

\$~

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 156/2020

MR. SADDAM

..... Petitioner

Through: Mr. Wills Mathews, Advocate with  
Ms. Sweta Prashar, Mr. Robin Singh  
Sirohi, Mr. Paul John Edison and  
Mr. Ginesh P., Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rahul Mehra, Standing  
Counsel (Crl.) with Mr. Chaitanya  
Gosain and Mr. Divyank Tyagi,  
Advocates for GNCT of Delhi.  
SI Maneesh Kumar, PS Shakarpur.

%

Date of Decision: 20<sup>th</sup> January, 2020

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**J U D G M E N T**

**MANMOHAN, J:- (Oral)**

**Crl.M.As. 1081-1082/2020 (for exemption)**

Allowed, subject to just exceptions.

Accordingly, present applications stand disposed of.

**W.P.(CRL) 156/2020**

1. Present writ of habeas corpus has been filed by the petitioner, who claims to be a Mahout, seeking release of elephant-Laxmi from the alleged illegal custody of Elephant Rehabilitation Centre (respondent no.4) and for a direction that the said elephant be brought back to Delhi along with visitation rights for the petitioner to meet the elephant-Laxmi at the cost of the respondents as well as directions to the respondents to produce all video and audio recordings from Police Station Shakarpur in FIR No.188/2019 to assess the alleged cruelty inflicted upon the elephant-Laxmi.

2. Mr. Wills Mathews, learned Counsel for the petitioner states that elephant-Laxmi was a Delhi resident and had been regularly participating in Republic Day parades from the year 1995 to 2007 and was an integral part of various governmental, non-governmental and spiritual functions associated with *poojas* in temples, marriages, sports, games and opening ceremonies.

3. Mr. Wills Mathews submits that the preamble to the Indian Constitution starts with “*We*” and it has nowhere been implied that it includes “*people*” only. He states that having ‘*not a single elephant in Delhi*’ cannot be considered as an achievement.

4. Learned counsel for the petitioner states that recently, in a Habeas Corpus petition filed on behalf of an elephant, the Supreme Court of the State of New York, County of Orleans, United States had issued a Habeas Corpus order on behalf of a non-human.

5. He lastly contends that the scope of the statement “*not being subjected to torture*” extends to the fact that an entity cannot be disengaged from someone it is very closely attached with. He states that in the present

case, secluding elephant-Laxmi from the petitioner would equate to mental agony considering the extent to which they were associated for the last ten years.

6. Mr. Rahul Mehra, learned Standing Counsel for the State contends that the present writ petition is a proxy litigation on behalf of the owner of the elephant-Laxmi. He submits that present writ petition of Habeas Corpus is not maintainable.

7. Having perused the paper book and leaving aside the issue of maintainability of the present writ of Habeas Corpus, this Court finds that the elephant-Laxmi had been moved to the Elephant Rehabilitation Centre (respondent no.4) in pursuance to the order passed by the Chief Wildlife Warden, Delhi after it was found that she, along with other domesticated elephants, had been living in dilapidated conditions with insufficient resources. The said order had been upheld by a learned Single Judge of this Court vide order dated 5<sup>th</sup> September, 2018 in Writ Petition being WP (C) No. 9102/2018 and the Division Bench vide order dated 5<sup>th</sup> April, 2019 in LPA No. 235/2019 with a caveat that the elephants should be shifted only after proper arrangements had been made for their travel and rehabilitation.

8. In the opinion of this Court, since an animal is unable to express itself, the principles of *parens patriae* jurisdiction will apply to the present case. The Supreme Court in *Animal Welfare Board of India vs. A. Nagaraja and Ors.* (2014) 7 SCC 547 has held that “the Court has also a duty under the doctrine of *parens patriae* to take care of the rights of animals.”

9. Keeping in view the aforesaid principle and the fact that an elephant, by virtue of its natural characteristics, requires sufficient water, large area for housing as well as for walking and grazing, this Court is of the opinion that Jungle is the natural habitat of an elephant and the presence of elephant-Laxmi in Elephant Rehabilitation Centre (respondent no.4) cannot be termed as illegal or unauthorised. In any event, there is no documentary proof to establish that the Mahout is the owner of the elephant and/or that elephant-Laxmi cannot live without the Mahout. Even if the Mahout is able to establish ownership, it would not be a ground to treat the elephant as his 'slave' and move elephant-Laxmi to an uncomfortable environment against her rights and interests. Consequently, the interest of elephant-Laxmi is best served in a forest rather than in a congested city with a Mahout.

10. Further, in the event of a conflict between the rights of the elephant and the alleged Mahout, priority will have to be given to the rights of the elephant. This Court is of the view that Elephant Rehabilitation Centre (respondent no.4) is better suited to take care of elephant-Laxmi's needs than a Mahout. Consequently, this Court is of the view that the presence of elephant-Laxmi in Elephant Rehabilitation Centre (respondent no.4) is not illegal as alleged by the petitioner.

11. Further, allegations of cruelty while shifting elephant-Laxmi cannot be decided in a writ of Habeas Corpus.

12. At this stage, learned counsel for the petitioner confines his prayer for visitation rights.

13. Since we find from the record that no such prayer has been made by the petitioner to the respondents, we dispose of the present writ petition by giving liberty to the petitioner to apply to the Elephant Rehabilitation Centre

(respondent no.4) for visitation rights.

14. Elephant Rehabilitation Centre (respondent no.4) shall consider the said request in accordance with law. It is clarified that the rights and contentions with regard to this aspect are left open and Elephant Rehabilitation Centre (respondent no.4) shall decide the same without being influenced by any observation made by this Court.

**MANMOHAN, J**

**SANGITA DHINGRA SEHGAL, J**

**JANUARY 20, 2020**

js

सत्यमेव जयते