

ITEM NO.5

COURT NO.2

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s).489/2018

PRERNA SINGH BINDRA & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 04-12-2018 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s) Ms. Sujatha Balachander, Adv.
Mr. Poojan Kapoor, Adv.
Mr. Abhay Kumar, AOR

For Respondent(s) Mr. A.N.S. Nadkarni, ASG
Ms. Suhasini Sen, Adv.
Mr. Ritesh Kumar, Adv.
Mr. Gurmeet Singh Makker, Adv.

Ms. Anitha Shenoy, Adv.
Mr. V.N. Raghupathy, Adv.
Mr. Parikshit Angadi, Adv.
Ms. Srishti Agnihotri, Adv.

Mr. Chandra Bhushan Prasad, AOR

Mr. Anand Grover, Sr. Adv.
Mr. Suhaan Mukerji, Adv.
Ms. Astha Sharma, Adv.
Ms. Kajal Dalal, Adv.
for M/S. Plr Chambers And Co.

Mr. S.P. Mishra, Sr. Adv (Adv. Gen.)
Mr. Sibor Sankar Mishra, Adv.
Mr. Niranjana Sahu, Adv.

UPON hearing the counsel the Court made the following
O R D E R

We have heard learned counsel for the petitioners as well as learned counsel for the State of West Bengal.

In an affidavit dated 12th October, 2018, the Union of India has annexed a Report of the Inspector General of Forests (Project Elephant Division) in compliance of the order dated 17th September, 2018 passed by this Court.

In the Report, with regard to the State of West Bengal, it is stated in paragraphs 7 to 9 as follows:

"7.The West Bengal State Forest Department have categorically informed that the hula parties are being controlled by the Department staff and they are not using any inhuman methods especially throwing fire balls etc. while driving away the elephants from the crop fields. No spiked barricades or pillars are erected in West Bengal for control of crop raiding by elephants. During the field visit to the various districts like West Midnapur, Durgapur, etc. and in the interaction with the local people in various villages of the South Bengal area, it has been found that the villagers and the Forest Departments are jointly undertaking anti-depredation works in a humane manner without causing injuries. The interaction with the

villagers have revealed that the villagers are not antagonistic to the elephants but they want that the elephants should be got confined to the scattered forest areas and also the compensation paid as ex-gratia payment should be made realistic and based on the cost incurred by the villagers. They also demanded that the local village youth may be engaged permanently for driving away the elephants from the habitations and the cultivated fields. The West Bengal Forest Department has assured that any illegal activities in driving away elephants will be dealt with stringently. Further it has been informed by the local DFOs that 40 to 60 per cent of the staff position in the various South Bengal Divisions are lying vacant which has affected the anti-depredation activities of the Forest Department.

8. Considering the peculiar landscape of the South Bengal with small patches of forests interspersed with paddy fields and other valuable crops, it is very difficult to control the human elephant conflict situation in South Bengal. The elephants which used to move to and fro from Jharkhand areas are now staying back in South Bengal for a longer period due to the availability of extensive paddy crop, potato and

sugarcane and other fruit crops in these areas.

9. Hence it is suggested that the vacancies of the field staff in West Bengal Forest Department may be filled up on war footing so that the anti-depredation squads can function effectively; under the supervision of the Forest Department staff. Further the local tribal youth may be hired either by special recruitment or by hiring on contract basis to engage the local communities effectively in the anti-depredation operations in the region. There should also be close coordination between the regional and local department officials of the States of West Bengal, Jharkhand and Odisha for effective management of the movement of elephants across the States borders. This is more important as the Odisha State have constructed artificial barriers like elephant proof trenches and irrigation canals which prevent the movement of elephants to Odisha side from West Bengal creating more havoc in the West Bengal side. Hence close coordination for easy passage of elephants across the State boundaries of West Bengal, Odisha & Jharkhand is required to be implemented seriously by all the three State Forest Departments."

Our attention has also been drawn to the Guidelines for Management of Human Elephant Conflicts circulated by the Ministry of Environment, Forest and Climate Change, Government of India on 6th October, 2017.

For the present, we are concerned with Paragraphs 6 and 7 of the Guidelines, which read as follows:

"6. Anti Depredation Squads (ADS)

Anti-depredation squads are commonly used in North Bengal, Assam, Odisha and Chhattisgarh where large groups of elephants raid agricultural crops. ADS are equipped with a vehicle, torch, siren, fire crackers and sometimes even double barrel guns, especially in Sukhna -Mahananda region of North Bengal. The presence of ADS gives the community a sense of reassurance that the government is protecting them and their property. ADS is effective if it is managed by technically competent persons, trained mahouts and kunki elephants. It requires high level of coordination between divisions. However, the manner in which it is often implemented operations of ADS is not systematic and there is a lack of standard operating procedures. There is lot of chaos in activities of ADS, with participation of local mobs which reduces their effectiveness. Shots are sometimes fired in the ground near the elephants to keep them moving towards the forests.

Elephants, including calves, are also poked with iron spears to drive them.

7. Elephant Drives

Elephant drives are often carried out by the Forest Department. Often the aim is to drive the elephant herd out of their range so that it becomes someone else's problem. Another objective is to drive it towards the forest. Sometimes cruel scaring tactics are used to drive the elephants. In one recent case a young calf got permanently separated from the mother, and later died of stress and starvation.

In some states elephant drives are the mainstay of conflict mitigation. Herds of over 100 elephants are regularly driven towards the forests. The elephants take shelter in the forests and return to feed on crops when people go away. This to and fro movement causes stress for the elephants. They become agitated when surrounded by people. In such cases they often charge at people and the conflict aggravates."

Learned counsel for the State of West Bengal says that the State is willing to abide by the contents of the Report of the Inspector General of Forests (Project Elephant Division) as well as the Guidelines mentioned above.

Learned counsel for the State of West Bengal further says that the State of West Bengal will consult the Wildlife Institute of India for advice on the use of commonly used repellent methods as well as new repellent methods and deterrent methods mentioned in the Guidelines for the purpose of reducing, if not, eliminating human elephant conflicts.

The statement of learned counsel for the State of West Bengal is taken on record and it is made clear that the State of West Bengal is bound by that statement.

With regard to the use of *mashaals*, it is submitted that this is the only method presently available to the State of West Bengal and the migration of elephants is due to start any day and perhaps it may not be possible to implement any other method to avoid human elephant conflict. As an emergency measure, under the direct control of the Forest Department, *mashaals* may be used for the time being only to avoid any deaths and crop damage that may take place and ensure the proper movement of elephants in the corridors. The *mashaals* be used only in an emergency.

As far as *spikes* of all kinds are concerned, it is categorically stated by learned counsel for the State of West Bengal that they are not being used and will not be used.

Liberty to file additional affidavits.

I.A. No.160132/2018

Issue notice to the State of Madhya Pradesh.

Constitution of a Task Force

It is stated on behalf of the Union of India that the meeting scheduled to be held on 1st December, 2018 was in fact held on 22nd November, 2018.

In principle, a decision was taken in that meeting to the effect that a High Level Committee will look into the issues related to monitoring and implementation of various guidelines, decisions, directions and instructions issued by the Ministry of Environment, Forest and Climate Change and compliance of directions given by Hon'ble Courts from time to time. Necessary actions on constitution of the Committee will be taken shortly after approval of the proceedings of the meeting.

This statement is made by learned counsel appearing for the Union of India, under instructions from Dr. K.M. Selvan, Scientist 'D', Project Elephant.

List the matter in the 3rd week of January, 2019.

(SANJAY KUMAR-I)
AR-CUM-PS

(KAILASH CHANDER)
ASSISTANT REGISTRAR