

Mihir Samson

Advocate

RPAD/Courier/Email

NOTICE

Shri. P. Mara Pandiyan,
Additional Chief Secretary
Forests and Wildlife Department,
Government Secretariat, South Block
Thiruvananthapuram, Kerala
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March 22, 2016

Dear Sir,

**Re: G.O. (Rt) No.84/2016/F&WLD providing a one-time opportunity to
declare illegal captive elephants in contravention of the Wild Life
(Protection) Act, 1972**

On behalf of my client, People for Ethical Treatment of Animals (PETA) India, a charitable company registered under Section 25 of the Companies Act, 1956, having its registered office at 14 Doctor Lane, Classic House, Gol Market, New Delhi-110001, I have to state as follows:

1. My client is a reputed organisation in India, working for the promotion and protection of animal welfare. It has been consistently raising concerns over the inhuman and cruel treatment of animals in India. My client has been a whistle-blower, raising concerns on critical issues such as the inhumane conditions and deplorable handling of animals in various facets of the trade industry, such as animals raised for food, animals used in the clothing trade, in laboratories as test subjects and in the entertainment industry, amongst others. My client also worked on a variety of other issues, such as the use of animals for labour, protection of birds, as well as stray and domesticated

animals. The initiatives undertaken by my client include investigative and public education efforts, research relating to animal welfare, animal rescues, legislative reforms, and organising special events to spread awareness about harms caused to animals by human conduct, among other initiatives.

2. As you are aware, the Wild Life (Protection) Act, 1972 ("the Act") was enacted to protect wildlife and prevent illegal poaching and trade of animal articles. The Indian Elephant, in particular, is a protected species under Schedule I of the Act.
3. Elephants are wild animals that cannot be domesticated, and are treated as such under the law. They are illegally captured from the wild and their will is subsequently "broken" through torture in order to tame and subjugate them. Such elephants are then forced to perform in circuses and temples, haul and lift heavy loads, and serve as transport. The average conditions and treatment of captive elephants in India are appalling, as the creatures are subject to a host of inherently cruel practices, such as being chained throughout the day, being forced to travel long distances by foot without adequate food, water and rest; being left neglected and alone although they are social animals; and being subjugated through the use of tools and instruments which injure and instil fear and distress in the animals.
4. Since a majority of captive elephants in India are owned by private individuals, Section 40(1) of the Act, at the time of its commencement, that is on 9th September 1972, allowed elephant owners to "declare" the elephants in their custody within a limited time period, and be issued ownership certificates by the Chief Wildlife Warden, subject to ensuring that their conditions of living were adequate in terms of Sections 41 and 42. Section 40(2) however provides that after the commencement of the Act, any acquisition, sale, receipt, keeping in control or custody of captive

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elephants by any person, except by express permission in writing by the Chief Wildlife Warden, was and is prohibited and illegal.

5. Further, Section 40(4) provides that the State Government may require, by notification, any person to declare to the Chief Wildlife Warden or the authorized officer, any animal in his control, custody or possession in such form, in such manner, and within such time, as may be prescribed. The term "notification" used in Section 40(4) has been defined under Section 2(22) of the Act to mean a notification published in the Official Gazette. Notwithstanding Sections 40(2) and 40(4), Section 40A provides for immunity in certain cases where an animal has not been declared as per the Section 40(1) and (4), allowing the Central Government, but not the State Government, to require, by notification, any person to declare a captive animal to the Chief Wildlife Warden. In pursuance of Section 40A, the Central Government notified the Declaration of Wild Life Stock Rules, 2003 allowing persons to declare captive animals other than those declared under Section 40 at the time of the commencement of the Act.
6. Any animal declared under Section 40 and 40A has to be dealt with under the provisions of Sections 41 and 42, in order to receive an ownership certificate, including an inspection of the premises and an opinion of the Chief Wildlife Warden that the applicant had adequate facilities for housing, maintenance and upkeep of the animal. Needless to state, an ownership certificate may be refused if the conditions under the Act are not met.
7. The purport of the above provisions of the Act and the 2002 Amendment are that all captive elephants must have been declared to the Chief Wildlife Warden either under Section 40 at the time of the commencement of the ACT or under Section 40A pursuant to the Declaration of Wild Life Stock Rules, 2003. That any captive elephant which has not been declared after 2003 is the property of the government, and consequently in illegal custody

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of other persons. Further, captive elephants which have been declared but in respect of which, an ownership certificate has not been granted or obtained, shall also be treated as government property. All persons in illegal possession of such elephants are liable to be convicted and punishable with a minimum imprisonment of 3 years which may extend to 7 years, and fined not less than Rs. 10,000. The illegal elephants must be seized by the State Government vide its powers under Section 50 of the Act.

8. On 26th February 2016, the Forest and Wild Life Department of the Government of Kerala, issued a Government Order numbered G.O. (Rt) No.84/2016/F&WLD directing the Chief Wildlife Warden to:

"register 289 captive elephants in the State which do not have valid Ownership Certificate as one time amnesty scheme for a period of one month from the date of this order under Subsection (4) of Section 40 of the Wildlife Protection Act 1972 on condition that the illegal transfer of elephants must not be condoned. The Chief Wildlife Wardens will initiate necessary action against the custodians of undeclared Captive Elephants after the said period under the Wildlife Protection Act."

9. The Government Order dated 26th February 2016 placed reliance on an *interim* order of the Hon'ble Supreme Court in W.P.(C) 743 of 2014, dated 18th August 2015, wherein the Court had directed the State of Kerala to take appropriate action against the owners of illegal captive elephants. However, the G.O. has evidently misinterpreted the *interim* order and taken action in favour of the owners keeping illegal elephants. The Government Order dated 26th February 2016 further relied on the proposal of the Principal Chief Conservator of Forests(Wildlife) vide a letter dated 18th September 2015 to provide a one-time opportunity to declare Captive elephants under Section 40(4) or initiate action under Section 50(3A) of the Act.

10. That the Kerala Government Order dated 26th February 2016 is *ex facie* illegal and *ultra vires* the Wild Life (Protection) Act 1972.

11. First, Section 40(4) empowers the State Government to allow the declaration *qua* an animal, *by notification*. The order dated 26th February 2016 is merely a Government Order and is not a notification in the Official Gazette, and therefore carries no authority under Section 40(4) of the Act.
12. Second, the Government Order dated 26th February 2016 provides for the “registration” of illegal elephants, a procedure which has not been contemplated under the Act. The Government Order is also vague, as it fails to clarify whether all illegal captive elephants which are registered pursuant to the order will be provided an ownership certificate after following the procedure laid down in Sections 41 and 42. Under the Act, the mere declaration of elephants is not sufficient to ensuring a valid ownership certificate.
13. Third, elephant owners have already been granted two separate opportunities to declare captive elephants under Section 40 and Section 40A respectively. The granting of a third opportunity to elephant owners to declare illegal elephants will only further encourage illegal trade of elephants in the State, undermine the conservation efforts of the Government and is contrary to the purpose and spirit of the Wild Life (Protection) Act, 1972. By a letter dated 16th May 2012, the Minister of State (Environment and Forests), wrote to the Hon’ble Minister of Forests and Wildlife, Kerala, and expressed the same view while rejecting the State of Kerala’s request to the Central Government to extend the time limit for declaration of animals under the Declaration of Wild Life Stock Rules, 2003 beyond 180 days.
14. Fourth, by providing further amnesty to law-breakers who keep illegal elephants, illegal trade and consequently inhumane and cruel treatment towards elephants is encouraged and goes unregulated, in violation of the Prevention of Cruelty to Animals Act, 1960. The Hon’ble Supreme Court held in *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547

that all living creatures have a fundamental right to live with dignity, free from unnecessary pain and suffering under Article 21 of the Constitution, read with Article 51A(g) and Sections 3 and 11 of the Prevention of Cruelty to Animals Act, 1960. The State of Kerala has acted in gross neglect of the law and rules in force on the protection of live elephants by issuing the Government Order dated 26th February 2016.

15. In light of what is stated above, my client calls upon you to strictly enforce the provisions of the law pertaining to the protection of elephants in letter and spirit. Therefore, you are called upon to within 7 days hence,

- i. Immediately withdraw/cancel the operation of G.O. (Rt) No.84/2016/F&WLD dated 26th February 2016 issued by the Forest and Wild Life Department, State of Kerala.
- ii. De-register all elephants declared pursuant to G.O. (Rt) No.84/2016/F&WLD dated 26th February 2016;
- iii. Take strict action under Sections 50 and 51 of the Wild Life (Protection) Act, 1972 against the owners of the 289 elephants in Kerala without a valid Ownership Certificate;

failing which our client shall be constrained to take appropriate action in law, including a writ petition as well as for injunctive relief against you at your entire risk as to costs and consequences, as which please note.

Regards,



Mihir Samson

Cc:

1. Dr. Bransdon S. Corrie, IFS, Principal Chief Conservator of Forests and Head of Forest Forces, Forests and Wildlife Department, State of Kerala, Forest Headquarters, Vazhuthacaud, Thiruvananthapuram- 695014
2. Shri. G. Harikumar, Principal Chief Conservator of Forests (Wildlife) Forests and Wildlife Department, State of Kerala, Forest Headquarters, Vazhuthacaud, Thiruvananthapuram- 695014