ownership, the learned Judge proceeded to say that he is entitled to obtain such certificate. But the question was where the animal should be kept till such time. The learned Judge having regarding to the paucity of space in the temple in question and also the interest of the animal being the paramount consideration, felt that it should not be anywhere closer or

within the vicinity of a civilization. Therefore the learned Judge said the elephant should remain at Sakkarebailu Forest area in Shimoga.

5. While observing the action taken by the appellant-NGO, the learned Judge also considered the arguments advanced by Mr. N.B. Vishwanath, Government Advocate that maintaining an elephant would cost substantial amount to the Government, but however they would take care of the elephant in question like any other elephant at Sakkarebailu forest at Shimoga. After this observation, the learned Judge proceeded to say as under in paragraph-13 of the order:

"The NGO, who is taking care of all Wild animals is also put on terms, in case if there is any shortfall by the Government in taking care of not only this elephant, but all elephants in Sakkarebailu forest including all other wild life in the said area."

6. This observation of the learned Single Judge said to have lead to Annexure-W dated 7.5.2010 and Annexure-X dated 8.7.2010. These two letters are from the Pri. Chief Conservator of Forests addressed to the appellant – M/s Compassion Unlimited Plus Action (CUPA). The gist of these two letters is cost of expenditure to be borne in respect of elephant, Giriprasad @ Manikanta would work out to Rs.2,79,017/- per annum and therefore the appellant – NGO should meet this expenditure annually. When there was no response to Annexure-W, second demand notice – Annexure-X seems to have been sent to the appellant – NGO. At this juncture, the appellant has come before us seeking for modification of the observations of the learned Single Judge at paragraph-13.

7. Reading of paragraph-13 of the order of the learned Single Judge as stated above would indicate that maintaining an elephant would cost substantial amount to the Government, but the learned Judge never indicated

that just because the NGO – appellant came to the rescue of the elephant in question, that NGO should bear the expenditure or maintenance cost. On the other hand the learned Judge was impliedly mentioning that if any shortcoming is noticed in the case of maintaining or taking care of not only Girijaprasad @ Manikantan but also other elephants and wild life in the Sakkarebailu forest, the appellant – NGO (CUPA) is entitled to agitate the same. But it does not mean that the appellant - NGO has to bear the cost of the maintenance of the elephant. These two letters are nothing but an unreasonable demand on the part of the Pri. Conservator of Forests who has not understood the tenor of the order of the learned Single Judge at paragraph-13 and mis-interpreted the same by demanding the amount from the appellant.

8. Therefore we make it clear in this order that the learned single Judge never meant that the cost of maintenance of Girijaprasad @ Manikantan or any other elephant or wild life in the area at Sakkarebailu forest area

would ever be financially met by the appellant/NGO. Therefore there is no question of payment of any money as demanded at Annexures-W and X.

9. Then coming to the other appeal, at paragraph-12 of the order of the learned Single Judge it is made clear that as of now, certificate of ownership so far as appellant/temple and also private appellant Mr. Jacob Abraham are cancelled. The gift is held as invalid. In that view of the matter, question of returning the possession of the tusker to private appellant Mr. Jacob Abraham would not arise till he can seek for the said tusker by producing certificate of ownership. Even otherwise at the time of giving certificate of ownership to the temple in question, the certificate of ownership issued by the authority at Kerala in the year 1999 in favour of Jacob Abraham was cancelled. Therefore he has no locus standi to claim the tusker as on today.

10. With the above observations, the appeal filed by the appellant – NGO in Writ Appeal No.3552/2010 and the

appeal filed by the temple in Writ Appeal No.2485/2010 are disposed of.

11. In view of the disposal of the writ appeals, Misc.W.8999/10 for production of additional documents and Misc.W 9001/2010 for stay in Writ Appeal No.3552/2010 do not survive for consideration and they are accordingly dismissed.

**Sd/-
Judge**

**Sd/-
Judge**

Gss/-