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W.A.(MD)No.979 of 2023 etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2026
DELIVERED ON : 02.09.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.(MD) Nos.979 and 848 of 2023
and CMP (MD) Nos.7675 and 6801 of 2023

Arulmigu Sri Subramania Swami Thirukoil
Rep through its Chairman Board of Trustees,
Thiruchendur, Tuticorin District.

Appellant(s) in
WA(MD) No.979/2023

The Principal Secretary to Government
Tourism, Culture and Religious Endowments
Department, Fort. St. George, Secretariat,
Chennai - 600 009.

Appellant(s) in
WA(MD) No.848/2023

Vs

1. S.G.M. Shaa Alias Sheik Mohammed
S/o Sheik Mohaideen Batcha,
6A, Edammal Street, Theni, Theni District.



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2. The Principal Chief Conservator of Forests and Chief Wildlife Warden,
O/o The Principal Chief Conservator of Forests and Chief Wild Life Warden,
No.1, Jeenis Road, Panagal Building,
Saidapet, Chennai - 600 032.
3. The Conservator Of Forests,
O/o The Conservator of Forests,
Virudhunagar, Virudhunagar District.
4. The Wild Life Warden,
O/o The Wild Life Warden, Srivilliputhur,
Virudhunagar District.
5. The District Forest Officer,
O/o The District Forest Officer, Theni,
Theni District.

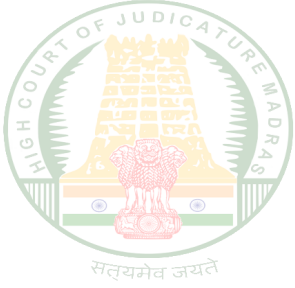
Respondent(s)
in both appeals

PRAYER: Appeals filed under Clause 15 of the Letters Patent to set aside the order dated 27.02.2023 passed by the learned Single Judge in W.P.(MD).No.7655 of 2020.

For Appellant in W.A.(MD) No.979/2023: Mr.A.K.Sriram
Senior Counsel
for Mr.Muthugeethayan
[Thru VC]

For Appellant in W.A.(MD) No.848/2023: Mr.R.Bharanidharan
Special Government Pleader

For Respondent(s): Mr.Mohammed Fayaz Ali,
Spl Government Pleader,
for R2 to R5



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No Appearance
for R1 in both appeals

COMMON JUDGMENTTHE CHIEF JUSTICE

Both these writ appeals question the same order, dated 27.02.2023, passed by a learned Single Judge in W.P.(MD)No.7655 of 2020. Since the grievance ventilated in both appeals is identical, they were heard together and are being disposed of by this common judgment.

2.1. The nub of the matter runs thus: One S.G.M. Shaa @ Sheik Mohammed/first respondent herein, who had purchased a female elephant named "Lalitha" in the year 2000, applied to have her ownership transferred in his name. The Principal Chief Conservator of Forests and Chief Wildlife Warden rejected that request by proceedings dated 23.03.2020. Aggrieved, the first respondent herein filed W.P.(MD)No.7655 of 2020, praying only that this rejection order be called for and quashed.

2.2. The said writ petition was disposed of on 10.09.2020. The



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rejection order was upheld, but the first respondent herein was permitted to continue in custody of Lalitha, subject to the department's right to inspect her at any time and to move the Court again if circumstances so required.

2.3. The matter rested there until, sadly, Lalitha's health deteriorated. She fell in December 2022 and suffered further falls in January and February 2023. On being informed of her condition, the learned Single Judge, who had passed the earlier order, visited her personally along with certain animal welfare activists on 26.02.2023 and found her in a distressing state, with multiple wounds and injuries. The case was listed the next day, "*for being mentioned*", and the impugned order dated 27.02.2023 came to be passed.

2.4. Paragraphs 1 to 12 of the impugned order are devoted entirely to Lalitha. The learned Single Judge directed that her custody be handed over to the District Forest Officer and the District Level Captive Elephant Welfare Committee for treatment; that a named veterinarian attend to her daily; that a detailed treatment plan be submitted; that she be declared to have reached the retirement age of sixty years under Rule 10 of the Tamil Nadu Captive Elephants



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(Management and Maintenance) Rules, 2011 [for brevity, "the Rules"],

and be relieved of all work; that her mahout and his assistant continue in service for four months on a fixed monthly payment; that an animal welfare volunteer be permitted access to her; and that the local police ensure the area around her is free of loud noise. These directions are specific to Lalitha and flow directly from what was before the Court.

2.5. From paragraph 13 onwards, the impugned order moves well beyond Lalitha. It directs the Secretary, Environment and Forest Department, to inspect all temple and privately owned elephants in the State; states that the direction of the First Bench of this court, in an unrelated batch of writ petitions, against fresh acquisition of elephants "must be scrupulously and strictly enforced"; observes that "time has now come" to decide whether all captive elephants, whether held by temples or private persons, should be shifted to Government Rehabilitation Camps; and directs the Secretary, Hindu Religious and Charitable Endowments Department, to issue instructions to every temple in Tamil Nadu not to acquire any elephant hereafter.

2.6. It needs to be noted that neither appellant was a party to W.P.(MD)No.7655 of 2020. The Principal Secretary, Tourism, Culture



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and Religious Endowments Department, filed W.A.(MD)No.848 of 2023, since paragraph 15 effectively directs the Hindu Religious and Charitable Endowments Department, of which it is the administrative head, to issue a policy circular binding on every temple in the State. Arulmigu Sri Subramania Swami Thirukoil, Thiruchendur, filed W.A. (MD)No.979 of 2023, as it maintains a female elephant, "*Deivanai*", who takes part in the temple's religious ceremonies, and the temple stands to be directly affected by any policy of the kind contemplated in paragraph 15.

3. Learned counsel for the appellants made the following broad submissions, which we summarise together since they overlap:

(i) Neither the appellants nor any temple in the State was made a party to the writ petition, and no relief was sought against them. Yet paragraph 15 casts substantive obligations on them, without notice and without an opportunity of hearing. This offends the basic rule of *audi alteram partem*.

(ii) The relief actually prayed for in the writ petition was confined to quashing the order rejecting transfer of ownership of one named



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elephant. Paragraph 15 grants relief far beyond this prayer, and indeed beyond anything pleaded in the writ petition.

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(iii) Section 40 of the Wild Life (Protection) Act, 1972, permits acquisition of a captive animal with the prior written permission of the Chief Wildlife Warden. Rule 3 of the Rules, made under that very Act, specifically permits donation of an elephant to a temple, subject to safeguards. Paragraph 15 runs counter to this existing statutory scheme, without the scheme itself being under challenge or having been declared invalid.

(iv) The order dated 24.09.2021 passed by the First Bench in W.P.Nos.3656, 3660, 3662, 3663 of 2021 and W.P.(MD)No.7010 of 2015, on which the learned Single Judge places reliance, does not say what the impugned order records. Paragraph 5 of that order, rightly read, is addressed to preventing the capture of fresh elephants from the wild, and it expressly protects elephants "*already existing*" in captivity. It does not touch donation of an already captive elephant to a temple, and it does not direct removal of elephants already with temples.



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(v) The very writ petitions before the First Bench, out of which that interim order arose, are still pending final decision. An interim order in a pending, larger proceeding cannot be treated as a final pronouncement and built upon to create fresh, wider directions in a separate and factually distinct case.

(vi) The subject of captive elephants across the country is already before the Supreme Court in W.P.(C)No.743 of 2014, where several orders have been passed from time to time, including a direction dated 01.11.2018 asking every State's Chief Wildlife Warden to survey and identify captive elephants and regularise ownership certificates. Judicial discipline required the learned Single Judge to leave the larger policy question to be worked out in that very proceeding, rather than issue a parallel, state-wide direction while deciding the case of one elephant.

4. The prayer in the writ petition was to the effect that the order rejecting first respondent's request to transfer Lalitha's ownership be quashed. There was no prayer seeking a direction to the Hindu Religious and Charitable Endowments Department to instruct every temple in Tamil Nadu not to acquire an elephant, or a direction



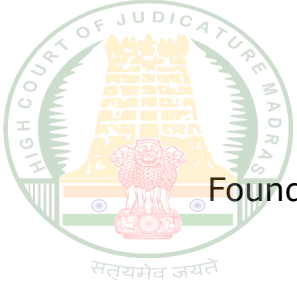
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contemplating removal of elephants already with temples across the State. No such case was pleaded by any party. No temple and no representative of temples was heard on the question.

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5. It is well settled that a court exercising writ jurisdiction must confine the relief it grants to what is pleaded and to the parties before it. A court cannot grant a relief that no party has asked for, particularly when granting it visits consequences on persons who were never given a chance to be heard. This is not a technicality. It is the very foundation of a fair hearing. However well-intentioned a direction may be, it cannot be sustained if it is passed against persons who were strangers to the proceeding and who had no opportunity to place their case before the court. This, in our view, is precisely what happened with paragraph 15 of the impugned order, so far as it concerns temples and the Hindu Religious and Charitable Endowments Department.

6. The learned Single Judge leaned heavily on the earlier order of the First Bench dated 24.09.2021, passed in W.P.Nos.3656 of 2021 and batch cases. The said order recorded the numbers of temple, private, and Forest Department elephants in the State as furnished by the counsel appearing for the State, noted the submissions of Elsa



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Foundation (an intervenor), and, in paragraph 5, directed as under:

*"5. The State should ensure that no further elephant is taken into captivity except for the purpose of treatment of such elephants if found unable to support itself in the wild. **No private person may capture any elephant or keep the same except those already existing.**"*

[emphasis supplied]

7. A plain reading of the aforesaid direction makes is ostensibly clear that the same, in substance, is a conservation direction, aimed at stopping any fresh depletion of the wild elephant population, save where an elephant genuinely cannot survive in the wild and needs to be taken in for treatment. The second sentence of the same paragraph reinforces this reading. It says that no private person may "*capture*" an elephant, and it protects those elephants "*already existing*" in captivity, rather than disturbing them.

8. Nothing in paragraph 5, referred to supra, speaks of donation of an already-captive elephant from one custodian to a temple. Nothing in it directs temples to stop receiving elephants that are gifted to them, a subject squarely governed by Rule 3 of the 2011 Rules. Nothing in it contemplates shifting elephants already settled in temples



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to rehabilitation camps. To read paragraph 5 as authority for a State-wide policy of that kind is tantamount to read into the said paragraph something that is simply not there. We may hasten to add that the very writ petitions in which this order was passed by the First Bench, namely W.P.No.3656 of 2021 and batch cases, remain pending for final adjudication.

9. The Tamil Nadu Captive Elephants (Management and Maintenance) Rules, 2011, framed under Section 64(2)(f) of the Wild Life (Protection) Act, 1972, already provide a complete code for the possession, housing, care, feeding, working, transport and retirement of captive elephants, including those held by temples. A few of these provisions are worth setting out, because they show that the field the learned Single Judge sought to regulate afresh is, in fact, already regulated by law.

10. Rule 3 of the Rules permits a temple to receive a donated elephant, but only after the Chief Wildlife Warden's prior permission, and only after a State Level Committee has scrutinised the elephant's health, age and pedigree, the temple's infrastructure, and the financial ability of the temple and the donor to maintain the animal. This is a



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considered, safeguard-laden mechanism for exactly the situation paragraph 15 seeks to prohibit outright.

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11. Rule 5 of the Rules lays down detailed housing standards, such as a clean tethering area with earth and sand, two concrete sheds of stipulated minimum size for every elephant, proper ventilation and drainage, and a bar on corrugated iron or asbestos roofing.

12. Rule 6(11) of the Rules provides that an elephant "*should not be taken to street and other places for begging or any other mean purposes.*" A bare reading of the Rules makes it clear that the provisions contained therein themselves distinguish between exploitative use, which is barred, and legitimate religious or ceremonial use in a temple, which is not treated as a "*mean purpose*" at all, provided the welfare conditions in the Rules are otherwise met.

13. Rule 7 of the Rules fixes the minimum daily quantity of green fodder according to the elephant's height, requires succulent food in hot weather, and mandates a supply of clean, potable water.



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14. Rule 8 of the Rules caps the load an elephant may carry, again scaled to its height, requires that this load be halved on hilly terrain, and limits work to five days a week with complete rest in the monsoon.

15. Rule 10 of the Rules, which the learned Single Judge himself invoked in Lalitha's case, retires an elephant from work altogether on attaining sixty years of age.

16. Read as a whole, along with Rule 13, which lists twenty-six specific acts of cruelty that are prohibited, and Rule 15, which sets up State and District Level Welfare Committees to inspect records and review elephant welfare once every three months, this is a comprehensive and carefully calibrated regulatory scheme. It permits temples to hold elephants. It builds in permission requirements, housing norms, feeding norms, work limits, retirement rules, and a standing inspection machinery to make sure any captive elephant, wherever held, is properly cared for.

17. A validly made subordinate legislation of this kind has the force of law and continues to bind until it is set aside by a competent

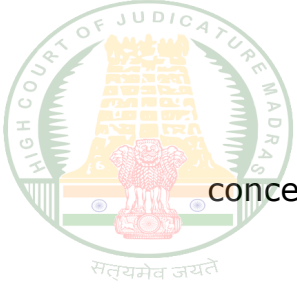


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forum in appropriate proceedings, or amended by the rule-making authority itself. A court cannot, in the course of deciding an individual case, issue a direction that has the practical effect of overriding such Rule, without the Rules itself being under challenge and being found to be beyond the rule-making power or otherwise invalid.

18. In the case at hand, the Rules were never under challenge in the writ petition. In fact, the Rules were relied upon and applied favourably in Lalitha's case, at paragraph 8 of the very same order. It is not open to hold, in one breath, that Rule 10 governs Lalitha's retirement, and in the next to direct action which runs athwart Rule 3 of the Rules, which permits exactly the kind of donation that paragraph 15 seeks to forbid across the board.

19. Rule 3 of the Rules does not stand alone. It operates as a species of the parent power under Section 40 of the Act, which permits acquisition of a captive animal with the prior written permission of the Chief Wildlife Warden or an authorised officer. A blanket bar of the kind found in paragraph 15 of the impugned order runs counter to the statutory permission, which Parliament itself has thought fit to retain, subject to obtaining requisite permission from the authorities



concerned.

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20. The directions issued by the learned Single Judge concerning Lalitha herself, her medical care, her retirement, the continuity of her mahout, and the protection of her surroundings from disturbance, were fully warranted on the facts placed before the Court and were well within the scope of the writ petition. We affirm every one of those directions. What we are unable to sustain is the leap from Lalitha's case to a State-wide pronouncement affecting every temple and every privately held elephant in Tamil Nadu, made without those temples being heard, without pleadings to support it, and in terms that go beyond both the order of the First Bench and the statutory Rules already in force.

21. For the reasons stated above, we hold that the order dated 27.02.2023 in W.P.(MD)No.7655 of 2020, in so far as directions are issued to the Secretary, Environment and Forest Department, to cause an inspection of all temple and privately owned elephants; the direction treating the order of the First Bench as requiring no further acquisition of elephants by temples or private individuals; the observation that a call should be taken on shifting all captive



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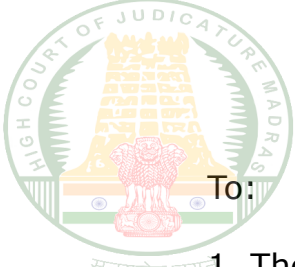
elephants, temple-owned and privately owned, to Government Rehabilitation Camps; and the consequent direction to the Secretary, Hindu Religious and Charitable Endowments Department, to instruct all temples in Tamil Nadu not to acquire any elephant, cannot be sustained. These directions are set aside.

22. All other directions in the order dated 27.02.2023 that relate specifically to the elephant "Lalitha," including her custody, medical treatment, retirement under Rule 10, the continuation and payment of her mahout and his assistant, access to her by the named animal welfare volunteer, and the direction to the jurisdictional police to keep her surroundings free of noise pollution, are affirmed.

In fine, W.A.(MD)Nos.848 and 979 of 2023 are allowed to the extent indicated above. There shall be no order as to costs. Connected miscellaneous petitions, if any, are closed.

(SUSHRUT ARVIND DHARMADHIKARI, CJ) (G.ARUL MURUGAN,J)
02.09.2026

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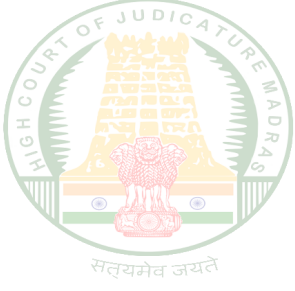


To:

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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

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