

Bombay High Court

Ajay Shankar And Ors. vs Union Of India And Ors. on 12 July, 2001

Equivalent citations: 2002 (1) BomCR 177

Author: H Gokhale

Bench: H Gokhale, D Bhosale

ORDER

H.L. Gokhale, J.

1. 1. Heard Mr. Mehta for the petitioners. Mr. Panjwani appears for respondents No. 1 and 2 and Mr. Sawant, Government Pleader, appears for respondents No. 3 and 4.

2. The petitioners herein are running three different Circus Companies known as Jumbo Circus, Great Royal Circus and Rambo Circus respectively. Amongst other animals they are having in their custody lions, panthers, tigers and bears. In the present petition, they are challenging the letter dated 6th June, 2000 issued by the Director (Law) & Member Secretary, Government of India. Respondent No. 2 herein. The letter is addressed to the Chief Conservator of Forests (Wildlife) and it is concerning the cancellation of certificate of ownership issued in regard to five categories of animals which are lion, tiger, panther, bear and monkey. These certificates of ownership are issued by the Chief Wildlife Warden under section 42 of the Wildlife (Protection) Act, 1972. The letter informs the Chief Conservator of Forests of Gujarat that rescue centres have been set up at five places, namely at Tirupati, Vishakapatnam, Bangalore, Jaipur and Vardalur (Chennai), and finally makes a request as follows :

"It is therefore requested to cancel all the certificates of ownership issued in regard to these five animals to circuses immediately."

3. There is no dispute that these Circus Companies have a certificate of ownership with respect to animals falling in these five categories. These certificates were obtained essentially for the purposes of the Circus Companies. The entire tenor of the petition discloses that. Subsequently it has so happened that the authorities concerned moved under the Prevention of Cruelty to Animals Act, 1960 and issued the necessary notification under section 22 of the Act, and have banned the training and exhibiting of animals. This notification issued on 14th October, 1998 under section 22 of that Act led to a Writ Petition to the Kerala High Court and the judgment of the Kerala High Court upholding the said notification is reported in the case of N. R. Nair v. Union of India. The judgment of the Division Bench of that High Court upheld that notification. The matter was carried to the Apex Court in Civil Appeal Nos. 3609-3620 of 2001 and by its Judgment and order dated 1st May, 2001 in N. R. Nair v. Union of India, the Apex Court has dismissed these appeals. The judgment is now available on 2001 SOL Case No. 328. The letter under challenge in the present petition is a sort of a sequitur to the earlier notification and under this communication, now the Chief Conservator of Forests is requested to cancel the ownership certificates issued to the Circus Companies.

4. Mr. Mehta, learned counsel appearing for the petitioners, does not dispute that these animals were used for the purposes of the circus after obtaining the certificates. He however states that now the circus owners do not intend to train or exhibit these animals. He further states that they do not intend to cart them also from one place to another place and to exhibit them and make money. An affidavit has been filed by the 3rd petitioner which states that the 3rd petitioner intends to buy a land near Pune and to place these animals over there. The affidavit states that these animals have been bought and some of them have been born and brought up along with the Circus Company and the petitioner wants to keep them.

5. Mr. Mehta submits that the Prevention of Cruelty to Animals Act, 1960 provides for a procedure to deprive the person who is owning the animals from his ownership of those animals. The person who is owning those animals has to be prosecuted for the offences notified under section 26 of that Act and, if convicted under section 29, one can be deprived of the ownership of those animals. He submits that there is no other procedure

available for taking away these animals from the ownership of the petitioners. He states that if the impugned letter is acted upon, it will lead to depriving the petitioners of their ownership over these animals by a procedure not provided for in law.

6. While drawing our attention to the provisions of the Wildlife (Protection) Act, 1972, with which we are concerned in the present matter, Mr. Mehta points out that the certificate of ownership is issued under section 42 of that Act by the Chief Wildlife Warden if he is of the opinion that the person concerned is in lawful possession of those animals. He submits that under this Act, there is no provision of depriving a person concerned of his ownership of the animals. For that matter, he submits that there is no specific provision to cancel these certificates under the Act. He therefore submits that the impugned communication of respondent No. 2 is bad in law and it will lead to cancellation of ownership certificate which cannot be permitted to be done in the manner it is contemplated.

7. Mr. Panjwani, learned counsel appearing for respondent Nos.1 and 2, on the other hand, points out that these animals were all throughout used for the purposes of the Circus Companies only. There is no dispute that they were trained and exhibited for the purposes of the Circus Companies. He submits that now when it is found that the animals are being treated with cruelty and when these activities are prohibited by issuing a notification under section 22 of the Prevention of Cruelty to Animals Act, 1960, that it is being contended that the petitioners would like to keep them separately with them. Mr. Panjwani as well as Mr. Mehta draw our attention to the observations of the Apex Court in the above referred matter wherein the Apex Court observed as follows .

"It is pertinent to note that even with respect to the animals whose exhibition and training is prohibited, the Act does not prevent the owner from keeping them as domestic pets. Of course, it is going to be difficult to expect someone to have a lion or tiger as a pet."

Mr. Mehta states that the above observations do not rule out the possibility that one can keep them as pet. On the other hand, Mr. Panjwani states that from the observations of the Apex Court it is clear that normally the Court does not expect one to have a lion or tiger as a pet. In the present matter, we are not concerned with a pet or two but a large number of animals. As per the affidavit of one Aditya Kumar Joshi, Deputy Secretary, Animal Welfare Division affirmed on 26th May, 2001, the following is the number of animals with each of the petitioners.

S .	N o .	P e t i t i o n e r	L i o n	B e a r	B l a c k	P a n t h e r	T i g e r	T o t a l
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1. Jumbo Circus 16 4 5 10 35

2. Great Royal Circus 15 12 27

3. Rambo Circus 15 2 17

Mr. Panjawani submits that there is no question of keeping such large number of these animals as pets. He states that the submission is being made because a dead animal is more valuable; and all these animals were being treated with cruelty in the Circus Companies and shows photographs in that behalf. Mr. Mehta, on the other hand, states that any death of any of these animals is to be informed to the authority concerned and in fact it is in the zoos managed by the Government that things are worse. Mr. Panjwani denies this allegation and draws our attention to the arrangements made at the special rescue centres by spending a huge amount.

8. In the aforesaid matter, the Apex Court has clearly recorded and refrained from going into the question as to whether any direction can be issued depriving the ownership of the animals since that was not arising in that matter. In the matter before us, however, the same has been squarely raised. The relevant section 42 of the Wildlife (Protection) Act, 1972 reads as follows :-

"42. Certificate of ownership. - The Chief Wildlife Warden may, for the purpose of Section 40, issue a certificate of ownership in such form, as may be prescribed, to any person who, in his opinion, is in lawful possession of any wild animal or any animal article, trophy, or uncured trophy, and may, where possible, mark, in the prescribed manner, such animal article, trophy or uncured trophy for the purpose of identification."

Now if this section provides for issuance of a certificate, surely a power to do a particular act includes a power to rescind the particular act. All that the section says is that the certificate is to be issued to a person who, in the opinion of the Chief Wildlife Warden, is in lawful possession of those animals. Mr. Mehta therefore submits that the only ground for cancellation can be that the person concerned is not in lawful possession and, in his submission, that will relate to the date when the certificate is issued and cannot mean anything subsequent thereto.

9. We are concerned with the Wildlife (Protection) Act, 1972 which is enacted for the protection of the wildlife. The overriding objective of the Act is to look after them and to preserve and protect them. The Act is not so much concerned with the rights of the human beings to own the animals or to profiteer from them. Therefore when section 42 talks about a certificate to be issued for a lawful possession, it will have to be read that while keeping the animals in possession, they will have to be treated in accordance with law. This will mean not to treat or deal with them with cruelty. Therefore if the Chief Wildlife Warden forms an opinion that the person to whom the certificate is Issued is not treating the animals in the manner in which they are expected to be treated, he can certainly exercise his powers under section 42 of the Act. It is true that there is power under the Prevention of Cruelty to Animals Act, 1960 which is to be exercised on conviction. That however cannot mean that in every matter one has first got to be convicted and then only he can be deprived of the ownership of animals as provided in that section. That is one way of dealing with the situation. The other remedy can certainly be under section 42 of the Wildlife (Protection) Act, 1972 itself by cancelling the certificate of ownership because power to grant a certificate will certainly have to be read as including power to rescind or cancel the certificate. In this view of the matter, we have no doubt that the Chief Wildlife Warden can exercise that power under section 42.

10. Coming to the present matter, we have a situation wherein it is submitted on behalf of the petitioners that now they intend to buy a parcel of land and look after the animals in their own way since they have love and affection for them. The submission of the petitioners that they would like to look after the animals themselves properly and also that they should be compensated in the event they are to be divested of the ownership are the aspects which the authority concerned will have to look into when any such representation is made to it. Where the authority intends to cancel the certificate, it will be expected to give a hearing while arriving at the decision to cancel the certificate. A requirement of such a hearing will have to be read under section 42 of the Act because the person concerned is going to be divested of his ownership with respect to those animals and, in the event, he has spent a good amount to purchase them, surely he should have a right to make his submission on his ownership, his opposition to any such decision and in any case the compensation that he ought to receive. A short reasoned order is something that ought to follow such a hearing. Needless to state that the authority concerned will take its decision after examining the merits of the representation made to it. At this stage, we record the submission of Mr. PanjwanI that there is no private ownership in the wildlife nor are they entitled to any compensation. Mr. PanjwanI relies upon a judgment of a Single Judge of Delhi High Court in the case of A. I. Mobile & A.W. Association v. Union of India. On the other hand, Mr. Mehta submits that section 39 of the Wildlife (Protection) Act, 1972 does not rule out private ownership of wildlife or else there was no occasion for a certificate of ownership under section 42 of the Act. Both these submissions require a careful consideration and the authority concerned will decide this issue while deciding

the representation.

11. This however does not mean that the hearing has to be given First before cancelling the certificate of ownership under section 42 of the Act. If the Chief Wildlife Warden forms an opinion that there is an urgent need to cancel the certificate of ownership, he may do so, but then he will have to hear the person concerned thereafter. There can be a post decisional hearing also if there is an urgency which will depend upon the grounds such as health of the animals, danger to their lives and also that the purpose of retaining the animals in private ownership no longer survives.

12. In view of the submissions made by the petitioners that they want to keep the animals privately and look after them, Mr. Panjwani has drawn our attention to the arrangement which the respondent Nos.1 and 2 have made as of now. It discloses that quite a good amount has been spent and special arrangements are made at five places. The consequence of cancellation of the certificate will be that the animals will have to be moved to the places where these rescue centres have been set up. In the event there is an immediate cancellation and the animals of the petitioners are required to be moved, the respondents will inform the petitioners as to where those animals are kept. This is because in that event there will be a post decisional hearing. Mr. Panjwani states that the petitioners are at liberty to send their doctor and their personnel to see as to whether proper arrangement is made to look after the animals and if they are not satisfied, they are at liberty to contribute for their upkeep as well.

13. in view of what is stated in the foregoing paragraphs, we find no reason to Interfere with the communication dated 6th June, 2000 which is challenged in the present petition. The injunction pending admission stands vacated. Petition is dismissed.

14. Mr. Mehta applies for continuation of the injunction which was granted pending the hearing of this petition. That Injunction will continue to remain in operation for a period of 4 weeks hereafter.

Authenticated copy of this order be made available to the parties.