



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4965 OF 2025

WITH

INTERIM APPLICATION (ST) NO.21808 OF 2025

Swasthishri Jinsen Bhattarak,
Pattacharya Mahaswami Sanstha,
Math (Karveer) Kolhapur,
Nandani, Terdal, Belgaon,
Through Swasthishri Jinsen
Bhattarak Pattacharya Mahaswamiji.

.....Petitioner

Vs.

1. Union of India,
Through Its Ministry of Environment
and Forest & Climate Change at
New Delhi.
2. The Office of High Power Committee
Having address at D-19, Third Floor,
Geetanjali Exclave,
New Delhi-110 017.
3. Chief Wildlife Warden &
Principal Chief Conservator of Forests
(Wildlife), Maharashtra,
State at Nagpur, having office at
“Van Bhavan”3rd Floor,
Ramgiri Road, Civil Lines,
Nagpur-440 001.
4. Chief Forest Conservator (Regional)
Kolhapur, having office at
“Vanvardhan”, Tarabai Park,
Kolhapur-416 003.

5. Deputy Forest Conservator,
Kolhapur Forest Division, Kolhapur
Having office at "Vanvardhan",
In front of Head Post Office,
Tarabai Park, Kolhapur.
6. Radhe Krishna Temple Elephant
Welfare Trust,
At Moti Khavdi-Jamnagar, Gujarat.
7. People for the Ethical Treatment
of Animal (PETA).

.....Respondents

WITH

INTERIM APPLICATION NO.7765 OF 2025

People For The Ethical
Treatment Of Animals (PETA) India

.....Applicant

In The Matter Between:

Swasthishri Jinsen Bhattacharya,
Pattacharya Mahaswami Sanstha,
Math (Karveer) Kolhapur,
Nandani, Terdal, Belgaon,
Through Swasthishri Jinsen
Bhattacharya Mahaswamiji.

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5. Deputy Forest Conservator, Kolhapur Forest Division, Kolhapur Having office at "Vanvardhan", In front of Head Post Office, Tarabai Park, Kolhapur.
6. Radhe Krishna Temple Elephant Welfare Trust, At Moti Khavdi-Jamnagar, Gujarat.
7. People for the Ethical Treatment of Animal (PETA). Respondents

Mr. Surel Shah, senior counsel with Mr. Manoj Patil & Ms. Kalyani Mangave, for the Petitioner.

Mr. Jatin Kochhar with Mr. Ninan Thikekar, i/b. Mr. Karan Singh Shekhawat, for the Respondent No.2.

Mr. A. I. Patel, Additional Government Pleader with Smt. S. S. Bhende, AGP, for the Respondent-State.

Mr. Shardul Singh with Mr. Smeet Savla, for the Respondent No.6.

Mr. Vishal Kanade with Mr. Prateek Pai, Ms. Sita Kapadia, Ms. Arunima Athavale, i/b. Keystone Partners, counsel & Solicitors for the Respondent No.7.

**CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.**

RESERVED ON : 4th JULY 2025.

PRONOUNCED ON : 16th JULY 2025.

JUDGMENT : (Dr. Neela Gokhale, J.)

1. **Rule.** Rule made returnable forthwith. With consent of the parties, the Petition is taken up for final hearing.

2. **THE CHALLENGE :**

2.1 By way of this Petition, the Petitioner seeks to quash and set aside the impugned order dated 27th December 2024 and 3rd June 2025 passed by the Respondent No.2-High Power Committee ('HPC') and also directions to the Respondent Nos.3 to 5 not to take any coercive action for transfer of the elephant namely Mahadevi @ Madhuri from the Petitioner Trust-Mathsansthan to the Respondent No.6- Radhe Krishna Elephant Welfare Trust at Jamnagar pursuant to the order impugned dated 27th December 2024 and 3rd June 2025 passed by the Respondent No.2.

3. **PARTIES TO THE PETITION :**

3.1 The Petitioner is a Trust registered under the provisions of

Maharashtra Public Trust Act, 1950 belonging to Jain discipline. The Petitioner Trust owns the elephant namely Mahadevi since the year 1992 and is stated to have a religious tradition to keep an elephant in the Math for religious programs. The maintenance of the elephant is an integral part of the Trust activities. The Respondent No.1 is the Union of India; the Respondent No.2 is the HPC; the Respondent Nos.3, 4 and 5 are the Chief Wildlife Warden & Principal Chief Conservator of Forest of the Maharashtra State, the Chief Forest Conservator (Regional), Kolhapur and the Deputy Forest Conservator, Kolhapur respectively. The Respondent No.6 is the Radhe Krishna Temple Elephant Welfare Trust ('RKTEWT') which is the receiving facility. This facility is stated to operate a specialized and well-equipped elephant care center i.e. suitable, appropriate and capable of receiving and caring for the said elephant. It is located in village Moti Khavdi, Jamnagar, Gujarat with an object of caring and rehabilitation of elephants that are injured, abandoned, rescued from circus and otherwise found to be neglected or abused. It is to this institution that the HPC has directed transfer and custody of the said elephant for its long term care and rehabilitation. The Respondent No.7 ('PETA') is a registered non-governmental animal rights organization with pan India

operations. It is the original complainant which had represented to the HPC regarding the plight of captive female elephant Mahadevi, housed at the premises of the Petitioner-Math.

4. FACTS OF THE CASE :

4.1 The Petitioner is the owner of the said elephant having registration certificate No. MH/04/02KLP/203 issued under the provisions of the Wildlife (Protection) (Maharashtra) (Amendment) Rules, 2004. According to the Petitioner, officials of the Respondent Nos.3 to 5 regularly visit the premises of the Petitioner and conduct check-up of the elephant.

4.2 On a representation made by PETA, the HPC by its order dated 28th December 2023 directed transfer of the said elephant from the Petitioner trust to the RKTEWT. The Petitioner filed a Writ Petition No.3713 of 2024 in this Court assailing the said order, being an *ex-parte* order. By order dated 13th March 2024, this Court requested the HPC to consider the representation dated 7th February 2024 made by the Petitioner and take a decision thereon within a period of 15 days after giving an opportunity of hearing to all the

concerned parties. In the meantime, the Respondent Nos.3 to 5 were to defer the transfer of the said elephant. Accordingly, the HPC formed a sub-committee to visit the Petitioner's premises and inspect the facilities and health conditions of the elephant and submit a report. The sub-committee visited the Petitioner's premises on 12th June 2024 & 29th September 2024. Two inspection reports were submitted to the HPC.

4.3 By its order dated 27th December 2024, the HPC on the basis of the inspection report submitted by its sub-committee, directed transfer of the elephant to the RKTEWT. The Petitioner assailed this Order dated 27th December 2024 by way of the present petition. By order dated 28th April 2025, this Court once again considered it appropriate that the Petitioner be heard by the HPC on all contentions raised by it and also considered its representation dated 7th February 2024 within a period of 15 days. This order was passed on the grievance of the Petitioner that the Petitioner was not heard by the HPC. However, this Court noted in its said order the reports dated 12th June 2024 and 25th November 2024 submitted by the sub-committee appointed by the HPC. By the same order an intervention

application of PETA was allowed. The Petition was kept pending before this Court.

4.4 On 17th May 2025, the Petitioner was heard by the HPC. The Petitioner's grievance representation was heard in detail and all the documentary evidence furnished by the Petitioner was considered by the HPC. The reports of the sub-committee as well as medical reports furnished by the Petitioner Trust itself were also considered by the HPC.

4.5 After considering the submissions made by all the parties, the HPC by its order dated 3rd June 2025 rejected the grievance of the Petitioner Trust and for the 3rd time directed transfer of the said elephant to RKTEWT. This order, passed during the pendency of the present petition is also being assailed in the present Writ Petition. The Petitioner sought an amendment to the present Writ Petition to include a challenge to this subsequent order dated 3rd June 2025 as well as to add additional grounds and averments in the Petition. The amendment was allowed by order dated 1st July 2025. The PETA was also permitted to be impleaded as party Respondent No.7at this time.

5. SUBMISSIONS OF PETITIONER :

5.1 According to the Petitioner, the impugned order dated 27th December 2024 is illegal, perverse and bad in law. There is no adjudication on the Petitioner's representation dated 7th February 2024 and hence, principle of natural justice have not been followed.

5.2 Even after hearing the Petitioner, pursuant to the directions of this Court, the HPC recorded an adverse finding contrary to material on record. Thus, the order dated 3rd June 2025, passed following the hearing, also suffers from legal infirmity.

5.3 The HPC failed to consider that the complaint made by the PETA that the elephant killed the head priest of the Petitioner Math was false. The HPC ignored the death certificate of the head priest placed on record by the Petitioner.

5.4 The HPC also overlooked the medical certificates filed by the Petitioner in support of its claim that the elephant was looked after properly. The reports of the sub-committee was also not appreciated in a proper perspective. The HPC also ignored the details placed by the Petitioner about the worship of the elephant, its existence,

religious value attached to the 2nd Bhagwan Tirthankar by the devotees and villagers, etc.

5.5 It is argued by the Petitioner that the proviso to Section 43(2) of the Wildlife Protection Act, 1972 permits use of elephants for religious purpose and the elephant was transferred to Telangana after obtaining necessary permission from the Forest Department. The Petitioner has detailed the importance of using the elephant in its religious functions and states that it is a living symbol for the community as other animals also. It is the fundamental right of the Petitioner to carry out their duties, rights and rituals to express their idea of religion as Article 25 of the Constitution recognizes this right. The Petitioner submitted that there are medical reports that demonstrate that the elephant has recouped and recovered from his back injury and the Petitioner Math has cared for the elephant, leading to the speedy recovery of the elephant. The Petitioner has facilitated medical attention for the elephant. The Petitioner Math has organized various religious programs from which they receive handsome income and hence, the financial capability of the Petitioner is also sound so as to be able to care for the elephant properly.

5.6 The Petitioner has also facilitated socialization of the elephant. The temporary transfer of the elephant to Telangana for religious function was on an inadvertent and incorrect understanding of the Petitioner that the Forest Department shall give the required permission and NOC for the transfer. The error was *bona fide* and there was no ulterior motive on the part of the Petitioner.

5.7 It was vehemently argued that the complaint was *mala fide* and made with an ulterior motive of facilitating the RKTEWT to add to its collection of elephants and to deprive the Petitioner of the said elephant. The learned counsel for the Petitioner doubted the intention of PETA to urge the HPC to transfer the elephant to RKTEWT in place of any other wildlife sanctuary/elephant sanctuary in any other State/City except for Jamnagar. On these grounds, the Petitioner has assailed the orders of the HPC.

6. SUBMISSIONS OF RESPONDENT NO.7-PETA :

6.1 The Petitioner Math has only a commercial interest in retaining custody of the elephant under a pretext of religious requirement. The Petitioner gave the elephant on rent to the

Telangana State Waqf Board for a religious function, to be paraded in a public procession for Muharram, for an amount of Rs.4 lakhs. This was without obtaining the requisite NOC from the Forest Department.

6.2 The pictures of the elephant being used in processions demonstrate that the elephant is forced into a crowded situation where she is tied with a rope around her belly, guarded by several Mahouts holding Ankush weapons and pulling her ears continuously amidst loud speakers and humans sitting on heavy howdrah kept on her, despite her foot rot and arthritic condition.

6.3 The health assessment report dated 12th August 2023 by a local veterinarian indicates that Mahadevi was swaying and bobbing her head and was under psychological distress.

6.4 Photographic evidence of Mahadevi and her shed dated 24th April 2025 showed her restrained with chains on two legs; she is living in a small dirty shed with hard floor on which has been added a layer of sand and mud; her foot pads and toe nails are painfully overgrown and infected and, she is controlled by multiple Ankhush.

6.5 A veterinary doctor namely Dr. Rakesh Chittora, an expert

in wild animal disease management, physically examined Mahadevi and submitted a report which is consistent with the findings of severe overgrown toe nails, swelling due to abscesses and signs of prolonged chaining on hard surfaces. She was found to be kept in severe solitary confinement.

6.6 An ownership certificate issued under the Wildlife Protection Act, 1972 does not grant absolute and unconditional ownership rights to parties upon wild animals, including elephants.

6.7 There are inconsistencies in the records of reliability of her care. Her weight dropped on 5th May 2025 and increased again 6 days later, which is not found to be healthy.

6.8 PETA also submitted a note on the ill-health of the elephant along with photographs. PETA hence, urged the Court to dismiss the present Petition.

7. The Respondent No.6-RKTEWT has signified its willingness to accept the care and custody of the elephant Mahadevi, by way of an affidavit dated 25th April 2025. The averments in the affidavit include a description of facilities available in their reserve.

The affidavit also indicates that the facility houses 238 elephants, establishing a dedicated area for social integration of elephants. The environment is natural and supportive for social bonding and well-being of elephants.

8. **ANALYSIS :**

8.1 Heard Mr. Surel Shah, learned Senior Advocate for the Petitioner, Mr. Jatin Kochhar, learned Advocate for the HPC, Mr. A.I.Patel for the State and Mr. Shardul Singh for the RKTEWT. Mr. Vishal Kanade, learned counsel represented PETA.

8.2 A plain reading of the impugned order reveals a meticulous, indepth and careful examination of various submissions made by parties of conflicting interests. The HPC appears to have examined the statutory framework of the Wildlife Protection Act viz-a-viz the ownership and custody of the elephant. The HPC has noted the multiple inspections including the Joint Inspection Report dated 20th June 2024, the Chief Wildlife Warden's (CWLW') report dated 25th November 2024 and the photographic evidence submitted by PETA. The HPC has also comprehensively considered the representation of

the Petitioner. The HPC has also aptly analyzed the effects of confinement of an elephant in a religious setting. The Committee has duly appreciated the observations of veterinary experts and interpreted legal provisions vis-a-vis the ethical, constitutional and legal framework supporting the protection and rehabilitation of elephants, especially those in captivity.

8.3 We have perused the evaluation of the elephant-Mahadevi contained in the Report dated 12th June 2024. Details of her physical health, physical well-being, diet adequacy terms and nutrition; social environment; hygiene and cleanliness of the shelter; availability of water and shade; mahout-elephant relationship, veterinary care and exercise and work schedule appear to be absolutely dismal. The overall assessment reads thus;

“Overall Assessment	The present facility need improvements in all fronts including opportunity for socialization. The wounds need specialized veterinary care with management intervention. The cultural practices and local sentiments run high and the management of the Math informed that the recommended standard practices, infrastructure facilities and opportunity for socialization will be created within three months. Keeping in mind the social, cultural and sentimental aspects surrounding the elephant and the possibility of providing specialized veterinary care, improving the infrastructure and socialization opportunities it is suggested that a time frame of three months may be given to the Math management
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	and review the infrastructure facilities and the health condition before a final decision of shifting the animal to a better facility”
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8.4 Mr. Shah has tried to impress upon us that this report of 12th June 2024 was followed by other two reports which clearly demonstrate a marked improvement in the health and condition of elephant. We immediately perused reports dated 20th June 2024, 1st October 2024, report of the sub-committee dated 25th November 2024, report of Dr. Kalappa dated 23rd April 2025, health certificates dated 5th May 2025 and 11th May 2025 and the photographs placed on record by all the parties. Report dated 20th June 2024 of the CWLW to the HPC indicates the inspection of the Petitioner Math Premises by the sub-committee and its observations. It is clearly stated that the elephant suffers from decubital ulcerated wounds on the bony prominences of the hip joints on both sides and the back side of the right elbow joint and severe foot rot on the middle toe of both forelegs. The elephant's nails are overgrown and deformed. The sub-committee recommended urgent need for specialized veterinary treatment, which if left unattended was bound to severely compromise the elephant's quality of life.

8.5 Report dated 1st October 2024 vociferously relied upon by the

Petitioner, simply indicated that the injury on the elephant's back noticed in report dated 12th June 2024 was healing and the injury to the toe nails was also getting better as compared to its earlier condition. In our view, the argument of the elephant's convalescence and that her condition is now improving has no strength and does not further the case of the Petitioner. In fact this argument is quite counterproductive inasmuch as it establishes the fact that the elephant suffered injuries while being under the 'care' and custody of the Petitioner-Math. We are definitely not impressed by this argument . At the outset, there is no explanation offered by the Petitioner as to what caused the injuries on the elephant's back in the first place. The only fathomable culprit can be the howdrah that may have been placed on the elephant's back to carry loudspeakers and human beings during processions. This continued treatment of the elephant is callous and brutal. The elephant does not deserve to be used to ferry weighty humans and equipments. Thus, this argument cannot be taken to be a mitigating factor in favour of the Petitioner.

8.6 The reports of the sub-committee dated 25th November 2024 submitted to the HPC also contains an observation that there is

considerable improvement in the wounds on the foot and in between nails of the elephant as compared to those found in the inspection report dated 12th June 2024. There are six points detailed by the sub-committee indicating that the Petitioner-Math is attempting to provide some facilities to the elephant. We have seen the said points. The efforts appear to be cosmetic which include provision of 10,000 liter water tank; walking the elephant for 5-10 kilometers in a day; health check-ups; taking the elephant to bathe once a week and replacing the cement/concrete platform with mud. The efforts made by the Petitioner are too little and too late in the day, to redeem the neglect and to commiserate for the damage caused to the mental and physical health of the elephant.

8.7 We have also seen the health certificates of the elephant, issued by the Doctors engaged by the Petitioner. Undoubtedly, all three health certificates provided by the doctor of the Petitioner-Math indicate that the animal is found healthy and sound. However, the said three one pager health certificates only contain the physical description of the elephant and one line regarding the condition of the elephant. These certificates are not consistent with the detailed

medical and over all reports of the sub-committee of the HPC and do not seem to reflect the correct picture of the condition of the elephant. The said certificate is also inconsistent with a plethora of recent photographs of the elephant which speak for themselves and tell the real story. Thus the cursory health certificates do not inspire confidence.

8.8 The HPC has considered in detail all the reports carefully. It has also dealt with the argument of the Petitioner that there is no fundamental right of an animal that can be enforced by a Constitutional Court. In this regard, the HPC relied upon the decision of the Supreme Court in the matter of *Animal Welfare Board of India v. A. Nagaraja*,¹ where the Apex Court held that the traditions, customs and religious beliefs are not above animal welfare obligations. The HPC also considered various precedents of the Apex Court and other High Courts in this regard. The Committee also considered the argument of the Math regarding requirement of the elephant to carry out its objectives and religious activities. However, the HPC has leaned in favor of the well-being and liberty of the elephant in captivity against the community's alleged rights canvassed by the

¹ (2014) 7 SCC 547.

Petitioner-Math, under Article 25 of the Constitution of India. We agree.

8.9 In regard to the choice of RKTEWT to be the recipient of the elephant, the HPC has appreciated the institutional background and experience of the said reserve. It has seen the photographs of the specialized sanctuary and assured itself of the suitability of the RKTEWT of housing the elephant, especially the daily access to natural areas for feeding, bathing, socialization and herd integration. All these facilities, including the number of personnel, care givers, international veterinary consultants, biologists specializing in elephant behaviour, etc are available for inhabitants of the reserve. It appears to be a godsent facility for the long suffering elephant. We also weighed in the doubts raised by the Petitioner regarding the suggestion of PETA to transfer the elephant only in RKTEWT and not any other sanctuary and explored the possibility of rehabilitating Mahadevi within the State of Maharashtra itself, but we are told that Maharashtra as yet does not have any Elephant Sanctuary. Sanctuaries exclusively caring for elephants do exist in Kerela and other states, however RKTEWT, Jamnagar, is the closest to Maharashtra and the

Elephant will not have suffer pronged agony during transportation to any other far flung area. Also as discussed above, we find the RKTEWT suitable to house Mahadevi and provide her with timely and much needed succor. Thus, we have no hesitation in confirming the order passed by the HPC.

9. Before we part, we deem it appropriate to record that we have considered and chosen the survival of the elephant and its right to quality life, over and above the rights of men to use the elephant for religious rites. We have no doubt that the Petitioner-Math may have had no deliberate intent to cause injury to the elephant however, in the given circumstances of conflict between the rights of an elephant and the rights of Petitioner-Math to use the elephant in the discharge of its religious activities, priority must be given to the elephant's welfare. The Court has duty under the doctrine *parens patriae* to secure the rights of the voiceless and hapless Mahadevi. We cannot but reminisce the words of Lawrence Anthony in his book 'The Elephant Whisperer',

"But perhaps the most important lesson I learned is that there are no walls between humans and the elephants except

those that we put up ourselves, and that until we allow not only elephants, but all living creatures their place in the sun, we can never be whole ourselves.”

10. The Petition is thus, dismissed. Rule is accordingly discharged.

11. The elephant shall be transferred to the Respondent No.6- Radhe Krishna Temple Elephant Welfare Trust, Moti Khavdi-Jamnagar, Gujrat within a period of two weeks from the date of uploading of this order. We request the Chief Wildlife Warden of Maharashtra to issue a Transport Permit and the Chief Wildlife Warden of Gujarat to issue a No Objection Certificate, if necessary to effect the said transfer. We also request the concerned police authorities to render support, as sought by the parties.

12. As the Petition itself has been disposed of, nothing survives in the Interim Applications therein and the same are also disposed of.

13. All parties to act on an authenticated copy of this Judgment.

(DR. NEELA GOKHALE, J.) (REVATI MOHITE DERE, J.)