

(2011) 08 DEL CK 0338
In the Delhi High Court
Case No : Writ Petition (C) 3782 of 2011

Yakub Ali

APPELLANT

Vs

The Dy. Director, Wild Life (Protection) and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 43(2)

Citation : (2011) 08 DEL CK 0338

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : L. Roshmani and Israr Ahmad, for the Appellant; Jatan Singh and Kunal Kahol for UOI, Sonia Arora and Ashutosh Shahi for R-2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner, claiming to be the owner of an elephant named Rangeli seized by a team of Wildlife Department of Delhi on 14th October, 2005 has filed this writ petition seeking mandamus for delivery of custody thereof.

2. The counsel for the Respondents appearing on advance notice on 30th May, 2011 was directed to ascertain the present status of the elephant. A status report was handed over on 6th July, 2011. The counsel for the Respondents has today in Court handed over a short reply affidavit and which is taken on record. The counsels for the parties have been heard.

3. It is the case of the Petitioner that he purchased the said elephant on 4th December, 2001 from Shri Harihar Chetra Mela, Sonpur, Chhapra, Bihar at a price of Rs. 1,50,000/-; a receipt of payment of consideration, a provisional Ownership Certificate issued by the concerned Forest Department of Chhapra, Bihar and a Transit / Transport Pass issued u/s 43(2) of the Wildlife (Protection) Act, 1972 in favour of Petitioner for transport of the said elephant from Bihar to

Delhi are filed with the petition. The Petitioner claims to have brought the elephant to Delhi on 28th December, 2001 and applied for Form No. 11 under Rule 34 declaring the purchase of the said elephant.

4. The Petitioner claims that the elephant was in the care of his brother Mr. Yusuf Ali on 14th October, 2005 when the same was seized; that on return to Delhi on 19th October, 2005 he applied for release of the elephant but which application was rejected without giving him any opportunity of establishing his ownership of the elephant. It is further the case of the Petitioner that his brother Mr. Yusuf Ali was arrested on 20th October, 2005 for the offence of illegally possessing the elephant; that though his brother claimed that he had Ownership Certificate of the elephant and that the elephant bore ID mark in the form of a micro-chip put by the Additional Principal Chief Conservator of Forests, Itanagar, Arunachal Pradesh but could not prove the ownership of the elephant and the seized elephant was found to be without any micro-chip.

5. It is yet further the case of the Petitioner that his brother Mr. Yusuf Ali was the owner of another elephant named Dhanmoti which he had acquired from Itanagar, Arunachal Pradesh and which had a micro-chip, but being an illiterate person confused Rangeli for Dhanmoti.

6. The Petitioner further claims to have in the year 2005 applied for Superdari of the seized elephant but which application was dismissed by the ACMM and the Criminal Revision Petition preferred there against dismissed by the Session Judge; Cr.M. (Main) No. 6092/2006 preferred in this Court was also dismissed on 16th November, 2006.

7. The petition further discloses that the Wild Life Inspector, Delhi applied to the Court of ACMM for implanting the micro-chip in the seized elephant which and for shifting the same to the Rajaji National Park, Haridwar, Uttranchal and which was allowed on 14th November, 2006; the Petitioner again preferred Criminal Revision No. 21/2006 against the said order which was dismissed and the seized elephant was transferred to Rajaji National Park.

8. The brother of the Petitioner Mr. Yusuf Ali was convicted for illegally possessing the seized elephant. The appeal filed by him was dismissed and the remedy there against preferred to this Court also withdrawn.

9. The Respondents in the status report filed in this Court have disclosed that the seized elephant is presently also at Rajaji National Park. The Respondents in their counter affidavits have stated that the brother of the Petitioner Mr. Yusuf Ali at the time of seizure as well as subsequently during the trial had taken a stand that the elephant which was seized belonged to him but later on shifted his stand to state that the seized elephant belonged to the Petitioner herein; that the learned ASJ while dismissing the appeal against conviction has also held that No. valid documents of lawful possession of elephant had been produced and it could not also be proved that the seized elephant was the same as that purchased by the Petitioner herein. It was further held that the transit documents produced did

not relate to the elephant which had been purchased from Sonpur. It is thus contended that the Petitioner by this petition is seeking to upset the findings of fact already arrived at in the trial against the brother of the Petitioner.

10. The counsel for the Petitioner has during the course of hearing handed over a Veterinary Health Certificate purportedly issued by the Rajaji National Park, Dehradun and in which the name of the elephant is described as Rangeli. I may however notice that the name of the elephant is described as "Radha" in the status report handed over on 6th July, 2011.

11. The counsel for the Petitioner has argued that the findings in the judgment in the prosecution against his brother cannot be held against him and the Petitioner on the basis of the documents filed before this Court and which he could not produce earlier, has been able to make out a case of his ownership of the seized elephant and is thus entitled to the writ of mandamus claimed.

12. I am unable to agree with the counsel for the Petitioner. There is a categorical finding in the judgment dated 2nd June, 2010 of the Additional Session Judge in the appeal preferred by the brother of the Petitioner that the Petitioner who had appeared in that prosecution as DW-1 had failed to prove that the seized animal was the one bought by him from Sonpur on 7th December, 2001. In the face of the said factual findings in the criminal prosecution, this Court cannot in the exercise of writ jurisdiction, without trial, hold to the contrary. If at all the Petitioner, for the reason of being not a party to the prosecution, has any right to independently establish his ownership of the seized animal, it has to be in a proceeding where evidence can be led and cannot be by way of this writ petition.

13. The petition is also liable to be dismissed for the reason of delay and laches alone. The animal was admittedly seized on 14th October, 2005. This petition has been filed after six years therefrom. It is inexplicable as to why the Petitioner during the last six years did not take any steps in this regard and has filed this petition now.

14. The writ petition is accordingly dismissed with liberty to the Petitioner to in the proceeding where evidence can be lead, make a claim in accordance with law for the ownership of the animal seized on 14th October, 2005.

No. order as to costs.