

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SUO MOTO PUBLIC INTEREST LITIGATION NO. 05 OF 2022

(Court on its own motion)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : SUNIL B. SHUKRE AND
VALMIKI SA MENEZES, JJ.

DATED : 07.09.2022

Heard Mr. J.T. Gilda, learned Senior Advocate assisted by Mr. P.S. Tembhare, learned Advocate.

2. The learned Senior Advocate has brought to the notice of this Court news item published in daily Times of India, Nagpur edition, dated 05.09.2022 and submits that the proposed move of the Forest Department to shift wild elephants to some Zoo is contrary to the directions issued by the Apex Court. He also submits that migration of wild elephants to Gadchiroli forest from some other areas is a sign of good health of forest and should have been seen as a welcome development. He submits that instead of treating this development in a positive way, the forest department is bent upon taking regressive steps, which are against the interest of wild animals of forest of the State of Maharashtra, tribal populace of Gachiroli and environment in general. He further submits that as these wild elephants have chosen forest areas lying

within Gadchiroli district as their natural habitat, these elephants cannot be taken out of this area without proper resolution having been passed by the concerned village panchayat, which is 'Kamlapur' and in this case, Kamlapur Village Panchayat has passed a resolution against shifting of wild elephants elsewhere.

3. We are of the view that the issue being raised by the learned Senior Advocate in this case is of seminal importance from the view point of the public interest. We are also of the view that this issue raises even more a fundamental issue regarding rights of wild animals within the society dominated by human beings in general and within the framework of the Constitution of India in particular. While it is true that the animals and the wild animals not being bestowed with similar mental faculties including faculty of speech as human being, it is difficult for human society to seek consent of the affected animals before they are forcibly removed from one area to another area but, that should not deter a human being from devising some method where rights of the wild animals against their forcible removal and in respect of other matters are equally respected as that of man and a balance is struck between the rights of man and rights of animals including wild animals. If this could be done, much of the problems arising from man-animal conflict will be redressed.

4. It may be pointed out here that ancient Hindu texts have already recognized the rights of animals, birds and every living creature and regarded every living being as having emerged from same divine power as man thereby deserving due respect, love and affection. This concept is again reflected in the couplet from of an Abhang (devotional poetry) written by Sant Tukaram which is reproduced as below :-

“वृक्षवल्ली आम्हा सोयरी वनचरे, पक्षीही सुस्वरे
आळवीती”.

5. There is also a question of biodiversity conservation and preservation. The Biological Diversity Act, 2002 has conservation of biological diversity as one of its objects. Presence of wild elephants adds to biodiversity of Gadchiroli forest and, therefore, it is the duty of the State to do everything to preserve the population of wild elephants in Gadchiroli. Any move to shift them to a Zoo would result in harming the biodiversity, and would be against the spirit of the Biological Diversity Act, 2002.

6. It is, therefore, necessary that this Court takes suo-moto cognizance of the issue involved here for its appropriate resolution.

7. In view of above, we direct the Registry to register Suo-moto Public Interest Litigation on the basis of the

said news item and place it before the Court for further consideration on 08.09.2022, high on board.

8. We appoint Mr. J.T. Gilda, learned Senior Advocate as an Amicus Curiae, who shall be assisted by Mr. P.S. Tembhare learned Advocate.

9. At this juncture, we direct that following parties be added as respondents :-

- (1) Union of India, through the Ministry of Environment, Forest and Climate Change.
- (2) The State of Maharashtra, through Chief Secretary, Mantralaya, Mumbai.
- (3) The Principal Secretary, Revenue and Forest Department, Mantralaya, Mumbai.
- (4) The Principal Secretary, Tribal Development Department, Mantralaya Mumbai.
- (5) The Principal Secretary, Social Welfare Department, Mantralaya, Mumbai.
- (6) The Chairperson, Maharashtra State Biodiversity Board, Seminary Hills, Nagpur.
- (7) The Chairman, Central Zoo Authority of India, Lodhi Road, New Delhi 110003.

10. Issue notice to the respondents.

11. Mr. N.S. Deshpande, learned A.S.G.I. waives service of notice for respondent No.1. Mrs. K.S. Joshi, learned In-charge Government Pleader waives service of notice for respondent Nos.2 to 5.

12. In addition to usual mode of service, service through e-mail and Registered Post with Acknowledgment Due is permitted.

13. Steno copy of the order be furnished to the learned Amicus Curie, learned A.S.G.I and learned in-charge G.P.

(VALMIKI SA MENEZES, J.)

(SUNIL B. SHUKRE, J.)