

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

BEFORE:

**The Hon'ble Mr. Justice Ravi Krishan Kapur
AND
The Hon'ble Mr. Justice Arindam Mukherjee**

**W.P.A. 19941 of 2018
CAN 2 of 2023**

**CAPE FOUNDATION & ANR.
VS.
STATE OF WEST BENGAL and ANR.**

For the petitioners	:Mr. Dhruba Ghosh Mr. Biswanath Chatterjee Mr. Ajeya Chowdhury Mr. Sobhan Kumar Pathak
For the respondent no.5	:Mr. Partha Sarathi Deb Barman Mr. Anindya Sundar Das Mr. Anup Dasgupta Mr. Ratul Deb Banerjee Mr. Sourojit Mukherjee Mr. Syed Ali Afzal Mr. Suman Halder
For the State	:Ms. Noelle Banerjee
Judgment on	:23.06.2025

Ravi Krishan Kapur, J:

- 1.The grievance in this Public Interest Litigation pertains to the illegal transportation of elephants from the State of West Bengal. It is contended that as many as 24 elephants had been transported out of the State of West Bengal to different States. Upon filing of the writ petition, by an order dated 19 July 2019, a Co-ordinate Bench directed as follows:

“This Public Interest Litigation has been taken out by a registered trust named “Cape Foundation” and one of its trustees named Radhika Bose.

The issue which the petitioners have raised in this Public Interest Litigation is essentially centred around the well being and protection of some captive elephants which, although registered in West Bengal, are now in the State of Bihar and some other State. The details where the captive elephants are presently kept have been disclosed in an affidavit filed on behalf of the State of West Bengal earlier.

So far as the question of bringing them back to the State of West Bengal is concerned, we are of the view that the respondent no.2, being the Chief Conservator of Forests (Wildlife), who is also the Chief Wildlife Warden, should take necessary steps by interacting with the appropriate authority of the Government of Bihar in order to bring the elephants back to the State of West Bengal. If there are other elephants in any other State, as disclosed in the affidavit filed on behalf of the State of West Bengal, the respondent no.2 shall proceed in the same manner as directed hereinbefore.

It will be open to the respondent no.2 to realise costs for transportation, etc., in order to bring the elephants back and for their upkeep in the State of West Bengal from the respondent nos.3 and 4, namely, Natraj Circus and Famous Circus, respectively, in accordance with law.

The writ petition stands disposed of accordingly. Urgent photostat certified copy of this order, if applied for, be given to the parties.”

2. In view of the alleged non-compliance with the order dated 19 July 2019, the petitioner had filed an application for contempt wherein an order dated 7 September 2022 was passed *inter-alia* directing the respondents as well as the intervenors to purge their contempt. In this context, it is important to mention that after the passing of the order dated 19 July 2019, the respondent no.5 Satyadeb Das claiming to be the Mahant of an Ashram where the three elephants were kept and alleging to be the lawful owner of the three elephants had complained of not being heard before passing of the order dated 19 July 2019.

3. Subsequently, by an order dated 4 May 2023 passed in (SLP) C No.18958 of 2022, the Hon’ble Supreme Court had set aside the above orders dated 7

September 2022 and 19 July 2019 respectively and directed to hear the added respondent no.5 and the other parties. By the said order, it was made clear that only the portion of the order dated 19 July 2019 which related to the added respondent no. 5 is set aside. The order directed that the issues raised in the writ petition be adjudicated afresh and also to take into consideration the Report of the Secretary, District Legal Services Authority, Gopalganj as regards to the habitation and health conditions of the subject elephants. All the questions relating to the merits of the matter were left open for consideration insofar as the respondent no.5 is concerned.

4. In brief, the case of the respondent no.5 Mahant was that the three elephants Bhola, Suman and Basanti were originally working at Natraj Circus. Thereafter, the proprietors of Natraj Circus had executed a Gift of Deed on 12 October, 2017 in favour of Satguru Daria Ashram, Dangshi, District- Gopalganj and the said three elephants were transported to the said Ashram in Bihar *via* Hemtabad. In this background, the only question which now arises for consideration relates to the three elephants presently at Bihar.
5. During the hearing of these proceedings, pursuant to an order dated 19 May 2022, the DFO, Gopalganj had arranged a team to visit the Ashram for an inspection. However, on reaching the Ashram, it was found that the elephants were missing and that the respondent no 5, in-charge of the Satnam Dariya Ashram had absconded. Later on, it transpired that the elephants had been sent for religious purposes. Despite repeated attempts the DFO, Gopalganj was unable to take custody of the elephants.
6. It is contended by the petitioner that, the respondent no 5 had illegally transported the three elephants from West Bengal to his Ashram situated at Bihar notwithstanding the cancellation of the ownership certificate and

suspension of the registration certificate of Natraj Circus under The Performing Animal Registration Rules, 2001, The Prohibitions of Cruelty to Animal Act 1960. There has also been violation of *inter-alia* sections 40(2), 39(1), 43(2) and 48(A) of The Wildlife Protection Act 1972 (the Act). In any event, no prior permission of the Chief Wildlife Warden was obtained before transportation of any of the elephants outside the State of West Bengal. The respondent no 5 has also failed to establish any lawful right in respect of the said three elephants. In such circumstances, the elephants belong to the State of West Bengal. In addition, the respondent no 5 has failed to produce any ownership certificate in respect of any of the three elephants in terms of section 39(1) of the Act. The ownership certificates of the prior owner, i.e., the Natraj Circus was issued in 2008 for a period of 5 years and automatically expired in 2013. There was no evidence to suggest that the same was ever renewed. In such circumstances, Natraj Circus had no lawful ownership in respect of any of the elephants at the time when the alleged deed of gift was executed. Nor was the alleged deed registered with the Chief Wildlife Warden of the State of West Bengal. It is alleged that the three elephants are being illegally held by the Ashram and kept in poor conditions, chained with spiked shackles for most of the day with three legs tied on a cemented floor, resulting in skin diseases and untreated wounds. No health records of the elephants were also being maintained by the Ashram. The elephants were also being commercially exploited. In addition, the respondent no 5 has acted contrary to orders of Court and had during the pendency of the proceedings transported the elephants from the Ashram to an unknown location notwithstanding an undertaking given to Court.

7. On behalf of the respondent no 5 it is contended that, he is the lawful custodian of the three elephants by virtue of a Gift Deed dated 12 October

2017 and that the elephants have since developed a bond with the respondent no 5 and the other residents of the Ashram. The elephants are well fed and maintained at an expense of approximately Rs.5000/- per day per elephant. Since the elephants have always lived a domesticated captive life, any attempt to relocate the elephants to the forests would make them hostile and aggressive. The release of these elephants into the wild would also be dangerous to their existence and survival. It is further contended that the respondent no 3, Natraj Circus, had a valid ownership certificate at the time of transferring the elephants to the respondent no.5. In addition, the respondent no 5 by letters dated 13 October 2017 and 25 November 2017 respectively had informed the Chief Wildlife Warden of such transfer from West Bengal to Bihar.

8. It is also contended that under section 39 of the Act “only wild animals” are the property of the Government and not “captive animals”. It is further alleged that there has been compliance with all the statutory formalities. The transfer of the elephants was purely by way of gift and no amount of consideration or gratification was involved in the transaction. The requirement of previous permission in writing from the Chief Wildlife Warden or an authorized officer for acquiring, receiving, keeping in control, custody or possession for transfer or transport is directory in nature as the same does not stipulate any penal consequences for non-compliance. It is further denied that the elephants have been commercially exploited. On the contrary, they are worshiped by the locals and residents of the Ashram.
9. On behalf of the State it is contended that in terms of sections 40 (2A) and (2B) of the Act, the respondent no 5 was obliged to take prior permission from the Chief Wildlife Warden before transporting the elephants to Bihar. The respondent no 5 had also failed to declare the possession of such elephants

within 30 days of possessing the same as required under the Act. The respondent no 5 was also in violation of the mandatory provisions of the Act and guilty of illegally transporting the elephants outside the State of West Bengal. Pursuant to the cancellation of the ownership certificate in favour of the Natraj Circus in 2018, the elephants automatically vested with the State of West Bengal. In addition, in view of the report filed by the Additional Principal Chief Forest Conservator of Forest Wild Life, West Bengal, the three elephants could always be relocated to the Gorumara National Park once they are transported from the Ashram.

10. For convenience, the relevant sections of the Wild Life (Protection) Act, 1972, are as follows:

2(5) - “captive animal” means any animal, specified in 11 [Schedule I or Schedule II] which is captured or kept or bred in captivity;

Section 2(36) wild animal- [(36) “wild animal” means any animal specified in Schedules I to IV and found wild in nature;]

39. Wild animals, etc., to be Government property.—(1) Every—

(a) wild animal, other than vermin, which is hunted under section 11 or sub-section (1) of section 29 or sub-section (6) of section 35 or kept or 1 [bred in captivity or hunted] in contravention of any provision of this Act or any rule or order made thereunder or found dead, or killed 2*** or by mistake; and

(b) animal article, trophy or uncured trophy or meat derived from any wild animal referred to in clause (a) in respect of which any offence against this Act or any rule or order made thereunder has been committed,

[(c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed; (d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act.]

shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat 4 [derived from such animal or any vehicle, vessel, weapon, trap or tool used in such hunting] shall be the property of the Central Government.

(2) Any person who obtains, by any means, the possession of Government property, shall, within forty-eight hours from obtaining such possession, make a report as to the obtaining of such possession to the, nearest police station or the authorised officer and shall, if so required, hand over such

property to the officer-in-charge of such police station or such authorised officer, as the case may be.

(3) No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorised officer— (a) acquire or keep in his possession, custody or control, or (b) transfer to any person, whether by way of gift, sale or otherwise, or (c) destroy or damage, such Government property.

[(4) Where any such Government property is a live animal, the State Government shall ensure that it is housed and cared for by a recognised zoo or rescue centre when it can not be released to its natural habitat.

(5) Any such animal article, trophy or uncured trophy or meat derived from any wild animal, as referred to in sub-sections (1) and (2) may be disposed of by the State Government or the Central Government, as the case may be, in such manner as may be prescribed by the Central Government: Provided that such disposal shall not include any commercial sale or auction and no certificate of ownership shall be issued for such disposal.]

40. Declarations.—(1) Every person having at the commencement of this Act the control, custody or possession of any captive animal specified in Schedule I, [or animal article, trophy or uncured trophy] derived from such animal or salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, shall, within thirty days from the commencement of this Act, declare to the Chief Wild Life Warden or the authorised officer the number and description of the animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept.

(2) No person shall, after the commencement of this Act, acquire, receive, keep in his control, custody or possession, sell, offer for sale or 420 otherwise transfer or transport any animal specified in Schedule I or any uncured trophy or meat derived from such animal, or the salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, except with the previous permission in writing of the Chief Wild Life Warden or the authorised officer.

[(2A) No person other than a person having a certificate of ownership, shall, after the commencement of the Wild Life (Protection) Amendment Act, 2002 (16 of 2003) acquire, receive, keep in his control, custody or possession any captive animal, animal article, trophy or uncured trophy specified in Schedule I, except by way of inheritance.

(2B) Every person inheriting any captive animal, animal article, trophy or uncured trophy under sub-section (2A) shall, within ninety days of such inheritance make a declaration to the Chief Wild Life Warden or the authorised officer and the provisions of sections 41 and 42 shall apply as if the declaration had been made under sub-section (1) of section 40:

[Provided that nothing in sub-sections (2A) and (2B) shall apply to the live elephant.]

3 (3) Nothing in sub-section (1) or sub-section (2) shall apply to a recognised zoo subject to the provisions of section 38-I or to a public museum.

(4) The State Government may, by notification, require any person to declare to the Chief Wild Life Warden or the authorised officer 4 [any animal or animal article] or trophy (other than a musk of a musk deer or horn of a rhinoceros) or salted or dried skins derived from an animal specified in Schedule I in his control, custody or possession in such form, in such manner, and within such time, as may be prescribed.

43. Regulation of transfer of animal, etc.—*(1) No person having in his possession captive animal, animal article, trophy or uncured trophy in respect of which he has a certificate of ownership shall transfer by way of sale or offer for sale or by any other mode of consideration of commercial nature, such animal or article or trophy or uncured trophy.*

(2) Where a person transfers or transports from the State in which he resides to another State or acquires by transfer from outside the State, any such animal, animal article, trophy or uncured trophy in respect of which he has a certificate of ownership, he shall, within thirty days of the transfer or transport, report the transfer or transport to the Chief Wild Life Warden or the authorised officer within whose jurisdiction the transfer or transport is effected. [Provided that the transfer or transport of a captive elephant for a religious or any other purpose by a person having a valid certificate of ownership shall be subject to such terms and conditions as may be prescribed by the Central Government.]

(3) Nothing in this section shall apply— (a) to tail feather of peacock and the animal article or trophies made therefrom; (b) to transfer of captive animals between recognised zoos subject to the provisions of section 38-I, and transfer amongst zoos and public museums.]

48A. Restriction on transportation of wild life.—*No person shall accept any wild animal (other than vermin), or any animal article, or any specified plant or part or derivative thereof, for transportation except after exercising due care to ascertain that permission from the Chief Wild Life Warden or any other officer authorised by the State Government in this behalf has been obtained for such transportation.*

11. Admittedly, there are no documents to demonstrate or even suggest that the respondent no 3, Natraj Circus, had renewed the ownership certificate issued in its favour in respect of any of the above three elephants since 2013. In this context, the order issued by Central Zoo Authority dated 7 December 2016 categorically records that the ownership certificate of the respondent no 3 expired on 31 October 2013 and the same was never renewed. Thereafter, upon failure of the respondent no 4 in providing basic amenities for taking care of the animals of the circus, the “zoo” status of the Natraj Circus had also been

stood revoked. Hence, any right which could be claimed by Natraj Circus automatically expired on 31 October 2013. Significantly, the last certificate of ownership in the name of Natraj Circus is dated 8 October 1999. The alleged gift deed dated 12 October 2017 was executed when the respondent no 4 had no ownership of any of the elephants in view of the expiry of the ownership certificate and non-renewal of the same. In such circumstances, the elephants currently in possession of the respondent no 5, which are deemed to be captive animals in terms of section 2(5) of the Act belong to the State of West Bengal. Thus, the alleged deed of gift is of no legal significance and in terms of section 39 of the Act, the elephants are deemed to have become the property of the State of West Bengal. Accordingly, the respondent no 3 could not have gifted the elephants to the respondent no 5 or to any other party. Any such document is unlawful, *non-est* and *void*. The general rule of law is that no one can transfer a better title than he himself possesses: *Nemo dat quod non habet*. (*State Bank of India vs. Rajendra Kumar Singh & Ors. AIR 1969 SC 401*).

12. On a conjoint reading of sections 39 and 40 of the Act, it is apparent that in the absence of an ownership certificate and any prior permission from the Chief Wildlife Warden, no person can acquire, receive, keep in his control, custody or possession of any animal under Schedule I or Part II of Schedule II of the Act. There is also nothing to substantiate the claim of the respondent no 5 that they had applied for an ownership certificate from the District Forest Officer, Gopalganj, Bihar. The transfer by way of a valid gift was not reported to the Chief Wild Life Warden. (*Nakeri Vasudevan Namboodiri & Ors. vs. Union of India and Ors. 2007 (4) KHC 140*). The proviso to section 40 (2A) or (2B) is inapplicable and of no assistance to the respondent no.5. Any such interpretation would nullify the object and purpose of the Act.

13. It is also evident from the reply dated 20 June 2018 issued by the Directorate of Forest, Government of West Bengal to the RTI application made by the petitioner no 1 that, the three elephants had been transported from West Bengal to Bihar without any prior lawful permission of the Government of West Bengal, more specifically from the Chief Wildlife Warden. In such circumstances, the respondent no 5 is also in violation of sections 43 and 48A of the Act which stipulates that prior permissions is to be taken before such animals are transferred or transported from one State to another. In conclusion, all the three elephants were illegally transported from the State of West Bengal. The respondent no 5 has also failed to obtain a No Objection Certificate which ought to have been issued by the Chief Wildlife Warden, Bihar, in terms of the Guidelines for Care and Management of Captive Elephants issued by the Ministry of Environment & Forests, Project Elephant, No 9-5/2003-PE dated 8 January 2008, prior to the elephants being transported to Bihar and after inspection of the place where the elephants were proposed to be kept.
14. Both the Chief Wildlife Warden of West Bengal and Bihar have denied receiving any application from either no 3 or the respondent no. 5 for transportation of any of the three elephants. In the absence of any prior permission under section 40(2) of the Act, there has been an *ex facie* violation of the mandatory requirements of the Act. The respondent no 5 has been unable to produce any document which would show that a declaration had been made or permission had been sought for from the State of Bihar within 30 days from date of such transportation. The contention that the above provision is directory in nature is untenable. Any such interpretation would defeat the purpose of the Act. In view

of the above, there has been contravention of sections 39(1), 43(2) and 48(A) of the Act.

15. The respondent no 5 has also failed to provide any records demonstrating the well-being of the elephants such as feeding, vaccination, disease and treatments, walk or movement and work schedule in terms of the Guidelines for Care and Management of Captive Elephants issued by the Ministry of Environment & Forests, Project Elephant, No 9-5/2003-PE dated 8 January 2008. By the report submitted by the Additional Principal Chief Forest Conservator of Forest Wild Life, West Bengal, the petitioner no 2 alongwith an experienced veterinarian in terms of an order of Court dated 16 March 2022 has highlighted the miserable health conditions and environment in which the elephants have been held. The spiked shackles, sharp spears and sticks used to tackle the elephants have inflicted several injuries on the elephants which remain untreated cannot be ignored. Similarly, the use of heavy chains and spiked bracelets to control them and tying three of their legs down for long hours on concrete floor is *inter-alia* in violation of the section 11(1) of the Prevention of Cruelty to Animals Act, 1960 and unacceptable. Any commercial exploitation of the three elephants is also cannot be ruled out and would be contrary to the Guidelines dated 8 January 2008. It is well settled that there is an inherent right in all creatures to live with honour and dignity. Article 51A(g) of the Constitution recognizes the requirement to have compassion for all living creatures. Such an approach is also reflected in the Report of the High Power Committee formed pursuant to the decision in *Sudipa Nath vs. Union of India* 2022 SCC OnLine Tripura 691.
16. Ultimately, the underlying object of considering the welfare and protection of the elephants is of paramount consideration. The Inspection Reports filed

pursuant to the orders of the Hon'ble Supreme Court and this Court respectively mark a significant difference of opinion. The Report dated 6 November 2022 filed by the Secretary, DLSA Gopalganj, Bihar is vague, and contradictory to all the prior Reports filed in these proceedings. The earlier reports had found the elephants to be "kept chained" and used for "commercial and political rallies". In particular, the report filed by the Chief Wildlife Warden, West Bengal dated 12 April 2022 details the findings on inspection of the three elephants. The photographs of the three elephants indicate obesity concerns, chronic foot rots, deformations and discolorations formed on the foot of the three elephants. In addition, clear unhealed wound marks were also visible on the elephants caused by the sharp spiked bracelets, around the feet of the elephant to restrict their movement. The photographs and video also suggest the use of sharp spears and ankus to induce fear to control the elephants which is prohibited in law. The Report further indicates the different ways in which the elephants have been ill-treated. On the other hand, the report dated 6 November 2022 is directed more towards certifying the respondent no 5 rather than dealing with the welfare of the elephants. Notwithstanding, there being two veterinarians, there is no input from them *vis-a-vis* the elephants. The failure of the veterinarians to record any findings questions the very object of them being present at such inspection. Significantly, the conduct of the respondent no 5 in creating obstruction and hindrances during the course of these proceedings also cannot be brushed aside. These elephants having been kept in captivity for most of their lives and deserve to spend the remaining years in a natural habitat which would also ultimately enure to their benefit. This is also in conformity with the stand taken by the State of West Bengal.

17. In view of the fact that the respondent no 4 had no ownership rights at the time of execution of the alleged Deed of Gift, all consequential steps including the transportation of the three elephants to Bihar are *non est* and illegal.
18. All the decisions relied on by the respondent no 5 are distinguishable and inapposite. In *Muruly M.S. vs, State of Karnataka 2022 SCC OnLine Kar 1481*, there was no dispute of the ownership of the elephants. The case primarily dealt with the proviso to section 40 which allows private individuals in certain circumstances ownership of live animals only after consent had been lawfully obtained from the authorities in accordance with law. In *Shakti Nayak vs. Union of India & Other (2014) 15 SCC 514*, the issue involved the avoidance of elephant deaths on railway tracks. In *Nil Ratan Kundu & Anr. vs. Abhijit Kundu (2008) 9 SCC 413*, the welfare of a child was in question. In view of the illegal transfer of ownership and unlawful transportation as well as the instances of cruelty and commercial exploitation of the three elephants, the same is of little assistance to the respondent no 5. There is also no quarrel with the proposition in *Animal Welfare Board of India vs. Nagaraja (2014) 7 SCC 347* which deals with bans on bullock cart racing.
19. In such circumstances, in view of *inter alia* the illegal transfer and transportation of the above three elephants, W.P.A 19941 of 2018 stands allowed. The three elephants belong to the State of West Bengal. The respondent no.2, being the Chief Conservator of Forests (Wildlife), who is also the Chief Wildlife Warden, is directed to take all necessary and expeditious steps by interacting with the Appropriate Authorities of the State of Bihar, State of West Bengal and any other third party in order to expeditiously bring the above three elephants back to the State of West Bengal. The State of West Bengal is also directed to take necessary and effective measures at their

borders to ensure that no such illegal or unlawful transportation of elephants takes place to outside the State of West Bengal. It would further be open to the respondent no 2 to realise all costs for transportation, carrying out the above exercise in accordance with law. With the above directions, WPA 19941 of 2018 alongwith any connected application stands disposed of. CAN 2 of 2023 for addition of the respondent no.5 stands allowed.

I agree,

Arindam Mukherjee, J.

Ravi Krishan Kapur, J.

Later:

After pronouncement of the judgment, the respondent no 5 prays for stay of operation of this judgment.

The prayer for stay is considered and rejected.

I agree,

Arindam Mukherjee, J.

Ravi Krishan Kapur, J.