

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF NOVEMBER, 2021

PRESENT

THE HON'BLE MR. RITU RAJ AWASTHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.48018 OF 2017 (GM-FOR) PIL

BETWEEN:

1. SRI SANTOSH MARTIN
S/O LATE Y.M.T.MARTIN
AGED ABOUT 48 YEARS
R/AT NO.7, MARTIN ROAD
BRUCEPET, BELLARY - 583 101
2. SRI RAJESH M. KURPAD
S/O SRI K.S.MOHANRAM
AGED ABOUT 44 YEARS
R/AT 395/35, 17TH MAIN ROAD
4TH T BLOCK, JAYANAGAR
BANGALORE - 560 041

... PETITIONERS

(BY SMT.NIMISHA KUMAR, ADVOCATE FOR
SRI NITIN R, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS
CHIEF SECRETARY
VIDHANA SOUDHA
BANGALORE - 560 001
2. THE PRINCIPAL SECRETARY
FORESTS, ECOLOGY & ENVIRONMENT
M.S.BUILDING
BANGALORE - 560 001
3. THE PRINCIPAL CHIEF CONSERVATOR
OF FORESTS (HEAD OF FOREST FORCE)
ARANYA BHAVAN
18TH CROSS, MALLESWARAM
BANGALORE - 560 003

4. THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS (WILDLIFE) & CHIEF WILDLIFE WARDEN
ARANYA BHAWAN
18TH CROSS, MALLESWARAM
BANGALORE - 560 003
5. THE DEPUTY CONSERVATOR OF FORESTS
EXECUTIVE DIRECTOR
ATAL BIHARI VAJPAYEE ZOOLOGICAL PARK
SHANKER COLONY (NEAR JYOTHI
MEDICAL SHOP)
M.P.PRAKASH NAGAR
HOSPET, BELLARY DISTRICT - 583 201
6. CENTRAL ZOO AUTHORITY
MINISTRY OF ENVIRONMENT & FORESTS
BIKANER HOUSE, ANNEXE VI
SHAHJAHAN ROAD
NEW DELHI - 110 011
7. DIRECTOR GENERAL OF FORESTS
AND SPECIAL SECRETARY
MINISTRY OF ENVIRONMENT & FORESTS
PARYAVARAM BHAVAN, CGO COMPLEX
LODHI ROAD, NEW DELHI - 110 003
8. ADDITIONAL PRINCIPAL CHIEF CONSERVATOR
OF FORESTS, FOREST CONSERVATION, MoEF
REGIONAL OFFICE, KENDRIYA SADAN
4TH FLOOR, E & F WING
II BLOCK, KORAMANGALA
BANGALORE - 560 034
9. CHIEF CONSERVATOR OF FORESTS (CENTRAL)
REGIONAL OFFICE, MoEF
SOUTHERN ZONE
KENDRIYA SADAN
4TH FLOOR, E & F WING
II BLOCK, KORAMANGALA
BANGALORE - 560 034
10. STANDING COMMITTEE
NATIONAL BOARD OF WILDLIFE
PARYAVARAN BHAVAN
CGO COMPLEX, LODHI ROAD
NEW DELHI - 110 003
BY ITS CHAIRMAN
11. MEMBER SECRETARY
ZOO AUTHORITY OF KARNATAKA (ZAK)

SRI CHAMARAJENDRA ZOOLOGICAL
GARDENS (MYSORE ZOO)
INDIRANAGAR
MYSORE - 570 010

... RESPONDENTS

(SMT.VANI H - AGA FOR RESPONDENT NOS.1 TO 5
SRI KUMAR M.N, CGC FOR RESPONDENT NOS.6 TO 10)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING GOVERNMENT ORDER DATED 28.08.2015 VIDE ANNEXURE-AN DIRECTING THAT THE ATAL BEHARI VAJPAYEE ZOO BE SHIFTED FROM BELLARY TO BILIKAL RESERVE FOREST, HOSPET AND ETC.

THIS PETITION COMING ON FOR ORDERS THROUGH VIDEO CONFERENCING THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

Heard learned counsel for the petitioners as well as learned Additional Government Advocate appearing for respondent Nos.1 to 5.

2. This public interest litigation has been filed challenging the Government Order dated 28.08.2015 whereby a direction was issued for shifting of Atal Bihari Vajpayee Zoological Park from Ballari to Bilikallu Reserved Forest, Hospet. The petitioners have also prayed for a writ of prohibition prohibiting respondent No.5 from proceeding with the construction of the zoo in the absence of obtaining permission of the Supreme Court as per the directions issued in Writ Petition No.47 of 1998 (***Raheja vs. Union of***

India) and in the absence of obtaining permission of the Standing Committee of the Indian Board of Wildlife as per clause 3.5.1 of the Guidance Document dated 19.12.2012.

3. Respondent Nos.1 to 5 have filed their statement of objections. Learned Central Government Counsel appearing for the Union of India - respondent Nos.6 to 10 has supported the stand of the State Government. Learned Additional Government Advocate appearing for respondent Nos.1 to 5 has filed a memo, which is taken on record.

4. In the affidavits of compliance dated 18.12.2019 and 11.03.2020 filed by the State respondents, it has been stated that all necessary approvals have been obtained before shifting of the said zoological park. In the memo filed by learned Additional Government Advocate, it is stated that clearance from the Central Zoo Authority has been obtained and the Forest Advisory Committee in its meeting held on 17.02.2021 has recommended establishment of zoo over forest area by the Forest Department/State Zoo Authority and its management by the Forest Department/State Zoo Authority after it is duly approved by the Central Zoo Authority, a Central Regulatory Authority under the Ministry, should be

considered as a non-forestry activity for the purpose of implementation of provisions of Forest (Conservation) Act, 1980. It is also submitted that as the extent of the built up area at Sri Atal Bihari Vajapayee Zoological Park, Hosapet Taluk is less than 20,000 square metres, in view of the provisions of the Environment Protection Act, 1986 (for short, "the said Act"), there is no requirement of Environment Clearance Certificate. It is further submitted that the Zoological Park has been already relocated from Ballari and Hosapet and it is serving as a Wildlife Rescue Centre for northern Karnataka.

5. Learned counsel appearing for the petitioners, on the other hand, submits that in view of the judgment of the Apex Court reported in **(2011) 1 SCC 744** in the matter of **CONSTRUCTION OF PARK AT NOIDA NEAR OKHLA BIRD SANCTUARY AND OTHERS**, the Environment Impact Assessment is required to be done before shifting of the said zoo and the same has not been done. It is submitted that the Apex Court in the said judgment has categorically laid down that the said restricted forest area shall be completely independent of any township development project as in case of creating an artificial lake or a urban

forest or setting up a zoological or botanical park or a recreational, amusement or a theme park.

6. We have considered the submissions of learned counsel for the petitioners as well as learned counsel for the respondents and gone through the records.

7. Since the State Government and its authorities have specifically come out with a stand that the Forest Advisory Committee in its meeting held on 17.02.2021 has recommended establishment of Zoo over forest area by the Government Authorities and its management which is duly approved by the Central Zoo Authority as non forestry activity and no clearance was required for construction of the said Zoo as it is in the area of less than 20,000 square metres under the said Act, there is no violation of any Act, Rules or Regulation.

8. We have taken note of the fact that in the matter of *CONSTRUCTION OF PARK AT NOIDA NEAR OKHLA BIRD SANCTUARY (supra)*, the Apex Court was seized with the matter where the Uttar Pradesh Government was creating a 'recreational park' in the restricted area of a bird sanctuary. The Apex Court has categorically laid down that no recreational park shall be constructed in the restricted

zone. In the present case, respondent Nos.1 to 5 have specifically taken a stand that there is no recreational activity which is to be taken up in shifting of Atal Bihari Vajpayee Zoological Park in the forest area and they will carry out minimum construction which is required for the zoo activities.

9. We, therefore, dispose of this writ petition with the observations that no recreational activity shall be allowed in the forest area and only minimum required construction shall be carried out for shifting of the zoo. The necessary requirement of obtaining clearance from the concerned authorities shall be mandatory for shifting of Atal Bihari Vajpayee Zoological Park from Ballari to Bilikallu Reserved Forest, Hospet.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**