

WMP.No.15802 of 2018
in W.P.No.28793 of 2013

M.SATHYANARAYANAN, J.

AND

M.M.SUNDRESH, J.

(Order of the Court was made by **M.SATHYANARAYANAN, J.**)

This Court, in continuation and in conjunction with the earlier orders, especially the order dated 27.11.2019, is passing the following order.

2. This Court has perused the Inspection Report of Mr.Ajay Desai, Elephant Scientist dated 15.12.2019. The said report deals with two elephants, namely 'Gomathy' maintained in Arulmigu Mahalingaswamy Temple, Thiruvaidaimaruthur, Kumbakonam and 'Avayambal' maintained in Mayurranathaswamy Temple in Mayiladuthurai. Insofar as the elephant, namely '**Gomathy**' is concerned, the following recommendations are made in the said report:

Recommendation for captive elephant Gomathy

1. The Forest Department's elephants are officially given retirement when they become old and from then on they are fed rations, given medical care and managed till they die of old age. Gomathy is 65 years old and well beyond retirement age but is still put on display (duty) the whole day through.

2. *With the exception of the morning and evening walk (3-4km). Gomathy has been tethered with a short chain which allows only a few feet of movement and no activity for 57 long years. For an intelligent, wide ranging and highly social animal this would possibly be the worst punishment, like a life imprisonment in solitary confinement.*

3. *Taking its extremely poor quality of life for nearly 6 decades and its age I would suggest that Gomathy be transferred to the M.R.Palayam Elephant Rescue and Rehabilitation Centre of the Tamil Nadu Forest Department. In this regard the following points need not be taken into consideration.*

a. *Although the elephant is very old, it is in good health and has no physical deformities or problems. As such a journey of 90 km in a truck would not be a problem for this elephant.*

b. *Due to its age, different health issues can arise and these are best dealt with by Veterinary doctors who have experience in managing health issues in wild animals (free ranging and captive). This type of experience and skill will only be available in the Forest Department, which has over a 100 years experience in managing captive elephants. Such experience and elephant specific knowledge and skills will not be available with junior veterinary doctors from the Animal Husbandry Department. So moving Gomathy to*

M.R.Palayalam will be beneficial from the health point of view. The fact that the temple authorities were unable to send the elephant to the annual rejuvenation camp for elephants shows that instead of increased health care in old age, care is actually declining.

c. There are already 4 other elephants there at the M.R.Palayam Elephant Rescue and Rehabilitation Centre and these will provide the companionship Gomathy has missed for decades. The social environment in M.R.Palayam centre will be highly conducive to the well being of this old elephant.

d. As per the Central Zoo Authority, captive elephant require at least 1.2 ha, but this implies area over which the elephant can roam around. Habitat enrichment is also suggested. The temple and the mahouts do not have the skills to let an elephant free range as they have been habituated to decades of just chaining the elephant. Although, one of the sites (adjoining the school) shown to us by the temple authorities has shade trees, it will be difficult to release an unchained elephant next to a school. There is adequate space and the scope for free ranging in M.R.Palayam centre, so Gomathy will finally have the opportunity to move around freely.

e. Taking all these into consideration, it would be best to transfer Gomathy to the M.R.Palayam Centre.

4. *The costs of transport and also maintenance of the elephant should be borne by the temple.*

a. *As even the government technically pay pension (life time care) for captive elephant managed by them. Hence it should also be the social responsibility of temples which keep elephants to pay for their care when they become old, rather than use the approach of 'working them till they die'.*

b. *The temple authorities felt that the elephant was needed because it added grandeur and impact by its presence. Elephants are also seen as representatives of Lord Ganesha. Thus it would only be fitting that they now extend support for the elephant which has given them decades of service.*

3. The following recommendations are made in respect of the elephant

'Avayambal':

Recommendation for captive elephant Avayambal

1. *There is significant scope of allowing greater freedom of movement if the coconut grove can be fenced (electric fence) and the elephant is allowed free movement inside. On the temple side of the coconut grove there will be a need to have an additional barrier (steel railings) to stop people from approaching the fence/elephant too closely or interfering with the fence.*

2. *Addressing the social issue is very difficult as getting more elephants is difficult, and keeping just one elephant, even in a good*

enclosure as it would be unethical to incarcerate a highly social and intelligent animal to a solitary life.

3. This elephant represents a typical temple elephant, which is most often a female and is mostly kept alone. Movement of elephants will have to be highly restricted due to the presence of a large number of people in and around temples. It creates a situation that resembles a life sentence in solitary confinement. It is suggested that the larger issue of all temple elephants being kept solitary or in situations where movement is restricted should be addressed in a more comprehensive way.”

4. The Court heard the submission of Mr.S.P.Chockalingam, learned counsel appearing for the review petitioner in Rev.Aplw.SR.Nos.112149 and 122113 of 2019, Mr.M.Maharaja, learned Special Government Pleader (H.R.&CE) appearing for the petitioner herein, Mr.Jeyesh B.Dolia, learned counsel for the 4th respondent/Animal Husbandry Department, Mr.Vijay Prasanth, learned Additional Government Pleader (Forest) appearing for the 7th respondent, Mr.Rana Saran Mohan representing Mr.R.Parthasarathy, learned counsel for the 5th respondent/Animal Welfare Board of India and Mr.V.Chandrasekar, learned counsel appearing for the 9th respondent Temple.

5. The learned Additional Government Pleader appearing for the 7th respondent prays for short accommodation to file his response to the allegations, however we are not going into the allegations or counter allegations for the reason that we are going to pass orders solely on the basis of the Inspection Report filed by Mr.Ajay Desai.

6. Mr.V.Chandrasekar, learned counsel appearing for the 9th respondent Temple would submit that he has no serious objection in shifting the captive elephant namely, 'Gomathy' to Elephant Care, Rescue and Rehabilitation Centre at M.R.Palayam, Trichy and he would further add that the Mutt is unable to bear either the cost of transportation or maintenance of elephants.

7. Mr.M.Maharaja, learned Special Government Pleader (H.R.&C.E.) appearing for the petitioner prays for short accommodation to file his response to the report of Mr.Ajay Desai pertaining to female elephant 'Avayambal' maintained at Mayurranathaswamy Temple in Mayiladuthurai.

8. Mr.Vijay Prasanth, learned Additional Government Pleader (Forests) appearing for the 7th respondent would submit that the Forest Department is functioning with minimal budget and it will be extremely difficult to transport and maintain the elephants and therefore, the 9th respondent temple may be directed to bear atleast a portion of the cost.

9. This Court paid it's best attention to the rival submissions and also perused the materials placed before it.

10. It is relevant to extract Rules 10 and 14 of the Tamil Nadu Captive Elephants (Management and Maintenance) Rules, 2011:

Rule 10. Retirement of elephants.- (1) No elephant shall be put to any work on attaining the age of sixty years:

Provided that healthy elephants above sixty years of age may be allowed to put to light work under proper Health Certificate from the Veterinary Doctor and with previous permission of Chief Wildlife Warden.

Rule 14. The aged elephants taken by the Department.- The aged elephants which could not be maintained by the temple/private authority shall be taken by the Forest Department after due checkup by Forests Veterinary Officer / Assistant Surgeon. The cost of maintenance should be born by the Hindu Religious and Charitable Endowments Department or Temple or private authority.”

11. Mr.S.P.Chockalingam, learned counsel appearing for the review petitioner in Rev.Aplw.SR.Nos.112149 and 122113 of 2019 would submit that the Hon'ble Supreme Court of India had already seized up the matter with regard to captive elephants in W.P.(C)No.743 of 2014 [*Wildlife Rescue and Rehabilitation Centre Secretary and Trustee Dr.Smt.Shiela N.Rao, Bangalore and Others v. Union of India and Others*]. In the said writ petition, the State of Tamil Nadu is arrayed as 11th respondent and the Chief Wildlife Warden, State of Tamil Nadu is arrayed as 12th respondent. As regards, shifting of captive elephant namely, 'Gomathy' is concerned, Mr.S.P.Chockalingam, learned counsel would submit that a 55 years old devotee was killed by the said elephant by crushing him with it's trunk when he worshipped the elephant during October, 2012 and as such, while transporting and maintaining the captive elephant 'Gomathy' at Elephant Care Rescue and Rehabilitation Centre at M.R.Palayam, Trichy, she is to be accompanied by it's regular Mahout/Chawadi and prays for appropriate orders.

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12. Mr.Vijay Prasanth, learned Additional Government Pleader (Forest) would submit that five elephants are already maintained at Elephant Care,

Rescue and Rehabilitation Centre at M.R.Palayam, Trichy and also agreeable to the suggestion made by Mr.S.P.Chockalingam, learned counsel as to the accompanying of regular Mahout/Chawadi of 'Gomathy' while she is being transported and maintained by the said center for sometime.

13. In the light of the above facts and circumstances, this Court directs the 7th respondent, namely Chief Conservator of Forests / Chief Wildlife Warden, Government of Tamil Nadu, Department of Forests, Chennai-15 to shift the elephant 'Gomathy' which is maintained in Arulmigu Mahalingaswamy Temple, Thiruvaidaimaruthur, Kumbakonam to Elephant Care, Rescue and Rehabilitation Centre at M.R.Palayam, Trichy, within a period of three weeks from the date of receipt of a copy of this order and while transporting and maintaining the said elephant to Elephant Care, Rescue and Rehabilitation Centre at M.R.Palayam, Trichy, the regular Mahout/Chawadi of 'Gomathy' shall accompany and permitted to stay in the said centre atleast for a month. A Status Report in this regard shall also be filed before this Court with supporting documents and photographs.

14. Insofar as the captive elephant 'Avayambal' maintained in Mayurranathaswamy Temple in Mayiladuthuri is concerned, response of the 7th respondent / Forest Department to the report of Mr.Ajay Desai shall be filed within a period of four weeks.

15. The typed set of documents filed by Chief Wildlife Warden in Rev.Aplw.SR.No.122621 of 2019 contains the report of the 7th respondent dated Feb' 2016 and in paragraph No.4 of the said affidavit, it is stated that as on 31.01.2016, the State of Tamil Nadu have estimated 138 captive elephants under the following categories:

<i>Sl.No.</i>	<i>Owner</i>	<i>Number</i>
1	Temple Elephants	40
2	Private Elephants	39
3	Forest Department Camp Elephants	49
4	Zoo Elephants	4
5	Circus	6
	Total	138

Therefore, insofar as Captive Elephants in Sl.Nos.1, 2, 4 and 5 are concerned, this Court requires Status Reports and the learned Additional Government Pleader (Forest) also undertakes to file the same. The 7th respondent shall also

avail the services of Mr.Ajay Desai while causing inspection of the said elephants.

Call on 31.01.2020. It is also open to Mr.Ajay Desai to appear before this Court for rendering necessary assistance.

[M.S.N., J.] [M.M.S., J.]
17.12.2019

Jvm

Note: Registry is directed to communicate this order to all the official respondents and also upload the order in the website.

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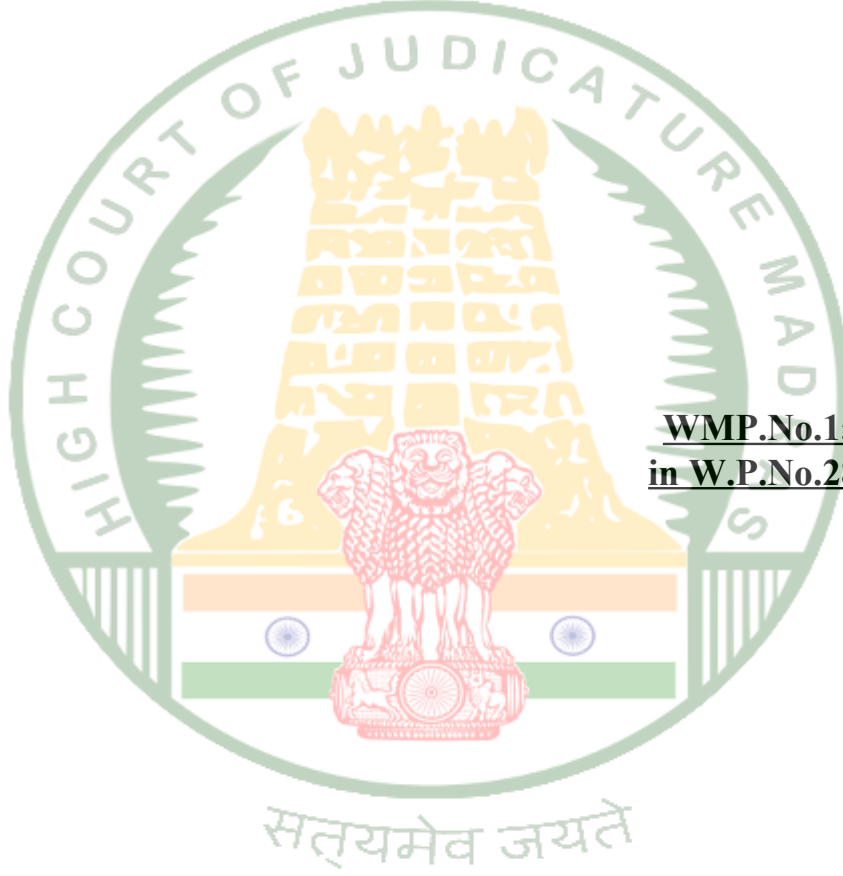
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