

Madras High Court

S.Muralidharan vs Arulmigu Suguvaneswarar Temple on 16 April, 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE ABDUL QUDDHOSE

W.P. No.9035 of 2018

S.Muralidharan

.. Petitioner

-vs-

1.Arulmigu Suguvaneswarar Temple,
Rep. By its Assistant Commissioner/
Executive Officer, Swarnambigai
Agraharam, Salem 636 001.

2.Commissioner,
Hindu Religious Charitable Endowments
Dept., 119, Uthamar Gandhi Salai,
Nungambakkam, Chennai 600 034.

3.Principal Chief Conservator of Forests
and Chief Wildlife Warden,
Dept. of Forests, Govt. of Tamil Nadu,
No.1, Jeenis Road, Panagal Buildings,
Saidapet, Chennai 600 015.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus

For Petitioner : Mr.SP.Chockalingam

For Respondents : Mr.M.Maharaja
Spl.G.P., for RR 1 & 2
: Mr.Santhanaraman
Spl.G.P. (Forests) for R-3

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O R D E R

(Made by Ms.Indira Banerjee, Chief Justice) This writ petition by way of public interest litigation has been filed for orders directing the respondents to euthanize the elephant Rajeshwari kept by Arulmighu Suguvaneswarar Temple, on humanitarian grounds.

2.Arulmigu Suguvaneswarar Temple, which is under the control of the Hindu Religious Charitable Endowments Department of the Government of Tamil Nadu, has an elephant by the name of Rajeshwari. In the writ petition, it is stated that the elephant, Rajeshwari is suffering from a serious painful disease and has developed bedsores, which have started decaying.

3.Mr.Chockalingam appearing for the petitioner submitted that several Veterinarians including Forest Department Veterinarians, have tried to experiment on Rajeshwari. However, in an attempt to make Rajeshwari stand, by lifting her with an earthmover, Rajeshwari broke her tusks and limbs. The petitioner submits that the elephant is in agony and on humanitarian grounds, the elephant should be euthanized.

4.The attention of this Court has been drawn to Section 13 (3) of the Prevention of Cruelty to Animals Act, 1960, set out hereinbelow:

13.Destruction of suffering animals. - (1) ...

(2) ...

(3)Any police officer above the rank of a constable or any person authorised by the State Government in this behalf who finds any animal so diseased or so severely injured or in such a physical condition that in his opinion it cannot be removed without cruelty, may, if the owner is absent or refuses his consent to the destruction of the animal, forthwith summon the veterinary officer in charge of that area in which the animal is found, and if the veterinary officer certifies that the animal is mortally injured or so severely injured or in such a physical condition that it would be cruel to keep it alive, the police officer or the person authorised, as the case may be, may, after obtaining orders from a Magistrate, destroy the animal injured or cause it to be destroyed in such manner as may be prescribed. An order of the Magistrate to destroy an animal is not appealable. Sub-section (4) of Section 13 provides no appeal shall lie from any order of a Magistrate for destruction of an animal .

5.Mr.M.Maharaja, learned Special Government Pleader, appearing on behalf of Hindu Religious Charitable Endowments Department, submitted that the Animal Welfare Board of India, a statutory body of Government of India established in 1962 under Section 4 of the Prevention of Cruelty to Animals Acts, 1960, would have to be impleaded.

6.Our attention has also been drawn to a circular dated 25.11.2013 of the Chairman of the Animal Welfare Board of India, Major General (Retd.) Dr.RM.Kharb, AVSM, with regard to euthanasia of animals in pain and agony. As per the said circular, euthanasia is a humane method of alleviating animal suffering in cases of incurable disease or injury or debility. It is an effective and permanent way to relieve severe pain and suffering.

7.However, euthanasia must be performed by qualified veterinarians who have an understanding of anatomical landmarks and the equipment and drugs used for humane euthanasia of animals.

8.The Board has recommended the following procedure for euthanasia animals:

1.Sedate large animals using xylazine and small animals like dogs, using a combination of xylazine and Ketamine. Humane and compassionate handling without causing any stress to the animal could be the only substitute to sedation and a qualified veterinarian can take this decision based on the mental and physical assessment of the animal and the skills of the animal handler.

2.Inject an overdose of thiopentone intravenously (90 mg/kg BW) over a period of 10 seconds. In most of the cases it will stop the heart.

3.If the heart beat persists (especially in case of large animals), inject intravenously one of the following drugs immediately after the animal becomes unconscious (these three solutions MUST NOT be administered to conscious animals):

Saturated magnesium sulphate solution to effect
10% Potassium chloride or iodide solution to effect
Chlorhexidine-cetrimide solution to effect

4.It may take few seconds to minutes for the heartbeat to stop. Do not rely on loss of respiratory movements or eye reflexes as signs of death. Use a stethoscope and check for heart beat. The veterinarian should not leave until he or she is certain that the animal is dead.

9.As per the criteria and standards of euthanasia of animals formulated by the Animal Welfare Board of India, the following essential considerations are to be kept in mind by the Veterinarians while performing euthanasia:

1.Veterinarians have the primary obligation to relieve an animal's incurable suffering and pain by performing euthanasia

2.A Veterinarian must not cause any animal to suffer by failing to maintain adequate paw control and relief of suffering

10.The following points need consideration in decision making to perform euthanasia of an animal:

a)History and seriousness of present illness and general health of the animal

b)Thorough physical examination for evidences of intractable or incurable condition / ailments

c)Prognosis of the case based on history, general health and physical examination for evidences of intractable or incurable condition / ailments

d)Euthanasia of animals is to secure the following five freedoms:-

i.Freedom from Hunger and Thirst ii.Freedom from Discomfort iii.Freedom from pain iv.Freedom to express normal behaviour v.Freedom from fear and distress. The decision to perform euthanasia is ultimately to be taken, by the veterinarian based on the above guidelines. Subsequent to the decision, the procedure to be adopted for administering euthanasia is to be as per the guidelines / standards explained in the document.

11.From the materials, which has been produced in this regard, it is patently clear that steps taken for the treatment of the elephant Rajeshwari, have not been successful. A letter dated 21.03.2018 from Dr.N.S.Manoharan, M.V.Sc., Deputy Director / Forest Veterinary Officer, to the Principal Chief Conservator of Forests and Chief Wildlife Warden, indicates that the elephant had been examined by a team of Veterinary Assistant Surgeons of Poly Clinic, Salem and Animal Disease Intelligence Unit. On examination, it was noticed that the animal was administered painkillers anti inflammatory, nerve tonics with external applications of anodyne ointment and rubifacients. The elephant suffered from stiffness and had great difficulty in moving. Further examination on 08.03.2018 revealed that the elephant was dull and depressed showing signs of shifting limb lameness. Decubitus ulcers were noticed in the posterior part of right elbow and near the right hip joint and sole ulcers noticed in all four limbs in varying degrees. The treatment continued, but only marginal improvement noticed. The status of the elephant as on 21.03.2018 was that the elephant was stable, but recumbancy persisted. Considering the biology, physiology of the elephants and the present pathology (the chronic deformity of fore limbs, the fracture of left elbow joint, sore wounds on the right lateral side of animal, maggot wounds, age factor and related issues) stress and septicaemia might result, which do not allow the complete recovery of the animal. The prognosis was Guarded to grave , which means intensive treatment and care till her death.

12.From the report, it is patently clear that the elephant is in agony with remote or rather no chances of recovery. The elephant is suffering. It seems euthanasia should be performed so that the elephant is relieved from prolonged agony and suffering.

13.Our attention has also been drawn to Section 11 of the Wild Life (Protection) Act, 1972. However, it appears that the aforesaid provision is not applicable in this case. The applicable provision in this case would be Section 13 (3) of the Prevention of Cruelty to Animals Act, 1950, set out hereinabove.

14.The Veterinary Officer incharge of the area where the elephant Rajeshwari is now being treated may examine her and if the Veterinary Officer certifies that the physical condition of Rajeshwari is such that it would be cruel to keep her alive, she should immediately be administered euthanasia. The examination shall positively be conducted at the earliest, preferably within 48 hours.

15.Needless to mention that the euthanasia shall be performed as per the rules, regulations and guidelines with regard to performance of euthanasia.

The writ petition is disposed of accordingly. No costs.

(I.B., CJ.) (A.Q., J.)
16.04.2018
Index : Yes/No

Website : Yes/No

Note: Issue order copy today itself.

sra

The Hon'ble Chief Justice
and
Abdul Quddhose, J.

(sra)

To

- 1.The Assistant Commissioner/
Executive Officer, Arulmigu
Suguvaneswarar Temple, Swarnambigai
Agraharam, Salem 636 001.
- 2.The Commissioner,
Hindu Religious Charitable Endowments
Dept., 119, Uthamar Gandhi Salai,
Nungambakkam, Chennai 600 034.
- 3.The Principal Chief Conservator of Forests
and Chief Wildlife Warden,
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