

State of Kerala vs Chandran

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Court : Kerala

Decided On : May-19-2022

Judge : Honourable the Chief Justice Mr.S.Manikumar,Honourable Mr. Justice Shaji P.Chaly

Appeal No. : RP/73/2022

Appellant : State of Kerala

Respondent : Chandran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR. JUSTICE SHAJI P.CHALY THURSDAY, THE 19TH DAY OF MAY 2022 / 29TH VAISAKHA, 1944 RP NO. 73 OF 2022 IN W.P.(C).No.24229/2016 REVIEW PETITIONERS/RESPONDENTS 1 TO 5 AND 8 TO 10 IN WPC:

1 STATE OF KERALA CHIEF SECRETARY,
THIRUVANANTHAPURAM, PIN - 695001 2 SECRETARY SC/ST
DEVELOPMENT DEPARTMENT, SECRETARIAT,

THIRUVANANTHAPURAM, PIN - 695001 REPRESENTED BY
SECRETARY 3 DIRECTOR SCHEDULED TRIBE DEVELOPMENT
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001 4 THE PROJECT OFFICER TRIBAL RE-SETTLEMENT
DEVELOPMENT MISSION, THIRUVANANTHAPURAM, PIN - 695001 5
DISTRICT COLLECTOR KANNUR, PIN - 670001 6 DEPUTY
DIRECTOR OF EDUCATION KANNUR, PIN - 670001 7 THE WILD LIFE
WARDEN IRITTY, KANNUR, PIN - 670703 8 TAHSILDAR IRITTY ,
KANNUR, PIN - 670703

BY SPL. GOVERNMENT PLEADER SRI. T.P. SAJAN
RESPONDENTS/PETITIONERS AND RESPONDENTS 6-8 & 11 & 12
IN WPC: 1 CHANDRAN AGED 48 YEARS, S/O. KARAPPAN, ARALAM
FARM BLOCK NO.13, KAITHAKKOLLI COLONY P.O, ARALAM FARM
KANNUR, PIN - 670704 2 SASI, AGED 53 YEARS, PUTHIYANGADI
COLONY, ARALAM FARM BLOCK NO.13, PLOT NO.451/5, ARALAM
FARM P.O, KANNUR - 670704

3 THAMPAN AGED 59 YEARS, S/O. VELUKKAN, KOOTTUVAY
COLONY, ARALAM FARM BLOCK NO.13, PLOT NO.440, ARALAM
FARM P.O KANNUR, PIN - 670704 4 SHAJI AGED 32 YEARS, S/O.
THOLAN ARALAM FARM BLOCK NO.13, PLOT NO.776 ARALAM
FARM P.O, KANNUR, PIN - 670704 5 THE MANAGING DIRECTOR
KSRTC, THIRUVANANTHAPURAM, PIN - 695001 6 CHIEF GENERAL
MANAGER NATIONAL BANK FOR AGRICULTURE AND RURAL
DEVELOPMENT, THIRUVANANTHAPURAM, PIN - 695001

7 DEPUTY DIRECTOR OF EDUCATION KANNUR, PIN - 670001 8
SECRETARY ARALAM GRAMA PANCHAYATH, KANNUR, PIN -
670704 9 MANAGING DIRECTOR ARALAM FARMING
CORPORATION, ARALAM KANNUR, PIN - 670704 BY ADVS. SMT.
A.G. ANEETHA M.KABANI DINESH MIJI JOHN OTHER PRESENT:
SMT. ANCHALA C THIS REVIEW PETITION HAVING COME UP FOR
ADMISSION ON 19.05.2022, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING:

ORDER

Dated this the 19th day of May, 2022 S. Manikumar, CJ. Though there were several reliefs sought for in W.P(C).No.24229 of 2016, while considering relief i(c), ie., to construct rail fencing along the entire length of forest boundary of Aralam Farm Re-settlement area to prevent the entry of wild elephants, in time bound manner, vide judgment dated 5.8.2021, we issued the following directions:

9. However, taking note of the fact that PWD is entering the arena for the first time, we are inclined to grant 18 months for the completion of the work, which includes time for examination of the project, if any required, floating and finalization of the tender.

10. The decision to construct concrete compound wall has

been taken long ago and therefore, in order to protect the life and property of the tribals living in that area, construction should be completed without any delay.

11. Respondent Nos.2, 3, 4 (the Secretary to the SC/ST

Development Department, Thiruvananthapuram; Director of SC/ST Development Department; Project Officer, Tribal Re-settlement Development Mission, Thiruvananthpauram) and the Chief Secretary, State of Kerala have been arrayed as respondents.

12. Unless there is proper and periodical monitoring,

construction of compound wall will not materialise in time. As co-ordination of various Departments is involved in the matter, we direct the first respondent/Chief Secretary, Government of Kerala to issue appropriate directions/instructions to the concerned officials for the commencement and completion of the compound wall within the time ordered by this court. Chief Secretary, Government of Kerala is also directed to monitor the work progress.

13. Registrar General, High Court of Kerala is directed to send a copy of this writ petition along with a copy of the

judgment to the Chief Secretary, Government of

Kerala/respondent No.1 forthwith, for compliance. Writ petition is disposed of.

2. In order to implement the directions, the Chief Secretary has

convened a meeting and an expert committee has been constituted to assess the mitigation measures and suggest measures suitable for prevention of entry of wild animals to Aralam re-settlement area. The Committee has submitted a report which includes construction of Hanging Solar Power Fencing, which is more effective than construction of concrete wall to the entire length. On the basis of expert committee report, State of Kerala represented by Chief Secretary and others have filed instant review petition seeking to implement the measures as suggested by the expert committee in Annexure-1.

3. When the matter came up for admission, it was pointed out

by learned counsel for writ petitioner that inasmuch as there is no case before this Court for construction of Hanging Solar Power Fencing, there is no prima facie case for review of the judgment.

4. Suggestions of the expert committee as per Annexure-1 are as under:

a. Considering the behavior of elephants and experience in different parts of the country, the most of the mitigation measures are seen overcome by the elephants and enter the habitations. Even if a strong concrete wall like the one constructed by ULCS on the southern boundary of the Sanctuary, the elephant entry into the farm can't be totally prevented. Even after construction of 10 kms of concrete wall, the elephants can enter the habitations through other areas beyond 10 kms. Elephants have the strength and courage to break the concrete wall since the Farm area is part of the home range and potential habitat since

long. Thus construction of concrete wall can't be considered as a foolproof solution for mitigating HEC in the rehabilitated area. Moreover, the construction of concrete/composite wall is very expensive and involves huge environmental cost.

b. The existing conflict mitigation infrastructure on the Western side of the Sanctuary such as stone wall and elephant proof trench shall be strengthened. i. The existing elephant proof trenches shall be deepened sufficiently to prevent elephant movement and wherever required stone pitching shall also be done to maintain the same. ii. Wherever elephants are frequently passing through the wall (either by breaking or jumping over), soil can be filled on the western side of the wall to totally block the passage. This method was found to be very effective in the past: Wherever the wall is presently broken, it shall be reconstructed properly. As suggested by PWD, a reinforce concrete (RCC) belt above the existing stone wall with a dimension of 50 cm width and 30 cm height shall be made and strengthened.

c. The steel fence with spikes (which is primarily in the marshy area) is found to be ineffective and elephant are easily overcoming this preventive structure. As suggested by PWD Engineers, composite wall is not practical in marshy areas as it may hinder the passage of water via several existing natural streams to river. If openings are provided in the wall, it will act as weak point and is not feasible. Hence the composite wall in this marshy areas is not feasible and effective. A well designed rail fence with strong foundation along with hanging solar power fence is the better option in this region. In addition, in rivers and streams (where elephants move across presently), the elephant passages shall be blocked by erecting

rail fence with strong foundations along with hanging solar power fence since concrete wall is not effective in these areas to arrest movement of elephants.

d. The hanging solar power fence is found to be very effective not only in Kerala (e.g. Palakkad and Wayanad) but also in the adjoining States (Karnataka and Tamilnadu). Hence along with strengthening the existing structures such as stone wall, elephant proof trench, solar power fence, etc a new hanging solar power fence can be installed and maintained. This hanging solar power fence can be powered using energizer installed at every 2 kms length so as to ensure optimum power supply throughout the fence. During rainy season, there may be shortfall in solar power. Hence charging batteries at the energizer points has to be augmented with electricity connection in these points.

e. Most of the mitigation structures are found to be a failure due to negligence in the maintenance such as periodic removal of weeds, power failures, manpower for proper up- keeping of the fence, etc. Hence it is proposed to exclusively deploy @ one watcher at every 2 kms round the clock to maintain the hanging solar power fence. Considering the eight hour work, a total of 15 watchers shall be engaged to keep watch on the fence round the clock. These watchers shall be entrusted to clear the undergrowth or any other hindrance to the hanging solar power fence.. The proposed hanging solar power fence shall have the design such that the supporting strands are not reached by elephants.

f. Presently, bits of coupe roads of about 7 kms in length exist all along the boundary of the rehabilitated area (except for three kms in the middle region) and are in very bad shape. It is proposed to improve and connect these coupe roads by aligning the road for 3 kms so that it is made motorable and round the clock perambulation all along the entire boundary can be ensured throughout year. A team shall be constituted exclusively for day and night patrolling. Day and night patrolling by staff and watchers has to be ensured and a vehicle to be exclusively provided for the purpose. For patrolling purpose, a minimum of five watchers shall be appointed to keep vigil on the boundary. All the man power required

have to be engaged only from the rehabilitated area close to the boundary.

g. Any infrastructure without proper maintenance will not serve the purpose for long. Hence all these infrastructures mentioned above shall be maintained all time.

h. Early warning system is found to be very effective for preventing HEC in Kerala as well as in Tamil Nadu. Hence this advanced system shall be installed in the conflict areas. This can include sirens at the energizer points at every 2 kms so that any presence of elephants can immediately be brought to the notice of the people around. In addition, a specially developed mobile application shall be provided to all inhabitants to inform the presence of elephants around the human habitations.

i. Most part of the rehabilitated area adjoining the sanctuary boundary is full of thick vegetation. The area acts as a forest and is contiguous to the Aralam WLS. The undergrowth along the boundary of the rehabilitated area has to be cleared at least 40 meter width so as to create psychological barrier for the elephants.

j. Vegetative barriers using thorny plants which can repel both elephants and wild boar can be raised in 5 m width in close espacement in the cleared area (suggested in point i). Plants species such as *Caesalpinia sappan* (Chappangam or Pathimukham) and *Plumbago indica* (Koduveli) are suggested for raising the vegetative barriers. Both species in addition to being repellent of elephants and wild boar, have medicinal values which will fetch some income to the tribes in the adjoining areas. In open areas the mango ginger (*Curcuma amada* Roxb.) shall be planted which is a repellent to wild pig and income generating activity for the local dependent community.

k. There shall be temporary opening gates at least in three locations with fence so as to drive back the existing elephants residing in the farm area. This will also help

in driving back any elephant intruding through some other route into the rehabilitated area. I. Awareness campaigns and capacity building programmes shall be organized by Aralam Wildlife Management to inculcate various aspects of HEC, need for coexistence, etc. to the tribes residing in the rehabilitated area as well as other stakeholders in the adjoining areas of the Aralam WLS.

5. Paragraphs 11 and 12 of the statement of facts in the review petition are extracted:

11. Pursuant to the said direction in order to complete the work as directed by this Hon'ble court, the Chief Secretary convened a meeting and discussed various aspects regarding the construction of the Stone Wall which is highly expensive and as there is a shadow of doubt regarding the effectiveness of the stone wall in preventing the movement of the elephant to the farm land, it was decided to form an expert committee to evaluate the feasibility of the various mitigation measures in the region. The Expert committee consists of 1) Sri K.V. Uthaman, Chief Conservator of Forest and Field Director as Chairman 2) Deputy Director (TRDM) of the Scheduled Tribe Development department 3) Concerned Chief Engineer (PWD) and an expert Dr.P.S.Easa (Member of IUCN/SSC Asian Elephant Specialist Group and Former Director (KFRI) was constituted to assess the mitigation measures and suggest various measures suitable for prevention of entry of wild life to Aralam Farm resettlement area. The committee submitted its report with 12 suggestions which according to the expert committee will be more effective to mitigate the issues compared to the construction of Concrete Compound wall in the entire length. The committee also found that the construction of Hanging Solar Power Fencing was found to be more effective and can be completed well within the time stipulated by this Hon'ble court and the cost of construction

also will be much less than the cost of construction of the Concrete wall. A true copy of the Report of the Expert Committee is produced herewith and marked as Annexure I.

12. It is respectfully submitted that the review

petitioners have not thought of constitution of an expert committee and appointment of expert committee was thought of on the background of the direction of this Hon'ble court to complete the construction work within 18 months from the date of receipt of the Judgment. In the above circumstance this review petition is necessitated to bring to the notice of this Hon'ble court that an expert committee has opined and suggested a more effective measure to prevent the intervention of wild elephants to the Aralam resettlement area and to seek permission of this Hon'ble court for construction of Hanging Solar Power Fencing and also other measures suggested in Annexure I report instead of Construction of concrete wall.

6. True that, there is no case before us for construction of

Hanging Solar Power Fencing instead of concrete compound wall to the entire length, but at the same time, we cannot ignore the suggestions of the expert committee as regards effectiveness of the measures to mitigate the issues, mainly prevention of elephants from entering into habitated areas.

7. The concluding remarks of the expert committee are to

the effect that if all the above suggestions of the members of the committee are implemented properly, it is expected that it will have more effectiveness to mitigate the issues compared to the construction of a concrete/composite wall in the entire length. The time taken to complete the above suggested activities could be well within the time stipulated by the Honble High Court of Kerala. On the other hand, construction of concrete/composite wall requires at least 3 years, which is much more beyond the stipulated time. In view of the economic cost involved, construction of concrete wall would cost at least five- times more than the above suggested mitigation measures. The economic cost worked out for various mitigation measures including maintenance for five years is given in Annexure-1. Also, the ecological cost involved for construction of the concrete wall is much

higher than the above-suggested mitigation measures. In long-term perspectives, the Committee feels that the above-suggested mitigation measures are more viable and feasible in the area.

8. Though on the facts, there cannot be any review of the

judgment. However, having regard to the expert opinion as stated supra, we are of the view that judgment made in W.P(C).No.24229 of 2016 dated 05.08.2021 requires a modification that instead of a concrete wall, construction of Hanging Solar Power Fencing be done.

9. While issuing directions in W.P(C).No.24229 of 2016, we

granted 18 months time for completion of the work. However, as considerable time has elapsed, taking note of the issue of preventing entry of elephant to Aralam Farm land and causing lose to life and property of the inhabitants, we direct the review petitioners to issue all necessary orders for commencement and completion of Hanging Solar Power Fencing within one year from the date of receipt of the order of review petition. Needless to say, as amount has already been sanctioned, work should be completed within the aforesaid period.

10. All directions issued in the judgment in W.P(C).No.24229

of 2016 dated 5.8.2021 will remain intact, except modification of construction of concrete compound wall into that of Hanging Solar Power Fencing. Accordingly, judgment in W.P(C).No.24229 of 2016 dated 5.8.2021 is modified and review petition is disposed of. Pending interlocutory applications, if any, shall stand closed. Sd/- S. Manikumar, Chief Justice Sd/- Shaji P. Chaly, Judge sou.
APPENDIX OF RP 73/2022 PETITIONERS ANNEXURES ANNEXURE 1 TRUE COPY OF THE REPORT OF THE EXPERT COMMITTEE

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