

VISHALAKSHI AMMA

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v.

STATE OF KERALA & ORS.

(Civil Appeal No. 1720 of 2023)

MARCH 17, 2023

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[M. R. SHAH AND MANOJ MISRA, JJ.]

Wildlife (Protection Act), 1972: ss. 40, 40A – Time for declaration of custody or possession of any captive animal or animal article – Relaxation of – On facts, the appellant filed the application/declaration on 25.05.2011 much beyond the prescribed period – Refusal of the authorised authority to issue ownership certificate in respect of the deer horn found from the house of the appellant which was in custody and possession of the appellant on the ground of delay in the application/declaration – Writ petition by the appellant – Single Judge directed the Chief Wild Life Warden to consider whether time has been relaxed in any case for the purpose of granting the certificate of ownership – Division Bench set aside the order passed by the Single Judge holding that the time limit prescribed u/r. 4(2) cannot be relaxed and/or extended – Interference with – Held: Not called for – Period of 180 days prescribed u/r. 4(2) has to be construed and considered as mandatory – Nobody can plead any ignorance or that he had no knowledge to make such declaration/application for ownership certificate – Thus, once a person in control, custody or possession of any wildlife animal or wildlife animal article, fails to file such declaration/application within the stipulated time mentioned in r. 4(2) then the bar/rigour u/s.40 would be applicable and the ownership of such wildlife animal article of which the declaration is not made shall vest in the Government/forest department – Division Bench rightly held that the application submitted by the appellant was made beyond the period prescribed u/r. 4(2) and was rightly rejected by the appropriate authority/Chief Wild Life Warden – Wild Life Stock Rules, 2003.

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C. D. Gopinath v. State of Tamil Nadu and Ors.
2010 SCC Online Mad 2851 - referred to.

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A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1720 of 2023.

From the Judgment and Order dated 29.05.2020 of the High Court of Kerala at Ernakulam in WA No. 109 of 2020.

B Lakshmeesh S. Kamath, Ms. Samriti Ahuja, Advs. for the Appellant.

Abraham C. Mathew, Nishe Rajen Shonker, Mrs. Anu K Joy, Alim Anvar, Advs. for the Respondents.

The Judgment of the Court was delivered by

C **M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 29.05.2020 passed by the Division Bench of the High Court of Kerala at Ernakulam in Writ Appeal No. 109/2020, by which, the Division Bench of the High Court has allowed the said appeal preferred by the State of Kerala and others - respondent(s) herein and has quashed and set aside the judgment and order passed by the learned Single Judge in Writ Petition No. 4772/2019, by which the learned Single Judge disposed of the said writ petition by directing the appellants herein to consider the declaration made by the original writ petitioner under Rule 11 of the Declaration of Wild Life Stock Rules, 2003 (hereinafter referred to as the Rules, 2003) by relaxing the time to file such a declaration in case the time is relaxed in any other case, the original writ petitioner has preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under: -

F 2.1 Under Section 40 of the Wild Life (Protection) Act, 1972 (hereinafter referred to as the Act, 1972), every person having at the commencement of this Act the control, custody or possession of any captive animal specified in Schedule I or Part II of Schedule II or animal article... or the musk of a musk deer or the horn of a rhinoceros, shall, within thirty days from the commencement of this Act, declare to the Chief Wild Life Warden or the authorised officer the number and description of the animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept. As per sub-section (2) of Section 40, no person shall, after the commencement of this Act, 1972, acquire, receive, keep in his control,

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custody or possession, the animal specified in Schedule I or Part II of Schedule II or any animal article including the deer horn, except with the previous permission in writing of the Chief Wild Life Warden or the authorised officer. However, Section 40A of the Act, 1972, is an exception and gives immunity in certain cases. As per Section 40A, notwithstanding anything contained in sub-sections (2) and (4) of Section 40 of this Act, the Central Government may, by notification, require any person to declare to the Chief Wild Life Warden or the authorised officer, any captive animal, animal article..... in his control, custody or possession, in respect of which no declaration had been made under sub- section (1) or sub-section (4) of Section 40, in such form, in such manner and within such time as may be prescribed. Sub-section (2) of Section 40, provides that any action taken or purported to be taken for violation of Section 40 of the Act, 1972 at any time before the commencement of the Wild Life (Protection) Amendment Act, 2002 shall not be proceeded with and all pending proceedings shall stand abated.

2.2 In exercise of the powers conferred under Section 40A read with Section 63 of the Act, 1972, the Central Government had made “the Declaration of Wild Life Stock Rules, 2003.” Rule 3 to 14 read as under: -

“3. Publicity of intent of notification and Assistance in making application.—(1) The Chief Wild Life Warden or the officer authorised by the State Government in this regard shall cause to give wide publicity to the intent of this notification in the regional language through electronic or print media or such other means.

(2) The Chief Wild Life Warden or the officer authorised by the State Government in this regard shall take necessary action to assist the local communities and individuals especially the poor and illiterate in the declaration of their possession, filling up the specified form and any other matter connected therewith and shall make every attempt to ensure that no individual or community associated with animals is deprived of this opportunity.

4. Procedure for filing applications.—(1) An application to the Chief Wild Life Warden or the officer authorised by the State Government in this regard shall be presented in the Form annexed to these rules by the applicant either in person or by an

A agent or by duly authorised legal practitioner or sent by registered post addressed to the Chief Wild Life Warden or the officer authorised by the State Government in this regard of the concerned State or the Union Territory.

B (2) The application under sub-rule (1) shall be presented in four complete sets within a period of one hundred and eighty days from the date of publication of these rules.

C (3) The applicant may attach to and present with his application an acknowledgement slip as is given in the Form which shall be signed by the official receiving the application on behalf of the Chief Wild Life Warden or the officer authorised by the State Government in this regard in acknowledgement of the receipt of the application.

D **5. Presentation and scrutiny of applications.**—(1) The Chief Wild Life Warden or the officer authorised by the State Government in this regard shall endorse on every application the date on which it is presented or deemed to have been presented under that rule and shall sign the endorsement.

(2) If on scrutiny, the application is found to be in order, it shall be duly registered and given serial number.

E (3) If the application, on scrutiny, is found to be defective, the same shall be returned to the applicant within fifteen days for rectifying the defects and resubmitting the corrected application within fifteen days from the date of its receipt.

F (4) If the applicant fails to rectify the defect within the time allowed under sub-rule (3), the Chief Wild Life Warden or the officer authorised by the State Government in this regard may, by order and for the reasons to be recorded in writing, decline to register the application.

G **6. Place of filing application.**—The applicant shall file application with the Chief Wild Life Warden or the officer authorised by the State Government in this regard.

H **7. Date and place of hearing to be notified.**— The Chief Wild Life Warden or the officer authorised by the State Government in this regard shall notify to the parties the date, place and time of hearing of each application, if required.

8. Decision on applications.—(1) The Chief Wild Life Warden or the officer authorised by the State Government in this regard shall verify the facts mentioned in the application and make such inquiry as may be required. A

(2) The Chief Wild Life Warden shall, as far as possible, decide the application within six months of the date of its presentation and communicate the same to the applicant in writing under his own signature by registered post. B

9. Hearing on application *ex parte*.—Where on the date fixed for hearing the application, the applicant fails to appear without intimation, the Chief Wild Life Warden or the officer authorised by the State Government in this regard may at their discretion adjourn or decide the application *ex parte*. C

10. Inquiry by the Chief Wild Life Warden or Authorised Officer.—(1) The Chief Wild Life Warden or the officer authorised by the State Government in this regard shall conduct a detailed inquiry and take all actions as provided in Section 41 of the Act. D

(2) A copy of the report pertaining to sub-rule (1) of this rule, shall be provided to the applicant.

11. Certificate of ownership.—(1) The Chief Wild Life Warden shall provide a certificate of ownership to the applicant whose claim is found valid. E

(2) The certificate of ownership shall be provided as per the provisions of Section 42 of the Act.

(3) The certificate of ownership shall contain the facsimile of the identification mark and in case of live animals the identification number of the transponder (microchip) implanted shall be mentioned in the certificate. F

12. Dealing with declared objects.—Any captive animal, animal article, trophy or uncured trophy declared under sub-section (1) of Section 40-A and in respect of which certificate of ownership has not been granted or obtained, shall be treated as government property. G

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A **13. Order to be signed and dated.**—Every order of the Chief Wild Life Warden shall be in writing and shall be signed and dated by the Chief Wild Life Warden.

B **14. Communication of order to parties.**— Every order passed on the application shall be communicated to the applicant either in person or by registered post free of cost.”

Therefore, as per Rule 4(2), the application to the Chief Wild Life Warden for such declaration, shall have to be presented in the prescribed format within a period of 180 days from the date of publication of these rules.

C 2.3 In the present case, the aforesaid Rules, 2003 came to be published on 18.04.2003. Therefore, 180 days to file the application/declaration expired on 18.10.2003. The appellant herein filed the application/declaration on 25.05.2011 that was beyond the prescribed period provided under Rule 4(2) of the Rules, 2003. The authorised authority refused to issue ownership certificate in respect of the deer horn found from her house and which was in custody and possession of the appellant on the ground that the application/declaration was made beyond the prescribed period provided under Rule 4(2) of the Rules, 2003. The appellant herein preferred writ petition before the learned Single Judge. The learned Single Judge disposed of the said writ petition by directing the Chief Wild Life Warden to consider whether time has been relaxed in any case for the purpose of granting the certificate of ownership and if so, under what circumstances, and if it is found that time has been relaxed in any case, consider the representation made on behalf of the appellant also in that background. The order passed by the learned Single Judge was the subject matter of the present writ appeal before the Division Bench of the High Court.

F 2.4 By the impugned judgment and order the Division Bench of the High Court has allowed the said appeal by observing that the time limit prescribed under Rule 4(2) of the Rules, 2003 cannot be relaxed and/or the period cannot be extended. Consequently, the Division Bench of the High Court has set aside the order passed by the learned Single Judge which has given rise to the present appeal.

G 3. Shri Lakshmeesh S. Kamath, learned counsel appearing on behalf of the appellant has vehemently submitted that the time prescribed under Rule 4(2) of the Rules, 2003 is not mandatory and can be relaxed

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in a given case. It is submitted that in the present case, the deer horn was found from the first floor of the house which is an old house and the appellant came to know about that in the year 2011. A

3.1 It is submitted that even after the application is made for ownership certificate/declaration, the appropriate authority/Chief Wild Life Warden is required to hold an enquiry and only thereafter, the ownership certificate can be issued. It is submitted that therefore, no prejudice shall be caused if the application for ownership certificate/declaration is made beyond the prescribed period provided under Rule 4(2) of the Rules, 2003. B

3.2 Learned counsel appearing on behalf of the appellant has vehemently relied upon the decision of the Madras High Court in the case of **C.D. Gopinath Vs. State of Tamil Nadu and Ors. (2010 SCC Online Mad 2851)**. C

4. Shri Abraham C. Mathew, learned counsel appearing on behalf of the respondent(s) while taking us to the relevant provisions of the Act, 1972 and Rules, 2003 has vehemently submitted that the time limit prescribed under Rule 4(2) is mandatory. It is submitted that as per Section 40A under which the Rules are framed under which a person in control, custody or possession of the wildlife animal or wildlife article etc., can apply for ownership certificate by making a declaration. It is submitted that looking to the object and purpose of Section 40 and 40A and the Rules, 2003 and when the specific time limit has been prescribed to submit an application for ownership certification/declaration, the same has to be adhered to as observed and held by the High Court by the impugned judgment and order. It is submitted that any other view shall frustrate the object and purpose of Section 40 and 40A and the Rules framed in exercise of powers under Section 40A of the Act, 1972. D E F

5. We have heard learned counsel appearing on behalf of the respective parties at length and have gone through the relevant provisions of the Act, 1972 and Rules, 2003. On and after coming into force of the Act, 1972, there is bar/restriction on keeping in custody or in possession of the captive animal specified in Schedule I or Part II of Schedule II or animal article etc., including the musk of a musk deer or the horn of a rhinoceros. However, Section 40A grants immunity in certain cases. As per Section 40A, notwithstanding anything contained in sub-sections (2) and (4) of Section 40 of the Act, 1972, the Central Government may, by G H

- A notification, require any person to declare to the Chief Wild Life Warden or the authorised officer, any captive animal, animal article, etc., in his control, custody or possession, in respect of which no declaration had been made under sub-section (1) or sub-section (4) of Section 40 and in exercise of powers conferred under Section 40A, the Central Government has framed the Rules, 2003. As per Rule 4(2), application/declaration under sub-rule (1) of Rule 4 for ownership certificate has to be made within a period of 180 days from the date of commencement of the Rules, 2003. Looking to the object and purpose of Sections 40 and 40A and the object and purpose for which Rules, 2003 has been enacted the period of 180 days prescribed under Rule 4(2) has to be construed and considered as mandatory, otherwise the object and purpose of the Act, 1972 and the Rules, 2003 shall be frustrated.

- 5.1 At this stage, it is required to be noted that as per Rule 3 of the Rules, 2003, the Chief Wild Life Warden or the officer authorised by the State Government was duty bound to give wide publicity to the intent of this notification in the regional language through electronic or print media or such other means. The sub-rule (2) of Rule 3 cast duty upon such officer to take necessary action to assist the local communities and individuals especially the poor and illiterate in the declaration of their possession, filling up the specified form and any other requirement prescribed under Rule 4(1). Thus, nobody can plead any ignorance and/or nobody can plead that he had no knowledge to make such declaration and/or application for ownership certificate and that too, within a period of 180 days as per Rule 4(2) of the Rules, 2003. Therefore, once a person in control, custody or possession of any wildlife animal or wildlife animal article, fails to file such declaration and/or fails to make any application within the stipulated time mentioned in Rule 4(2) then the bar/rigour under Section 40 shall be applicable and the ownership of such wildlife animal article of which the declaration is not made shall vest in the Government/forest department.

6. In view of the aforesaid facts and circumstances, the Division Bench of the High Court has rightly observed that the application submitted by the appellant herein which was made beyond the period prescribed under Rule 4(2) was liable to be rejected and was rightly rejected by the appropriate authority/Chief Wild Life Warden. We are in complete agreement with the view taken by the Division Bench of the High Court.

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6.1 Now so far as the reliance placed upon the decision of the Madras High Court in the case of **C.D. Gopinath (supra)** relied upon by learned counsel appearing on behalf of the appellant is concerned, as such on facts the said decision shall not be applicable to the facts of the case on hand. A

Even otherwise, in view of the discussions hereinabove, we are not in agreement with the view taken by the learned Single Judge that the period prescribed under Rule 4(2) of the Rules, 2003 is directory. B

7. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgment and order passed by the High Court. Consequently, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. C

Nidhi Jain
(Assisted by : Abhishek Pratap Singh, LCRA)

Appeal dismissed.