

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA**

In the matter of an application for mandates in the nature of Writs of Certiorari, Prohibition and Mandamus, in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/WRIT/420/2021

1. Centre for Eco- Cultural Studies,
No. 1613, Malabe Road, Kottawa,
Pannipitiya.
And
P.O. Box 03, Diyakapilla,
Sigiriya.
2. Justice for Animals
No. 17, Skelton Gardens,
Colombo 05.

PETITIONERS

Vs.

1. Hon. Wimalaweera Dissanayake,
State Ministry of Wildlife Protection,
Adoption of Safety measures including
the Construction of Electrical Fences
and Trenches and Reforestation and
Forest Resource Development.

Hon. Mahinda Amaraweera,
Minister of Agriculture,
Miniter of Wildlife and Forest
Resources Conservation
No. 1090, Sri Jayawardenapura
Mawatha, Rajagiriya.

Substituted 1st Respondent

2. Mr. W. P. P. Fernando,
Secretary,
State Ministry of Wildlife Protection,
Adoption of Safety measures including
the Construction of Electrical Fences
and Trenches and Reforestation and
Forest Resource Development.
3. Mr. Somaratne Widanapathirana,
Secretary,
Ministry of Wildlife and Forest
Conservation,
No. 1090, Sri Jayawardhanapura
Mawatha, Rajagiriya.

Mrs. R. M. C. M. Herath,
Secretary- Ministry of Wildlife and
Forest Resources Conservation,
No. 1090, Sri Jayawardenapura
Mawatha, Rajagiriya.

Substituted 3rd Respondent

4. Mr. Chandana Sooriyabandara,
Director General,
Department of Wildlife Conservation,
No. 811/ A, Jayanthipura Main Road,
Battaramulla.
5. Ms. Renuka Bandaranayake,
Acting Director,
Department of National Zoological
Gardens,
Anagarika Dharmapala Mawatha,
Dehiwala.

Dr. Thilak Premakantha,
Director,
Department of National Zoological
Gardens.

Substituted 5th Respondent

6. Hon. Nimal Siripala de Silva,
Minister of Labour

NOW

Minister of Ports, Shipping and
Aviation

7. Hon. (Prof.) G. L. Peiris,
Foreign Minister

Hon. Susil Premajayantha,
Minister of Education,
Ministry of Education,
Isurupaya, Battaramulla.

Substituted 7th Respondent

8. Hon. (Mrs.) Pavithra Devi
Wanniarachchi
Minister of Transport

Hon. (Dr.) Wijeyadasa Rajapaksa,
Minister of Justice, Prison Affairs and
Constitutional Reforms and Justice,
Ministry of Justice,
19, Sri Sangaraja Mawatha,
Colombo 10.

Substituted 8th Respondent

9. Hon. Dinesh Gunawardena,
Minister of Education

NOW

Hon. Prime Minister,
Minister of Public Administration,
Home Affairs, Provincial Councils and
Local Government.

10. Hon. Douglas Devananda,
Minister of Fisheries.

11. Hon. Gamini Lokuge,
Minister of Power

Hon. Harin Fernando,
Minister of Tourism and Lands,
Ministry of Tourism and Lands,
6th Floor, 21, Rakshana Mandiraya,
Vauxhall Street,
Colombo 2.

Substituted 11th Respondent

12. Hon. (Dr.) Bandula Gunawardena,
Minister of Trade

NOW
Minister of Transport and Highways

13. Hon. C. B. Rathnayake,
Minister of Wildlife and Forest
Conservation,
No. 1090, Sri Jayawardhanapura
Mawatha, Rajagiriya.

Hon. Vidura Wickramanayaka,
Minister of Buddhasasana, Religious
and Cultural Affairs,
Ministry of Buddhasasana, Religious
and Cultural Affairs,
135, Srimath Anagarika Dharmapala
Mawatha, Colombo 7.

Substituted 13th Respondent

14. Hon. Mahinda Rajapaksa,
Minister of Buddhasasana, Religious
and Cultural Affairs,
Minister of Urban Development and
Housing
Minister of Economic Policies and Plan
Implementation.

Hon. Kanchana Wijesekara,
Minister of Power and Energy,
Ministry of Power and Energy,
437, Galle Road, Colombo 3.

15. Hon. Janaka Bandara Tennakoon,
Minister of Public Services, Provincial
Councils and Local Government

Hon. Naseer Ahamed,
Minister of Environment,
Ministry of Environment,
Sobadam Piyasa,
416/C/1, Robert Gunawardana
Mawatha, Battaramulla.

Substituted 15th Respondent

16. Hon. Keheliya Rambukwella,
Minister of Health

NOW
Minister of Health and Water Supply

17. Hon. Chamal Rajapaksa,
Minister of Irrigation

Hon. Roshan Ranasinghe,
Minister of Irrigation,
Minister of Sports and Youth Affairs,
Ministry of Sports and Youth Affairs,
9, Phillip Gunawardana Mawatha,

Colombo 7.

Substituted 17th Respondent

18. Hon. Dullas Alahapperuma,
Minister of Mass Media

Hon. Manusha Nanayakkara,
Minister of Labour and Foreign
Employment,
Ministry of Labour and Foreign
Employment,
6th Floor, Mehewara Piyasa,
Narahenpita,
Colombo 5.

Substituted 18th Respondent

19. Hon. Johnston Fernando,
Minister of Highway,

Hon. Tiran Alles,
Minister of Public Security,
Ministry of Public Security,
14th Floor, Suhurupaya,
Battaramulla.

Substituted 19th Respondent

20. Hon. Wimal Weerawansa,
Minister of Industries

Hon. Nalin Fernando,
Minister of Trade, Commerce and
Food Security,
27, CWE Secretariat Building,
Vauxhall Street,
Colombo 2.

Substituted 20th Respondent

21. Hon. Basil Rajapaksa,
Minister of Finance.
22. Hon. Mahinda Amaraweera,
Minister of Environment.
23. Hon. S. M. Chandrasena,
Minister of Lands.
24. Hon. Mahindananda Aluthgamage,
Minister of Agriculture.
25. Hon. Vasudeva Nanayakkara,
Minister of Water Supply.
26. Hon. Udaya Prabhath Gammanpila,
Minister of Energy.
27. Hon. (Dr.) Ramesh Pathirana,
Minister of Plantation.
28. Hon. Prasanna Ranatunga,
Minister of Tourism.
29. Hon. Rohitha Abeygunawardhana,
Minister of Ports and Shipping.
30. Hon. Namal Rajapaksa,
Minister of Youth and Sports
Minister of Development Coordination
and Monitoring.
31. Hon. Ali Sabry PC,
Minister of Justice.
32. Hon. Sarath Weerasekara
Minister of Public Security.
33. Mr. W. M. D. J. Fernando,
Secretary to the Cabinet of Ministers,
Office of the Cabinet of Ministers,
Republic Building,
Sir Baron Jayathilaka Mawatha,
Colombo 01.
34. Hon. Attorney General
Attorney General's Department,
Colombo 12.
35. P.A. Jayanga,
Officer- in- Charge,
Special Investigation Unit- 01
Criminal Investigation Department,
Sri Lanka Police,

- York Street,
Colombo.
36. Rohana Premaratne,
Senior Superintendent of Police,
Director,
Criminal Investigations Department,
Sri Lanka Police,
York Street,
Colombo.
37. C. D. Wickramaratne,
Inspector General of Police,
Sri Lanka Police,
Police Headquarters,
Colombo 01.
38. U. G. Mihiran Madawala,
Assistant Director,
Pinnawala Elephant Orphanage,
Department of National Zoological
Gardens,
Pinnawala.
39. Dr. Vijitha Perera,
Veterinary Sergeant/ Officer in
Charge,
Udawalawa Elephant Transit Home
and Elephant Holding Site,
Department of Wildlife Conservation,
Udawalawa.
40. Hemantha Samarasekera
Assistant Director,
Ridiyagama Safari Park,
Department of National Zoological
Gardens,
Ridiyagama.
41. Suneth Chathuranga Weerasinghe,
Monorowiya Watta, "Block C"
Colombo Road, Alawwa.
42. Bharatha Dewapriya Amawathunga,
No. 536, Old Road,
Meegoda.
43. Ajith Siri Kumara Gallage,

- No. 133A, Pagoda Road,
Pitakotte,
Kotte.
44. Hasantha Champika Samarasekara
Karunaratne,
No. 133A, Pagoda Road, Pitakotte,
Kotte.
45. Waruna Lanka Wijesinghe
Kannagara,
Kahatapitiya,
Kannawila,
Horana.
46. Withana Pathrennehelage Harshana
Deepthi Kumara,
No. 199/2,
Biyagama.
47. John Paalu Irugalbandara Kamal
Kithsiri,
No. 685, Athurugiriya Road, Kottawa.
48. Buddhika Deshapriya Mirihalla,
Pallewatta, Mawela,
Singula.
49. Ven. Boralande Wajiragnana Thero,
Incumbent Viharadhipathi,
Sri Sambodhi Viharaya,
R. G. Senanayake Mawatha,
Colombo 7.
50. Wijemanna Mohottige Don Samantha
Udayanga Wijemanne,
No. A72/1, Gangabada Watta,
Medagoda, Amithirigala.
51. Kolonnawe Sri Sumangala Thero,
Sri Devram Maha Vehera,
Pannipitiya.
52. W. M. B. S. U. Wijemanna
A/1/72, Gangabada Watta,
Medagoda,
Amithirigala.
53. S. C. Hapuarachchi

Indrani Veediyagoda
Bandaragama.

41st to 53rd Added Respondents

RESPONDENTS

CA/WRIT/423/2021

1. Centre for Environmental Justice,
(Guarantee Limited),
No. 20/A, Kuruppu Road, Colombo 08.
2. Withanage Don Hemantha Ranjith
Sisira Kumara,
Director and Senior Advisor,
Centre for Environmental Justice,
No. 20A, Kuruppu Road, Colombo 08.
3. Pathragoda Kankanamge Dilena,
Executive Director,
Centre for Environmental Justice,
No. 20 A, Kuruppu Road, Colombo 08.
4. Panchali Madurangani Panapitiya,
565/4A, Mihindu Mawatha, Malabe.
5. Maheshi Nalinka Munasinghe,
No. 5, Jayanthipura Road,
Battaramulla.
6. Wadduwage Visakha Perera
Tillekeratne,
73/12, Kirillapone Avenue,
Colombo 05.

PETITIONERS

Vs.

1.Hon. Wimalaweera Dissanayake,
State Ministry of Wildlife Protection,
Adoption of Safety Measures including
the Construction of Electrical Fences and
Trenches and Reforestation and Forest
Resources Development.

“Sobadam Piyasa”, 5th Floor,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

2.Chandana Sooriyabandara,
Director General,
Department of Wildlife Conservation,
No. 811/A Jayanthipura Main Road,
Battaramulla.

3.Director General,
Department of National Zoological
Gardens,
Anagarika Dharmapala Mawatha,
Dehiwala.

3A. Renuka Bandaranayake
Director General (Acting)
Department of National Zoological
Gardens,
Anagarika Dharmapala Mawatha,
Dehiwala.

4.Officer- in- Charge,

Special Investigation No.01
Criminal Investigation Department,
York Street,
Colombo.

4A.P.A. Jayanga,
Officer-in-Charge,
Special Investigation No.01
Criminal Investigation Department,
York Street,
Colombo.

5. C. D. Wickramaratne,
Inspector General of Police,
Police Headquarters
Colombo 01.

6. Hon. S. Prabhakaran,
Additional Magistrate,
Chief Magistrate's Court,
Colombo 12.

7. Hon. C. Wickramanayake,
The Magistrate,
Magistrate Court,
Matale.

8. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

9. Dishan Wickramaratne
Gunasekara

- Polkantha, Malimbada,
Polatuwa, Matara.
10. Waruna Lanka Wijesinghe
Kannangara, Kahapitiya, Kanwila,
Horana.
11. Suneth Chathuranga Weerasinghe,
Monroviyawatta, Part C,
Colombo Road, Allawwa
12. S.N. Roshan, 363/3,
Gamunu Mawatha,
Pelanwatta Road, Pannipitiya.
13. W.P.H. Deepthi Kumara,
199/2, Biyagama.
14. I.B. Kamal Kithsiri, 685,
Athurugiriya Road,
Kottawa.
15. W.M.B. Samantha Udaya
Wijemanna, A/1,
72, Gangabadawatta, Medagoda,
Amitirigala.
16. Buddhika Deshapriya Mirihella,
Pallewatta, Mawela, Higula.
17. Chief Incumbent, Sri Sambodhi
Viharaya, Colombo 07.
18. Ajith Sirikumara Gallage,
Ramanayake Mawatha,
Hokandara South, Hokandara.

19. Hasanthi Champika, Samarasekara
Karunaratna, Opatha Walawwa,
Opatha, Ganegoda.
20. Bharatha Deshapriya,
Amaratunga, 563, Old Road,
Meegoda.

RESPONDENTS

CA/WRIT/431/2021

1. Chandra Jayaratne
2, Greenlands Avenue,
Colombo 5.
2. Sharmini Pieris
4, Elliot Place,
Colombo 8.
3. Umanga Thammannagoda
65/14J, Kumaragewatte Road,
Pelawatte.
3. Amalee Perera
174, Polhengoda Road,
Colombo 5.
4. Dulani De Silva
8, Green Path,
Kohuwala.
5. Reverend Matara Ananda Sagara
Thero
Pahiyangala Gallen Viharaya,
Bulathsinghala.

PETITIONERS

Vs.

1. Hon. Wimalaweera Dissanayake,
State Ministry of Wildlife
Protection, Adoption of Safety
Measures including the
Construction of Electrical Fences
and Trenches and Reforestation
and Forest Resource Development.

1A. Mahinda Amaraweera,
Minister of Agriculture
Minister of Wildlife and Forest
Resources Conservation
No. 1090, Sri Jayawardenapura
Mawatha, Rajagiriya.

2. Mr. W.P. P. Fernando,
Secretary, State Ministry of Wildlife
Protection, Adoption of Safety
Measures including the
Construction of Electrical Fences
and Trenches and Reforestation
and Forest Resource Development.

3. Mr. Somaratne Widanapathirana,
Secretary, Ministry of Wildlife and
Forest Conservation,
No. 1090, Sri Jayawardhanapura
Mawatha, Rajagiriya.

3A. Mrs. R. M. C. M. Herath,
Secretary, Ministry of Wildlife and
Forest Resources Conservation,
No. 1090, Sri Jayardenapura
Mawatha, Rajagiriya.

4. Mr. Chandana Sooriyabandara,
Director General,
Department of Wildlife
Conservation,
No. 811/A Jayanthipura Main
Road,
Battaramulla.

5. Ms. Renuka Bandaranayake
Acting Director,
Department of National Zoological
Gardens,
Anagarika Dharmapala Mawatha,
Dehiwala.

5A. Dr. Tilak Premakantha
Director
Department of National Zoological
Gardens
Anagarika Dharmapala Mawatha,
Dehiwala.

6. P. A. Jayanga,
Officer- in- Charge,
Special Investigation Unit- 01
Criminal Investigation
Department,
Sri Lanka Police,
York Street,
Colombo.

7. Rohana Premaratne
Senior Superintendent of Police,

Director,
Criminal Investigation
Department,
Sri Lanka Police,
York Street,
Colombo.

8. C. D. Wickramaratne

Inspector General of Police,
Sri Lanka Police,
Police Headquarters
Colombo 01.

9. U. G. Mihiran Madawala

Assistant Director,
Pinnawala Elephant Orphanage,
Department of National Zoological
Gardens,
Pinnawala.

10. Dr. Vijitha Perera

Veterinary Sergeant/ Officer in
Charge,
Udawalawa Elephant Transit
Home and Elephant Holding Site,
Department of Wildlife
Conservation,
Udawalawa.

11. Hemantha Samarasekera

Assistant Director,
Ridiyagama Safari Park,

Department of National Zoological
Gardens, Ridiyagama.

12. Hon. Nimal Siripala De Silva

Minister of Labour.

12A. Manusha Nanayakkara,

Minister of Labour and Foreign
Employment,

Ministry of Labour and Foreign
Employment

6th Floor, Mhewara Piyasa,

Narahenpita, Colombo 05.

13. Hon. (Prof.) G. L. Peiris

Foreign Minister.

13A. Hon. M. U. M. Ali Sabri

Foreign Affairs Minister

14. Hon. (Mrs.) Pavithra Devi

Wanniarachchi

Minister of Transport.

14A. Hon. Bandula Gunawardena

Minister of Transport and
Highways and Mass Media

15. Hon. Dinesh Gunawardena,

Minister of Education.

15A. Hon. Susil Premajyantha,

Minister of Education,

Ministry of Education,

Isurupaya,

Battaramulla.

16. Hon. Douglas Devananda
Minister of Fisheries.
17. Hon. Gamini Lokuge,
Minister of Power.
- 17A. Hon. Kanchana Wijesekera,
Minister of Power and Energy,
Ministry of Power Energy,
437, Galle Road,
Colombo 3.
18. Hon. (Dr.) Bandula Gunawardena
Minister of Trade
- 18A. Hon. Nalin Fernando,
Minister of Trade, Commerce and
Food Security,
Ministry of Trade, Commerce and
Food Security,
27, CWE Secretariat Building,
Vauxhall Street,
Colombo 12.
19. Hon. C.B. Rathnayake,
Minister of Wildlife and Forest
Conservation,
No. 1090, Sri Jayawardhanapura
Mawatha, Rajagiriya.
- 19A. Hon. Mahinda Amaraweera,
Minister of Agriculture
Minister of Wildlife and Forest
Resources Conservation

No. 1090, Sri Jayawardenapura
Mawatha, Rajagiriya.

20. Hon. Mahinda Rajapaksa

Minister of Buddhasasana,
Religious and Cultural Affairs

Minister of Urban Development
and Housing

Minister of Economic Policies and
Plan Implementation.

20A. Vidura Wickramanayaka,

Minister of Buddhasasana,
Religious and Cultural Affairs,

Ministry of Buddhasasana,
Religious and Cultural Affairs,

135, Srimath Anagarika
Dharmapala Mawatha, Colombo 7.

21. Hon. Janaka Bandara Tennakoon

Minister of Public Services,
Provincial Councils and Local
Government.

21A. Hon. Dinesh Gunawardena,

Minister of Public Administration,
Home Affairs, Provincial Councils
and Local Government

22. Hon. Keheliya Rambukwella

Minister of Health

AND NOW

Minister of Health and Water
Supply

23. Hon. Chamal Rajapaksa

Minister of Irrigation.

- 23A. Hon. Roshan Ranasinghe,
Minister of Irrigation and Sports
and Youth Affairs,
Ministry of Sports and Youth
Affairs,
9, Phillip Gunawardana Mawatha,
Colombo 7.
24. Hon. Dullas Alahapperuma
Minister of Mass Media
- 24A. Hon. Bandula Gunawardena
Minister of Transport and
Highways and Mass Media
25. Hon. Johnston Fernando
Minister of Highways.
- 25A. Hon. Bandula Gunawardena,
Minister of Transport and
Highways and Mass Media
26. Hon. Wimal Weerawansa
Minister of Industries.
- 26A. Hon. Romesh Pathirana
Minister of Industries and
Plantation Industries
27. Hon. Basil Rajapaksa
Minister of Finance
- 27A. Hon. Ranil Wickramasinghe
Minister of Finance, Economic
Stabilization and National Policies
28. Hon. Mahinda Amaraweera
Minister of Environment.

- 28A. Hon. Naseer Ahamed,
Minister of Environment,
Ministry of Environment,
Sobadam Piyasa,
416/C/1, Robert Gunawardana
Mawatha, Battaramulla.
29. Hon. S. M. Chandrasena
Minister of Lands.
- 29A. Hon. Harin Fernando,
Minister of Tourism and Lands,
Ministry of Tourism and Lands,
6th Floor, 21. Rakshana
Mandiraya,
Vauxhall Street,
Colombo 2.
30. Hon. Mahindananda Aluthgamage
Minister of Agriculture.
- 30A. Hon. Mahinda Amaraweera,
Minister of Agriculture
Minister of Wildlife and Forest
Resources Conservation
No. 1090, Sri Jayawardenapura
Mawatha, Rajagiriya.
31. Hon. Vasudeva Nanayakkara
Minister of Water Supply.
- 31A. Hon. Keheliya Rambukwella,
Minister of Health and Water
Supply.
32. Hon. Udaya Prabhath Gammanpila

Minister of Energy.

- 32A. Hon. Kanchana Wijesekara,
Minister of Power and Energy,
Ministry of Power and Energy,
437, Galle Road,
Colombo 3.
33. Hon. (Dr.) Ramesh Pathirana
Minister of Plantation
AND NOW Plantation Industries
34. Hon. Prasanna Ranatunga
Minister of Tourism
- 34A. Hon. Harin Fernando,
Minister of Tourism and Lands,
Ministry of Tourism and Lands,
6th Floor, 21, Rakshana
Mandiraya,
Vauxhall Street, Colombo 2.
35. Hon. Rohitha Abeygunawardhana
Minister of Ports and Shipping.
- 35A. Hon. Nimal Siripala de Silva,
Minister of Ports, Shipping and
Aviation.
36. Hon. Namal Rajapaksa
Minister of Youth and Sports
Minister of Development
Coordination and Monitoring.
- 36A. Hon. Roshan Ranasinghe,
Minister of Irrigation and Sports

and Youth Affairs,

Ministry of Sports and Youth
Affairs,

9, Phillip Gunawardana Mawatha,
Colombo 7.

37. Hon. Ali Sabry PC

Minister of Justice

37A. Hon. (Dr.) Wijeyadasa Rajapaksa,

Minister of Justice, Prison Affairs
and Constitutional Reforms and
Justice,

Ministry of Justice,

19, Sri Sangaraja Mawatha,

Colombo 10.

38. Hon. Sarath Weerasekara

Minister of Public Security

38A. Hon. Tiran Alles,

Minister of Public Security,

Ministry of Public Security,

14th Floor, Suhurupaya,
Battaramulla.

39. Mr. W. M. D. J. Fernando

Secretary to the Cabinet of
Ministers

Office of the Cabinet of Ministers

Republic Building,

Sir Baron Jayathilaka Mawatha,

Colombo 01.

40. Hon. Attorney General

Attorney General's Department,
Colombo 12.

41. Suneth Chathuranga Weerasinghe
Monrowiya Watta, "Block C",
Colombo Road,
Alawwa.

42. Ven. Boralande Wajiragnana
Thero
Incumbent Viharadhipathi Sri
Sambodhi Viharaya,
R. G. Senanayake Mawatha,
Colombo 07.

43. John Paulu Irugalbandarage
Kamal Kithsiri
No. 685, Athurugiriya Road,
Kottawa.

44. Buddhika Deshapriya Mirihalla
Pallewatta,
Mawela Singula.

RESPONDENTS

CA/WRIT/433/2021

1. Radhika Coomaraswamy
No. 27 1/C, Pedris Road, Colombo
03.

2. Jayanthi Kuru Uthumpala
No. 9/8- 1/1, Ebert Place,
Colombo 05.

3.Natasha Balendra

No. 3/5, Maitland Crescent,
Colombo 07.

4.Deanne Uyangoda

No. 38/1, Bovitiya Mawatha,
Subadhrarama Lane,
Nugegoda.

5.Yamindra Perera

No. 130, Reid Avenue, Colombo 07.

PETITIONERS

Vs.

1.Hon. S. Prabhakaran

Additional Magistrate
Magistrate's Court of Colombo.

2.Hon. Buddhika Sri Ragala,

Chief Magistrate,
Magistrate's Court of Colombo.

2A. Hon. Nandana Amarasinghe,

Chief Magistrate,
Magistrates Court of Colombo.

3.Hon. Wimalaweera Dissanayake,

State Ministry of Wildlife Protection,
Adoption of Safety Measures including
the Construction of Electrical Fences and
Trenches and Reforestation and Forest
Resources Development.

4. Mr. W. P. P. Fernando

Secretary, State Ministry of Wildlife
Protection, Adoption of Safety Measures
including the Construction of Electrical
Fences and Trenches and Reforestation
and Forest Resources Development.

5. Hon. C. B. Rathnayake

Minister of Wildlife and Forest
Conservation,
No. 1090, Sri Jayawardhanapura
Mawatha, Rajagiriya.

6. Mr. Somaratne Widanapathirana,

Secretary, Ministry of Wildlife and
Forest Conservation,
No. 1090, Sri Jayawardhanapura
Mawatha, Rajagiriya.

7. Mr. Chandana Sooriyabandara,

Director General,
Department of Wildlife Conservation,
No. 811/A Jayanthipura Main Road,
Battaramulla.

8. P. A. Jayanga,

Officer-in-Charge,
Special Investigation Unit- 01
Criminal Investigation Department,
Sri Lanka Police,
York Street,

Colombo.

9.Rohana Premaratne,
Senior Superintendent of Police,
Director,
Criminal Investigation Department,
Sri Lanka Police,
York Street,
Colombo.

10.C. D. Wickramaratne,
Inspector General of Police,
Sri Lanka Police,
Police Headquarters
Colombo 01.

11.Ms. Renuka Bandaranayake,
Acting Director,
Department of the National Zoological
Gardens,
Anagarika Dharmapala Mawatha,
Dehiwala.

12.U. G. Mihiran Madawala,
Assistant Director,
Pinnawala Elephant Orphanage,
Department of National Zoological
Gardens, Pinnawala.

13.Dr. Vijitha Perera
Veterinary Sergeant/ Officer in Charge
Udawalawa Elephant Transit Home

and Elepahnt Holding Site,
Department of Wildlife Conservation,
Udawalawa.

14.Hemantha Samarasekera

Assistant Director,
Ridiyagama Safari Park,
Department of National Zoological
Gardens,
Ridiyagama.

15.Dishan Wickremarate Gunasekara

Polkantha, Malimbada,
Palatuwa, Matara (Kataragama
Devalaya).

16.Waruna Lanka Wijesinghe

Kannangara
Kahapitiya, Kanwila, Horana.

17.Suneth Chathuranga Weerasinghe,

Monroviyawatta, Part C,
Colombo Road,
Allawwa.

18.S.N. Roshan

363/3, Gemunu Mawatha,
Pelanwatta Road,
Pannipitiya.

19.W.P.H. Deepthi Kumara

199/2, Biyagama

20.I. B. Kamal Kithsiri

685, Athurugiriya Road, Kottawa.

21. W. M. B. Samantha Udaya Wijemanne

A/1, 72, Gangabadawatta, Medagoda,

Amitirigala.

22. Buddhika Deshapriya Mirihella

Pallewatte, Mawela, Higula.

23. Chief Incumbent

Sri Sambodhi Viharaya,

Colombo 07.

24. Ajith Sirikumara Gallage

Ramanayake Mawatha,

Hokandara South,

Hokandara.

25. Hasanthi Champika Samarasekara

Karunaratne

Opatha Wallawwa,

Opatha, Ganegoda.

26. Bharatha Deshapriya Amaratunge,

563, Old Road, Meegoda.

RESPONDENTS

Before: Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel:

- Sanjeewa Jayawardena PC with Prashanthi Mahindaratna, Dilumi De Alwis and Lakmini Warusavithana for the Petitioners in CA/WRIT/420/2021.
- Ravindranath Dabare with Savanthi Ponnampereuma and Kanchana Balachandra for the Petitioners in CA/WRIT/423/2021.

- Uditha Egalahewa PC with N.K. Ashokbharan and Shenal Fernando for the Petitioners in CA/WRIT/431/2021.
- Dr. Romesh De Silva PC with Niran Anketel, Harith de Mel and Hasini Rupasinghe for the Petitioners in CA/WRIT/433/2021.
- Kanishka de Silva Balapatabendi DSG with Shemanti Dunuwille SC for 1st to 40th Respondents in CA/WRIT/420/2021, 1st to 8th Respondents in CA/WRIT/423/2021, 1st to 40th Respondents CA/WRIT/431/2021, 1st to 14th Respondents CA/WRIT/433/2021.
- Asthika Devendra with Kaneel Maddumage and Kavindi Weerasekara for the 41st Respondent in CA/WRIT/420/2021, 11th Respondent in CA/WRIT/423/2021, 41st Respondent CA/WRIT/431/2021, 17th Respondent in CA/WRIT/433/2021.
- Kuvera De Zoysa PC with Pasindu Parakrama for the 42nd and 43rd Respondents in CA/WRIT/420/2021, 18th and 20th Respondents in CA/WRIT/423/2021, 47th and 48th Respondents in CA/WRIT/431/2021, 24th and 26th Respondents in CA/WRIT/433/2021.
- Saliya Peiris PC with Kaneel Maddumage and Kavindi Weerasekara for the 45th, 46th, 50th and 52nd Respondents CA/WRIT/420/2021, 10th, 13th and 15th Respondents CA/WRIT/423/2021, 45th and 46th Respondents in CA/WRIT/431/2021, 16th, 19th and 21st Respondents in CA/WRIT/433/2021
- Kaneel Maddumage for the 47th, 48th and 53rd Respondents in CA/WRIT/420/2021, 14th and 16th Respondents CA/WRIT/423/2021, 43rd and 44th Respondents in CA/WRIT/431/2021, 20th and 22nd Respondents in CA/WRIT/433/2021
- Manohara De Silva PC with Kaneel Maddumage for the 49th Respondent in CA/WRIT/420/2021, 17th Respondent CA/WRIT/423/2021, 42nd Respondent in CA/WRIT/431/2021, 23rd Respondent in CA/WRIT/433/2021

Argued on: 11.11.2022, 21.11.2022, 25.11.2022, 29.11.2022, 01.12.2022, 02.12.2022, 05.12.2022, 06.12.2022, 09.12.2022, 13.01.2023, 01.02.2023, 13.07.2023, 12.10.2023, 06.11.2023, 27.11.2023, 18.01.2024.

Written Submissions:

Petitioners in CA/WRIT/420/2021- 15.02.2024
 Petitioners in CA/WRIT/423/2021- 13.02.2024

Petitioners in CA/WRIT/431/2021- 15.02.2024
 Petitioners in CA/WRIT/433/2021- -
 Respondents in CA/WRIT/420/2021- 19.02.2024 (41st added Respondent)
 19.02.2024 (51st,52nd and 53rd Respondents)
 16.02.2024 (45th, 46th, 50th and 52nd Respondents)
 Respondents in CA/WRIT/423/2021- 19.02.2024 (11th Respondent)
 16.02.2024 (10,13th and 15th Respondents)
 Respondents in CA/WRIT/431/2021- 19.02.2024 (41st Respondent)
 16.02.2024 (45th and 46th Respondents)
 Respondents in CA/WRIT/433/2021- 19.02.2024 (17th Respondent)
 16.02.2024 (16th,19th and 21st Respondents)

Written Submissions on Behalf of the 1st to 40th Respondents in CA/WRIT/420/2021, 1st to 8th Respondents in CA/WRIT/423/2021, 1st to 40th Respondents in CA/WRIT/431/2021, 1st to 14th Respondents in CA/WRIT/433/2021 - 12.02.2024

Decided on: 31.05.2024

Sobhitha Rajakaruna J.

The Petitioners of the Applications bearing numbers CA/WRIT/420/2021, CA/WRIT/423/2021 and CA/WRIT/431/2021 are primarily seeking a mandate in the nature of a Writ of Certiorari quashing the Fauna and Flora (Protection, Well-being and Regularization of Registration of Tamed Elephants) Regulations No. 01 of 2021 (hereinafter referred to as ‘Regulations’) published in Gazette Extraordinary No.241/41 on 19.08.2021. The Petitioners in the Application bearing No.CA/WRIT/433/2021 primarily seek a Writ of Certiorari quashing the Order of the learned Magistrate of Colombo dated 06.09.2021 by which the learned Magistrate has decided to release the elephants subjected to such case to their registered owners/custodians according to the aforementioned impugned Regulations. Additionally, a Writ of Mandamus is sought directing the Department of Wildlife Conservation to seize the possession of the elephants who were ordered to be released as per the said Order of the Magistrate’s Court. The Petitioners in the connected matters also

challenge the said Orders of the learned Magistrate of Colombo as well as the Order of the learned Magistrate of Matale dated 06.09.2021.

On 18.01.2024 the learned Counsel who appeared for the Petitioners and Respondents in the above-mentioned four Applications (CA/WRIT/420/2021, CA/WRIT/423/2021, CA/WRIT/431/2021 and CA/WRIT/433/2021) after concluding their oral submissions invited this Court to pronounce one judgement in respect of all four cases.

Impugned Regulations

The impugned Regulations have been issued by the respective State Minister purportedly under section 22A of the Fauna and Flora Protection Ordinance [Chapter 469] (hereinafter referred to as 'FFPO') read with section 71 of the said FFPO. Part I of the said Regulations deal with the protection and well-being of tamed elephants, whereas Part III provides for obtaining tamed elephants for historical/cultural processions. Part II of these Regulations deals with regularizing the registration of tamed elephants. The grounds of the Petitioners to challenge the above-mentioned Orders of the learned Magistrate who released the elephants to the original owners/custodians are also mainly based on the provisions in the said Part II of the Ordinance.

Until those impugned Regulations were published in the year 2021, the regulations published in the Gazette Extraordinary Notification No.662/4 on 14.05.1991 governed the registration and issuance of licenses for tuskers and elephants. It is noted that serious concerns were raised during the hearing whether the said Gazette Notification No. 662/4 has been duly approved by the Parliament.

In terms of Regulation No.5(1)¹ of the said Regulations the application for the registration of an elephant for the first time shall be made substantially in the form set out in Schedule II thereto subject to the conditions specified therein. Regulation 5(2)² provides that the

¹ Regulation 5(1):

The application for registration of an elephant for the first time shall be made substantially in the Form set out in Schedule II hereto subject to the conditions specified therein.

² Regulation 5(2):

The application for registration of an elephant that is in the custody of an owner but has not been registered as at the date of commencement of these regulations shall be made substantially in the Form set out in Schedule III hereto subject to the conditions specified therein.

application for the registration of an elephant that is in the custody of an owner but has not been registered as of the date of commencement of those Regulations shall be substantially in the form set out in Schedule III thereto subject to the conditions specified therein. The provisions stipulated in section 5(2) are crucial as the main arguments of the Petitioners based on these provisions to challenge the Regulations as well as the respective Orders of the learned Magistrates who made decisions following these Regulations.

Regulation 6(1) describes the required accompanying documents for the said first-time registration whilst Regulation 6(2)³ provides that any person having the ownership of an elephant by a license, *sannasa* or other legal document or by succession as at the date of commencement of these regulations shall register such elephant under these regulations and such registration shall be obtained within three months from the date of coming into operation of these regulations.

The above provisions detail the procedures and requirements for first-time registration applications for elephants. Such applicants must follow the format provided in Schedule II, adhering to specified conditions. Elephants, already in an owner's custody but not yet registered at the time these regulations come into effect, must use the application format in Schedule III, subject to specific conditions. This provision is pivotal in legal challenges against the rules and the learned Magistrate's decisions based on them. The owners of elephants, who possess them through a license, *sannasa*, other legal documents, or by succession, must register these elephants within three months from the date the Regulations commence.

Key Arguments Presented by Petitioners on the on the Part II of the Regulations

The Petitioners submit that the provisions of the impugned Regulations are *ex facie* contravene the provisions of the Constitution of Sri Lanka, FFPO and the Offences Against Public Property Act No.12 of 1982. The learned President's Counsel for the Petitioners in

³ Regulation 6(2):

Any person having the ownership of an elephant by a licence, *sannasa* or other legal document or by succession as at the date of commencement of these regulations shall register such elephant under these regulations and such registration shall be obtained within three months from the date of coming into operation of these regulations.

CA/Writ/420/2021 referring to section 22A (12) of the FFPO asserts that the Sri Lankan elephant is expressly declared as 'public property' in terms of the FFPO, and consequently all offences committed against an elephant, including the offence of unlawful possession of an elephant, are punishable under the said Offences Against Public Property Act read together with the provisions of the FFPO.

The Petitioners contend that Regulation 5(2) of the impugned Regulations is untenable in law and contrary to sections 22A (7), 22A (12) and 23 of the FFPO. Further, the Petitioners submit that Regulation 6(2) is also contrary to section 22A of the FFPO and untenable in law. In addition to the above, the Petitioners challenge the Regulations 6(3)⁴ and 7(1)⁵ as well. Similarly, several concerns have been raised by the Petitioners in respect of Regulation 8.

The learned President's Counsel for the Petitioners in CA/Writ/420/2021 contends that if a person purportedly owns or has in his custody or possession an elephant or makes use of an elephant, he must mandatorily show that the said elephant is registered and a license has been obtained in respect thereof in terms of section 22A of the FFPO. In the event the elephant is without registration and a license, such purported custodian/owner is deemed to have committed a non-bailable offence punishable under section 22A (7) or 23 (1) of the FFPO and the Offences Against Public Property Act. Another important argument raised by the learned

⁴ Regulation 6(3):

- (a) Every application submitted under regulation 5 shall be referred by the prescribed officer to the Examination Committee appointed under regulation 8 for examination.
- (b) The Committee shall determine the criteria for the examination of such eligibility which shall then be referred to the Secretary for his approval.
- (c) After examining the eligibility of the relevant applicant in keeping with the criteria approved by the Secretary, such Committee shall submit a report to the Secretary to the Ministry of the Minister assigned the subject of Wildlife (hereinafter referred to as the "Secretary") within a period of two weeks from the date of receipt of the application.
- (d) Such application and the report in respect thereof shall be referred by the Secretary to the recommendation committee appointed under regulation 8 within a period of two weeks from the date of receipt of such report.
- (e) After considering the application along with the report referred to in paragraph (d) the recommendation Committee shall submit its recommendations to the Cabinet of Ministers by a Cabinet Memorandum within a period of two weeks from the date of receipt of such application along with the report.
- (f) The Cabinet of Ministers may grant approval for the issuance of a licence after taking into consideration the recommendations submitted by the recommendation committee.

⁵ Regulation 7(1):

The prescribed officer shall register any person who has fulfilled the eligibility criteria and shall issue a licence substantially in the Form set out in Schedule IV hereto subject to the conditions specified therein.

President's Counsel is that the law does not permit the registration of an elephant or the issuance of a license under the FFPO retroactively.

The attention of this Court has been drawn to the Report ('P20' in CA/Writ/420/2021) compiled by the retired Supreme Court judge Nimal Edward Dissanayake. Certain paragraphs of pages 1-3 of the said Report which is in Sinhala language have been translated by the Petitioners as below: (Vide- written submissions of the Petitioners in CA/Writ/420/2021)

"In the above context, it is important to draw Your Lordships' attention to the Report of His Lordship, Justice N. Dissanayake at 'P20' at, where it is reported that the increase in demand for elephants for processions, organized by various religious institutions, as well as due to a perception by a "class of new rich businessmen" that owning and rearing elephants "will enhance their standing in society", had led to a lucrative illicit trade of elephant calves stolen from the wild and sold. Justice Dissanayake reports that "unscrupulous persons with the support of a few corrupt officials of the Department of Wild Life Conservation" engaged in mass scale capturing of baby elephants from the jungles of Habarana, Yala, Udawalawe, and the North Central Province and selling them. Some of these persons had at their disposal, fleets of vehicles like high-powered off-road jeeps for their travel. They possessed trucks that could go into deep jungles and bring back baby elephants etc. They had unlicensed guns, tranquilizing equipment, and ammunition etc., at their disposal. The evidence led before the Committee of Inquiry had revealed that the following methods had been used by the culprits in capturing and transport of baby elephants from the jungle;

- 1. By shooting and killing the mother elephant;*
- 2. By sedating the mother elephant by using the tranquilizing guns;*
- 3. By injecting tranquilizers to the baby elephants;*
- 4. Capturing baby elephants released into the jungle after rehabilitation by the "Ath-Athuru-Sevena-Udawalawe";*

5. Taking baby elephants from the "Ath-Athuru-Sevena" with or without the knowledge of the Wild Life Department". [vide pages 1 -3 of the Report]"

In the above context, I need to take cognizance of the facts mentioned in the said report which are vital to instant Applications. It is reported that the increase in demand for elephants for processions, organized by various religious institutions, and the perception by a "class of new rich businessmen" that owning and rearing elephants "will enhance their standing in society," has led to a lucrative illicit trade of elephant calves stolen from the wild and sold. It is divulged in the said Report that "unscrupulous persons with the support of a few corrupt officials of the Department of Wildlife Conservation" have engaged in the mass-scale capturing of baby elephants from the jungles of Habarana, Yala, Udawalawe, and the North Central Province and selling them. Fleets of vehicles like high-powered off-road jeeps for travel, trucks capable of entering deep jungles to bring back baby elephants, unlicensed guns, tranquillizer equipment, and ammunition have been at their disposal. Evidence presented to the respective Committee of Inquiry has revealed that the culprits use several methods to capture and transport baby elephants from the jungle.

In summary, several Petitioners argue that under the given circumstances, Regulation 5(2) allows the registration of an elephant in a purported owner's custody that wasn't registered by the date these Regulations took effect, following the format of Schedule III. This, according to the Petitioners, undermines the absolute prohibition stipulated in section 22A (1) of the FFPO, which clearly and explicitly forbids the ownership, custody, or use of an elephant unless it is registered and a license has been obtained as per the provisions of the FFPO.

Another important argument of the Petitioners is that it is mandatory under the FFPO to have the Registration as well as a license to lawfully and legitimately own and have in custody an elephant. The learned President's Counsel for the Petitioner in CA/Writ/420/2021 relies on section 22A (6) in support of the above argument. In terms of the provisions of the said section 22A (6) when a person becomes the owner, or obtains the custody, of an elephant by virtue of sale, gift, the death of the previous owner or in any other manner whatsoever, such person shall immediately inform the Director or prescribed officer. If the elephant is registered or licensed, steps should be taken to have the previous registration and license cancelled and to have a fresh registration made and a fresh license obtained.

The contention of the Petitioners in respect of Regulation 6(2) of the impugned Regulations is that it is contrary to section 22A of the FFPO to the extent that such provisions enable unlawful regularization of the fraudulent possession of elephants by retroactive registration. In essence, a person cannot have ownership of an elephant based only on a license in terms of the said section 22A and it is essential that such registration should be recorded in the prescribed 'Register of Elephants' maintained by the Director General of Wildlife Conservation. Thus, a person can obtain an annual license from the prescribed Officer upon payment of the prescribed license fee in terms of section 22A (5) once such registration is recorded in the said Registry of Elephants.

Challenging Regulations 6(3),7(1) and 8 of those Regulations, the Petitioners contend that the power of registration of elephants and issuance of licenses under section 22A of the FFPO shifts to a committee comprising of external entities such as politicians, bureaucrats and even private parties who are not contemplated under the law. The Petitioners argue that the statutory functions by which the law has exclusively vested in the Director General of Wildlife Conservation have been replaced by incorporating a committee as prescribed in those impugned Regulations.

Objections Raised by the Respondents

One of the main objections raised on behalf of the Respondents is that the Petitioners cannot maintain the instant Applications due to lack of necessary parties. Similarly, objections have been raised on locus standi of the Petitioners and also on the basis that the Petitioners have come to Court with unclean hands.

The 41st Respondent of the case bearing No. CA/Writ/420/2021 argue that in the event the Petitioners impugned the order dated 06.09.2021 of the learned Chief Magistrate of Colombo and the learned Magistrate of Matale (I intend to deal extensively about those Magistrate's Court cases later in this Judgement), the Added Respondents are necessary parties and accordingly, such Added Respondents should have been named as Respondents/ Parties at the very outset. Further, the said 41st Respondent submits that the failure to name him and the other owners and/or custodians to whom the elephants were released is a non-curable

error. Thus, the said Respondent, particularly moves the application bearing No. CA/Writ/420/2021 etc., be dismissed.

The said 41st Respondent argues that only the 41st to 50th added Respondents (of CA/Writ/420/2021) were added as Respondents and anyhow, the Petitioners have failed to name the following owners and/or custodians to whom the respective elephants were ordered to be released by the learned Magistrates of Colombo and Matale:

- 1) Dilshan Wickramarathne Gunasekera - (Ref. -Elephant Registration No.200)
- 2) S.M. Roshan - (Ref. -Elephant Registration No.209)
- 3) N.G. Rajapaksha - (who claimed the elephant through a *sannasa*)
- 4) K.G. Thilakarathna - (name mentioned in the case of the Magistrate's Court of Matale)

The learned Deputy Solicitor General ('DSG') who appears for the 1st to 40th Respondents in CA/Writ/420/2021 and the respective Respondents in the other three cases raises objections, inter alia, on the aspect of not adding the necessary parties. The learned DSG asserts that none of the owners of the elephants who were subjected to the relevant Magistrate's Court case as well as the respective learned Magistrates have been named as parties in the instant Applications.

It is observed that all intervenient Petitioners who sought to intervene in the instant Applications were duly added as party Respondents with the consent of the Petitioners. Hence, the contention of those Respondents that the respective purported owners or the custodians of the elephants subjected to the relevant Magistrate's Court cases were not parties at the time of filing the instant application cannot be considered reasonable. All the intervenient Petitioners who sought to intervene participated in these proceedings effectively as Added Respondents. As such, I cannot assume any substantial prejudice was caused to these Added Respondents.

It is noted that two of the persons among the above-mentioned individuals highlighted by the said 44th Respondent are named as Added Respondents in one or more of the instant Applications. The above-named Dilshan Wickramarathne Gunasekera is the 9th Respondent of the CA/ Writ/ 423/2021 and the 15th Respondent in the CA/Writ/433/2021 as well.

Whereas S.M. Roshan is the 18th Respondent in CA/Writ/433/2021 and the 12th Respondent in CA/Writ/423/2021.

The parties in all 4 Applications have already invited this Court to pronounce one Judgment in respect of all these cases and this Court accordingly needs to take cognizance of the facts and circumstances of all 4 cases in arriving at a final determination. Therefore, I cannot assume that any substantial prejudice has been caused to any of the parties or that a blatant violation of the Rule of Natural Justice exists which compels this Court to dismiss these Applications solely on such objections.

In *Gulam Hussain Ali Asgar Shabbir and Others v. LOLC Finance PLC and Another (CA/WRIT/181/2024) decided on 05.04.2024* I have extensively dealt with the issue of not making a judicial officer a party in a review application. It was held in the said Order that;

“.....the non-inclusion of the judicial officer who issued the impugned order cannot always be considered a fatal defect to dismiss in limine an application for judicial review and such non-inclusion cannot be an obstacle to a comprehensive adjudication of the matter. In any case, designating the judicial officer in question as a party respondent will be essential if there is a specific allegation, personal or otherwise, made against him/her. If such accusations are made against the judicial officer whose order is being challenged by the writ application, then the said judicial officer should be allowed to present a defense or furnish essential material to the Court of Appeal. It is crucial to ensure that no name of a person or an institution is merely included in the caption of a writ application as a superficial addition, especially when the active engagement of that party in the proceedings is highly unwarranted.”

The Court further decided in the said case that the caption of a writ application should not include ‘ceremonial figures’ or serve as a mere ‘list of witnesses’, nor should it be exploited for collateral purposes, such as aligning with the Petitioner's stance. In my view, it is not ethical for a judicial officer to take one side in a review application when an order of such a judicial officer is challenged in a review application. It was further decided that the inclusion of a judicial officer as a party respondent in a prerogative writ should be determined by the Court of Appeal based on the substantive and ancillary details as well as the circumstances of each case. The degree of involvement or challenge directed at the judicial officer concerning

either the judicial order itself or their conduct needs to be taken into consideration when the Court of Appeal deals with an objection on ‘necessary parties’ concerning a judicial officer.

Another objection raised by some of the Respondents is that the Petitioners of the instant Applications have no locus standi to maintain these Review Applications before this Court. The Petitioners have declared that they have intended for a Public Interest litigation (‘PIL’). PIL is aimed at addressing issues that affect the larger community or societal interests and it generally intends to address matters that impact the public at large, such as environmental protection, human rights, and social justice. Review Courts in our Country and outside our jurisdiction taking a positive approach has relaxed the traditional rules on locus standi. The PIL has often led to an active role for the judiciary in shaping public policy and ensuring that government actions comply with constitutional and legal standards. The Respondents, in my view, have failed to establish a reasonable ground for this Court to deviate from the current developments of the law regarding the PIL and dismiss these Applications based on standing.

Based on the circumstances of these cases I am compelled to put all the other objections such as a.) application is misconceived in law b.) reliefs sought are vague and ambiguous c.) petitioners are guilty of suppression and misrepresentation into a basket of stereo-typed traditional objections. This is due to the reason that, in my view, the Respondents have failed to establish the worthiness of such objections amidst the special circumstances of the instant Applications. Furthermore, the Respondents have failed to adduce any reasonable evidence to establish that the Petitioners have come to this Court with unclean hands or with ulterior motives/ malice.

Thus, I proceed to overrule all the alleged preliminary objections raised by various Respondents as the questions that need to be resolved by this Court in these cases are aimed at addressing issues that affect the larger community, societal interests or a set of animals who cannot raise a voice in court.

Primary Submissions of the Respondents

The learned Deputy Solicitor General (‘DSG’) who appears for all State Officials in all 4 Applications, in addition to the objections raised on the maintainability of these Applications, submits that all measures have been taken in Part I of the impugned Regulations to prevent

commercial exploitation regarding tamed elephants and such has been further assured by amending the long title of the FFPO.

The learned DSG contends that the inquiry against the perpetrators in reference to tampering with the Register of Elephants maintained by the Director General of Wildlife Conservation was pending and several issues had cropped up due to the incomplete Register since 2015. It must be stressed that the Register of Elephant (‘අලි පොත’) was summoned by this Court on our own motion and at that time it was under the custody of the Registrar of the High Court of Colombo. Both my brother and I perused the said Register and the Registrar of this Court subsequently was ordered to return it to the Registrar of the High Court of Colombo. It is noted that none of the Respondents have tendered to court any acceptable evidence of tampering with the said Register and thus, such alleged assertions have become a mere blanket application without focusing on the elephants who were subjected to the relevant cases in the respective Magistrate’s Courts.

She asserts that the impugned Regulations were published as no adequate measures were available in the previous set of regulations published in 1991 for the protection and well-being of the tamed elephants. The learned DSG's perspective is that if this Court decides to quash the impugned Regulations, there will be no regulations in place for the protection, well-being, and registration of tamed elephants, as the previous regulations have not only been rescinded but were also never approved by Parliament. Another key argument of the leaned DSG is that the Petitioners are not entitled to challenge the orders of the respective Magistrate’s Court under the provisions of Article 140 of the Constitution.

Several learned Counsel who appears for the Respondents other than the State officials have not made submissions justifying the issuance of the impugned Regulations and its alleged legality. Those Respondents mainly contend that they have not been identified as suspects in the relevant Magistrate’s Court cases and are not liable for any offense under the FFPO. The inference that attempted to be made particularly by the added Respondents is that the elephants subjected to the respective Magistrate’s Court cases have not been captured from the jungle.

Those Added Respondents also raise objections on the maintainability of the instant Applications as stated above.

Merits of the Submissions of the Petitioners and Respondents on the provisions of Part II of the impugned Regulations

The attention of this Court has been drawn to the Cabinet papers marked '1R1' to '1R8(B)' (tendered to Court by the learned Deputy Solicitor General), particularly to the Cabinet paper marked '1R3(a)' wherein the late Gamini Jayawickrama Perera, who was the then Minister of Wildlife submitted a Cabinet Paper under the heading "Regulating Tamed Elephants and Addressing Issues Arising Out of the Pending Cases". Subsequently, the Cabinet appointed a subcommittee headed by then Minister Sarath Amunugama [Vide - '1R3(c)']. The Cabinet then directed the Secretary to the Ministry of Wildlife to seek the advice of the Attorney General in settling the cases related to these elephants.

Subsequently, by way of the Memorandum marked '1R5(a)' the Minister of Wildlife sought permission of the Cabinet inter alia to release the elephants as soon as possible with the intervention of the Attorney General by taking suitable action in reference to cases filed by the CID and the elephants who are the productions in those respective cases [Vide -proposal in Clause 3.1(I)]. The Cabinet by its decision dated 14.01.2020 ['1R5(b)'] granted approval inter alia for the proposal at 3.1(I) of the Memorandum, directing the Secretary of Wildlife to formulate a suitable mechanism in association with the relevant authorities, to permit those who could and are willing to look after the tamed elephants, under the supervision of the Department of Wildlife Conservation and the Department of National Zoological Gardens.

In addition, a further Memorandum dated 12.03.2021 marked '1R7(a)' was submitted by Hon. Mahinda Rajapaksa, the then Prime Minister and the then Minister of Wildlife and Forest Conservation. The Cabinet by its decision dated 15.03.2021 marked '1R7(b)' granted approval for the proposals contained in Clauses 4.1 and 4.3 of the said Memorandum and advised that necessary action should be taken to reach an amicable settlement in the pending Court cases with the assistance of the Secretary to the Ministry of Public Security and the Attorney General. Accordingly, the Minister of Wildlife was entrusted with the task of preparing a methodology to register again in a formal manner all tamed elephants to whom

licenses and *sannas* had been given and those without licenses at that time. Clause 4.2 of the said '1R7(a)' specifically provides that all cases of legal action taken at present should be withdrawn and handed over those animals to their purported "present owners" according to the conditions of transferring those animals.

Thereafter, a further Memorandum was submitted by the then Minister of Wildlife and Forest Conservation dated 12.08.2021 marked '1R9(a)' recommending the orders regulating the protection, welfare and registration of tamed elephants made under section 22A read with section 71 of the FFPO. In reference to said Memorandum '1R9(a)', the Cabinet by its decision dated 17.08.2023 granted approval to publish the "Fauna and Flora (Protection, Well-being and Regularization of Registration of Tamed Elephants) Regulations". As a result, the Gazette Extraordinary No. 2241/41 which contains the impugned Regulations was published on 19.08.2021.

The efforts taken by the Cabinet of Ministers to introduce the impugned Regulations include regulatory changes to resolve pending court cases, directing the Ministry of Wildlife to seek even the Attorney General's advice on resolving or withdrawing criminal cases involving tamed elephants, and facilitating the registration of unlicensed tamed elephants. This approach raises concerns about disregarding legal principles and statutory mandates, as it seems to prioritize quickly resolving pending cases over adhering to legal compliance.

On the other hand, the impugned Regulations have been made purportedly under section 71 of the FFPO. In terms of the said section 71(1), the Minister may make Regulations for the purpose of carrying out or giving effect to the principles and provisions of the said FFPO. In particular and without prejudice to the generality of the powers conferred by the above section 71(1), the Minister may make regulations in view of 71(2) for or in respect of all or any of the following matters: -

"(a) the circumstances in which and the conditions subject to which the Director may exercise the powers conferred on him by section 55,

(b) the circumstances in which and the conditions subject to which any licence or permit may be issued free of charge;

- (c) the fee to be paid for any licence or permit issued under this Ordinance or under any regulation, and the mode and manner of payment or recovery of any such fee;*
- (d) the prohibition or regulation of the import, manufacture, sale, possession or use of any head-gear so constructed as to be capable of being fitted with any lamp or artificial light or of any lamp constructed so as to be capable of being fitted into any head-gear;*
- (e) the period of office of the members of the advisory committee appointed under section 70, the manner in which meetings of that committee shall be convened, the procedure to be followed at such meetings, and the manner in which the recommendations of that committee shall be made;*
- (f) the declaration of any period other than that specified in section 72 as a close season in respect of any particular species of bird or beast either throughout the whole of Sri Lanka or in any specified area;*
- (g) the establishment and administration the "Wildlife Preservation Fund" and the purposes for which that Fund may be employed ; and*
- (h) all matters for which regulations are required or authorised to be made under this Ordinance, all matters stated or required by this Ordinance to be prescribed, and all other matters incidental to or connected with such matters."*

Regulations are often referred to as secondary or delegated legislation. Such regulations derive their legality from the enabling statute which delegates specific powers to an authorized person to promulgate detailed rules necessary for the effective implementation and administration of the Act of Parliament. This delegation is generally meant for flexibility and expertise in the legislative process enabling wider and technical provisions which need to be addressed without direct intervention of the whole legislature. When the enabling statute prescribes the procedure for making regulations, compliance with such procedural requirements is essential for the legality of the regulations. In an application for judicial review, the Review Court has the power to invalidate regulations that exceed the powers granted by the respective Act of Parliament. It is mandatory that the regulations must be consistent with the primary legislation and the delegatee, who is empowered to make regulations, cannot alter, amend or override the provisions of the enabling statute. The promulgation of rules should be guided by the intent of the legislature as specifically expressed

in the respective statute and such power to promulgate the rules is strictly limited to the scope and the authority granted by the enabling statute.

In the first place, the attention should be drawn to the argument of the Petitioners that the impugned Regulations violate the Constitution of Sri Lanka, FFPO, and the Offences Against Public Property Act of 1982. The Petitioners highlight that section 22A (12) of the FFPO designates the Sri Lankan elephant as public property, making any offense against elephants, including unlawful possession, punishable under the Offences Against Public Property Act in conjunction with the FFPO. The Petitioners claim that Regulation 5(2) is legally untenable and contradicts sections 22A(7), 22A(12), and 23 of the FFPO. They also assert that Regulation 6(2) contradicts section 22A of the FFPO and is legally indefensible. Additionally, the Petitioners challenge Regulations 6(3) and 7(1), and raise several issues regarding Regulation 8.

Section 22A (7) of FFPO reads:

“Any person who owns, has in his custody or makes use of an elephant which is not registered, and in respect of which a license has not been obtained in accordance with the provisions of this section, shall be guilty of an offence and shall on conviction be liable to a fine not less than one hundred and fifty thousand rupees and not exceeding two hundred and fifty thousand rupees or to imprisonment of either description for a term not less than two years and not exceeding five years or to both such fine and imprisonment. “

Section 22A (12):

“Any elephant which has not been registered under this section shall be presumed to be taken or removed from the wild without lawful authority or approval and such elephants shall be deemed to be public property. The provisions of the Offences Against Public Property Act, No. 12 of 1982 shall accordingly apply in respect of such elephants.”

Section 23:

(1) “Any person who is in unlawful possession of an elephant shall be guilty of an offence and shall on conviction be liable to a fine not less than one hundred and fifty thousand rupees and not exceeding two hundred and fifty thousand rupees or to imprisonment of either description for a term not less than ten years and not exceeding twenty years or to both such fine and

imprisonment; and the court may on the conviction of any such person make order for the disposal of the elephant in respect of which the offence was committed, having regard to the rights of any other person who may appear to the court to be lawfully entitled to the possession of such elephant-

(2) *A person who is found in possession of an elephant shall be deemed to be in unlawful possession of that elephant unless-*

(a) he is the captor of that elephant under the authority of a licence issued under this Ordinance or under any written law repealed by Ordinance No. 2 of 1937; or

(b) he is the successor in title to such captor; or

(c) he is in possession on behalf of such captor or his successor in title.

(d) he has registered and licensed the elephant in terms of section 22A of the Ordinance.”

In terms of the above provisions of law any person owning, possessing, or using an unregistered elephant without a proper license commits an offence. Possessing an elephant unlawfully is an offence. On conviction, the person is liable to imprisonment or both. The presumption of Illegal Capture is a paramount feature in section 22A (12). Any unregistered elephant is presumed to be taken from the wild unlawfully. Such unregistered elephants are deemed public property. The Court has the discretion to order the disposal of the elephant, considering the rights of any person lawfully entitled to it.

As pointed out by some of the Petitioners the legal regime of the FFBO with regards to the registration is only to provide in respect of the elephants

a.) who were there at the time of enacting the FFBO

b.) upon whom license were issued under section 13 of the FFPO

c.) and newborn elephants.

In this context, it is a puzzle how those impugned Regulations recognize a new class of elephants called “*tamed elephant that is in the custody of an owner but has not been registered as at the date of commencement of these regulations*” as narrated in Regulation 5(2). Moreover, I cannot

find any procedure adopted in the FFPO where registration can be sanctioned for a person who purportedly becomes an owner through a so-called *sannasa*.

In the circumstances, the question that arises is whether Regulation 5(2) can be promulgated allowing the registration of an elephant that is in the custody of an owner but has not been registered as of the date of commencement of those Regulations, whereas section 22A (1) of the FFPO explicitly prohibits ownership, custody or use of an elephant unless it is registered and a license has been obtained in respect of the elephant concerned by the said section 22A(1).

Regulation 6(2) does not reflect any requirement to inquire from a person who seeks belated registration of an elephant under the said Regulation as to why the purported acquisition of such elephant has not been reported immediately under section 22A (6) to the Director General of Wildlife Conservation or the prescribed Officer. Further, it is observed that the said Regulation 6(2) does not prescribe a particular form for the registration of elephants acquired through a *sannasa* etc. It is observed that the Impugned Regulations 5(2) and 6(2) enable a person who owned, had custody or made use of an unregistered elephant to regularize their ownership through retroactive registration.

It is noted that in terms of section 22A, only an owner or custodian can seek registration of elephants and the category of persons stipulated in impugned Regulation 5(1) do not fall into the category of a person who owns or has in his custody an elephant. It is a vital factor to disclose how the elephant came into the custody of the person who seeks registration.

I am convinced with the contention of the Petitioners that no person can possess an elephant without a license and registration provided the registration of elephants was duly carried out as provided for under the FFPO and the register of elephants was duly maintained.

Further, the Petitioners claim that the impugned Regulations are intended to benefit those who are subject to the law and who remain liable for prosecution and punishment under the FFPO and the Offenses Against Public Property Act. However, section 13 of the FFPO provides for certain steps to be taken by the Director General of Wildlife Conservation whenever it appears to him that in any area outside a National Reserve damage to any person or any house, crop, plantation or other property is likely to be caused by any elephant.

Further, it provides that the Director may issue licenses subject to conditions to capture elephants as described in section 13(1)(a). Section 17(2) provides that the elephant killed or taken under section 13 is not the property of any person.

On perusal of the aforesaid provisions of the FFPO, the fundamental requisite of the said FFPO is to keep the Director General of Wildlife Conservation informed forthwith about any acquisition of an elephant by way of any means including a sale, gift, or death of the owner.

Section 13(1)(b) reads:

“whenever it appears to the Director that there is serious danger to life or property in the area referred to in subsection (1) (a), he may issue licences subject to such conditions as he may deem necessary or expedient either free or on payment of the prescribed fee or of such fee not exceeding the prescribed fee, if any, as he may consider adequate, authorizing the licensee to shoot, kill or take the elephant as the case may be, within that area while the declaration is in force.”

It's crucial to recognize that there are allegations that these elephant owners/custodians acquired and tamed their elephants purportedly through illegal poaching. Consequently, while the impugned Regulations provide another opportunity for owners of tamed elephants to register their elephants, effectively legalizing their ownership, the Petitioners contend that this unfairly provides another chance to legitimize their ownership over wild elephants which they had previously illegally captured and tamed. Furthermore, the Petitioners contend that as per the provisions of the Ordinance, wild elephants, not rightfully registered are recognized as public property, and thus it is unreasonable to legitimize the ownership of these elephants to individuals who had previously claimed unlawful private ownership over them.

The Petitioners further contend that the Added Respondents sought registration and license for their elephants retroactively under the impugned Regulations subsequent to the arrest and/or seizure of the elephants (subjected to the relevant Magistrate's Court cases) by the Director General of Wildlife Conservation based on unlawful ownership or possession. The Petitioners also argue that several Added Respondents, who are being charged under the FFPO by the Magistrate Court/High Court for illegal custody and possession, are now seeking to register and license the elephant following the issuance of the gazette notification

containing the impugned Regulations. According to the Petitioners, it is an attempt to avoid ongoing criminal prosecution, which has not been definitively concluded.

As per the case of *Bombay Dyeing & Mfg. Co. Ltd. (3) v Bombay Environmental Action Group, (2006) 3 SCC 434, 486-87 (para 10)*, the amendments in regulations must be construed in furtherance of the legislative policy and not in derogation thereof. But while doing so, the past experience of the state which paved the necessities for modifying the earlier regulation should not be forgotten. Furthermore, In *International Spirits & Wines Association of India v. State of Haryana (2019) 20 SCC 284* it was held that:

‘where authority empowered to make rules regarding grant of liquor license is the State government under the Act this power could not be altered through any rules or regulations. The power granted under Punjab Excise Act, 1914 to the Finance Commissioner is only a regulatory power and available only after liquor license has been granted. This power to regulate supply, storage or sale of any intoxicant for the entire State could not mean grant of liquor license for any "local area" under the Act. Grant of liquor license is different from regulation of liquor license. Amendment of Rules by the Finance Commissioner assuming power to determine the number of licenses will be unreasonable and unsustainable. (Vide - *M.P.Jain & S.N.Jain; Principles of Administrative Law*, 9th Edition, 2022)

In light of the reasons given above, I hold that Regulations 5(1), 5(2), 6(1), 6(2), 6(3), 7(1), 7(2) and 7(3) of Part II of the impugned Regulations are not aligned with the provisions of the FFPO, and the delegatee authorized to promulgate regulations under the FFPO has changed, amended, or override the basic provisions of the said enabling statute. The Regulations 5(1), 5(2), 6(1), 6(2), 6(3), 7(1), 7(2) and 7(3) have been unlawfully promulgated usurping the power to make regulations and without confining to the scope and authority granted by the FFPO. Accordingly, I take the view that Regulations 5(1), 5(2), 6(1), 6(2), 6(3), 7(1), 7(2) and 7(3) are liable to be quashed. Anyhow I am not inclined to quash the rest of the Regulations in the said Part II of the Regulations based on the legal framework adopted by me to arrive at the above conclusion. I am not convinced with the submissions made on behalf of the State Officials to justify the above Regulations which need to be quashed.

However, I have a reasonable doubt as to how the impugned regulations as prescribed in Regulation 15 declare that the 'licence fee' or 'licence renewal fee' should be credited to the Wildlife Conservation Fund without adhering to the rules/law relating to the government revenue of the country. None of the Petitioners have substantially challenged the said regulation and no adequate submissions have been made upon the same. Therefore, this Court is unable to make any determination on the said Regulation 15.

Merits of the Submissions of the Petitioners and Respondents on the provisions of Part I of the impugned Regulations

The Petitioners in CA/Writ/423/2021 and CA/Writ/431/2021 challenge inter alia, the provisions of Part I of the impugned Regulations. The learned President's Counsel for the Petitioner in CA/Writ/431/2021 referring to the long title of the FFPO submits that any and all commercial uses of Fauna and Flora shall be deemed to be misuses in terms of FFPO. He further submits that not even tamed/domesticated elephants can be used for commercial purposes and such a position is corroborated by the fact that the FFPO does not recognize or provide for any permitted commercial uses. The learned Counsel for the Petitioners in CA/Writ/423/2021 submitted that although the intended effect of the FFPO is inter alia the prevention of the commercial and other misuses of the Fauna and Flora, the impugned Regulations have permitted elephants to be used for tourism, tourist safari rides, towing vehicles, transporting timber, for cinema shooting or any other similar activities.

For clarity and better adjudication, I must reproduce the provisions which need to be adhered to by every person who owns or has in custody an elephant according to Part I of the impugned Regulations.

“(a) when such elephant behaves violently and abnormally not obeying the commands of the mahout due to musth or any other cause, reasonable steps using minimum force in keeping with the traditional methods shall be taken to control such elephant, in order to prevent any damage caused to such elephant or to the life of the mahout of such elephant or to any other person or property. Any harmful drug or material which causes unnecessary pain or oppression shall not be used to control such elephant and if any anesthetic drug is injected to such elephant, such drug shall be injected only with the directions of a Veterinary Surgeon;

(b) Where any weight other than the golden palanquin with the round stool (ခေတ္တဥှော်) and the casket relics or ornaments of deity used in cultural activities including procession is placed on an elephant, such weight shall not be placed on such elephant unless an appropriate saddle is laid on the elephant. When such elephant is used for tourism or such other activity, not more than four persons shall be allowed on such elephant;

(c) When a Veterinary Surgeon or a Registered Traditional Doctor who treats elephants determines that an elephant is unfit to engage in any work, such elephant shall not be used for any work, service or other duty;

(d) (i) Where any vehicle is used for the transportation of an elephant such vehicle shall have the capacity to hold a weight equal to the weight of such elephant and shall have the required permits. Such vehicle shall have a strong coverage with a platform made adopting strong protective methods and a minimum of six wheels in order to get on such elephant into such vehicle and to get off from the vehicle and to prevent any damage to the public or any property. Where two elephants are transported such vehicle shall have at least ten wheels;

(ii) In any circumstances, an elephant shall not be transported continuously for more than twelve hours. When any elephant is being transported, such vehicle shall exhibit a board indicating that an elephant is being transported, and the speed of such vehicle shall not exceed thirty (30 km) per hour;

(e) When an elephant is in musth or agitated and requires to be tied or requires to be used in procession using protective knots to control the elephant in order to protect lives of the public and property, such elephant shall be tied and taken in procession in keeping with the traditional methods using suitable chains which suits the strength, height and weight of such elephant so as not cause any oppression. Such chain shall be changed from one limb to another limb of the elephant at least once in three days;

(f) Knots made in accordance with the traditional methods using chains shall be used to tie the elephants and any elephant escaped from the control of the mahout, agitated and in stray shall be controlled with the towrope and shall not use any nylon ropes, iron chains with spikes or sharp edges for such purpose;

(g) (i) No elephant shall be deployed to tow any vehicle for a period more than four hours per day without any rest except taking any food items necessary for such elephant or any other elephant or to carrying over its neck, the chains and bells of such elephant;

(ii) Timber or any other weight shall not be transported with the direct use of tusks or jaws of such elephant except carrying food or timber necessary for lifting or towing any weight using tusks and jaws of such elephant in accordance with traditional methodology using mouth piece or harness;

(iii) The weight carried by such elephant in this manner shall be less than one third (1/3) of the weight of such elephant;

(h) An elephant shall not or caused to be engaged in work or causing to stay in extremely unfavorable hot weather conditions and shall not take on foot for long durations on tar roads during extremely hot weather conditions except for procession or taking for bathing. Any elephant shall not be engaged in any work or other activity during the night except for a procession;

(i) (i) Any elephant shall be provided with a stable or any other traditional natural elephant tethering with sufficient shade and ventilation in a clean and healthy environment.

(ii) The height of such stable shall suit to the height of such elephant and gunny bags, straw, cadjan leaves or such other material shall be used to cover the roof of such stable in order to minimize the heat inside the stable;

(iii) If iron planks or asbestos planks are used to cover the roof, adequate methodology shall be adopted to minimize the heat inside the stabled;

(iv) Where any natural elephant tethering is made, it shall be made under the shade of a huge strong ramified tree and such place shall be made with concrete or by fixing a natural stone plank to rest the hind limbs of such elephant;

(v) The stable in which the elephant is kept shall be separated from cattle and other domestic animals;

(vi) If the place in which the elephant is kept is exposed to lightning, a lightning conductor shall be duly fixed in such place. In addition, appropriate measures shall be taken to keep the

stable or other elephant tethering in good sanitary condition by providing suitable drainage system and waste disposal system;

(j) When using such elephant in cinema shootings or any other similar activities extreme heat, electricity, electric bulbs or anesthetic drugs shall not be used in a manner which may cause harm to such elephant except fire drills, lights, light decorations used in cultural activities including processions or tourism activities on State patronage or under State approval, television live telecasts and recordings. Where it is required to do so, it shall be carried out in accordance with the guidelines of a Veterinary Surgeon or a Registered Traditional Doctor who treats elephants.

(k) No person shall light crackers or shoot near any elephant except the traditional gun fire which is essential in traditional processions;

(l) When elephants are required to be decorated for functions, generators or any other dangerous electricity supply shall not be used and batteries with a minimum electric power shall be used for such purpose in order to prevent any harm to such elephant;

(m) Every elephant shall be provided with fresh and nutritious food and water in sufficient quantities daily and shall not abandon such elephant under circumstances which will render it to suffer pain by thirst or starvation;

(n) Any elephant other than a sick elephant or an elephant in musth shall be bathed not less than for two and a half (2 1/2) hours daily except when transporting or on the days of the procession;

(o) Any elephant shall not be or caused to be allowed to swim across dangerous waterways or rivers.

(p) Every elephant shall be examined by a Veterinary Surgeon or Registered Traditional Doctor who treats elephants to ascertain whether such elephant is suffering from a nutritional deficiency or any other infirmity and shall be given such medicines and food as may be prescribed by such surgeon or Doctor. Such treatment shall be recorded in the treatment history sheet and get it endorsed by the prescribed officer when the permit in respect of tamed elephant is renewed;

(q) An elephant shall be subject to a full medical examination by a Veterinary Surgeon or a Registered Traditional Doctor who treats elephants once in six months and such fact shall be recorded in the treatment history sheet;

(r) Every elephant shall be allowed, sufficient time to sleep and in the case of an elephant below five years of age, be allowed to sleep for a longer duration than that;

(s) Standard goad with a tip, tick or knife which is recognized as traditional tools shall be used to train, control or to take care of an elephant. No sharp weapons, fire or any anesthetic drug shall be used for such purpose. The standards and specifications of such tools shall be as specified in Schedule 1;

(t) The following elephants shall not be engaged in any work or other activity -

i) a pregnant she-elephant;

ii) any she-elephant having a calf elephant less than two years of age;

iii) any elephant in musth;

(iv) any elephant over sixty years of age: Provided that, an elephant over sixty years of age may be used in any traditional cultural procession if a Veterinary Surgeon or a Registered Traditional Doctor who treats elephants has recommended that such elephant is in a suitable condition to use in any traditional cultural procession; or

(v) any sick elephant;

(u) Any elephant other than an elephant specified in sub regulation (t) shall be allowed to walk daily for a minimum distance of 5 km;

(v) Any calf elephant of less than five years of age shall be allowed to be with the mother elephant while the mother elephant is engaged in any work and shall not be engaged in any work. Such calf elephant shall not be separated from the mother elephant;

(w) Any person who has the custody of an elephant or who takes care of an elephant shall have a land more than three acres in extent in order to take care of such elephant, allow such elephant to stay in rest and to tie such elephant when in musth so as not to cause any damage to lives of the public or any property. In case of more than one elephant, one acre each shall be added for each such elephant;

(x) Healthy and suitable elephants shall be used for breeding purposes, and a Committee consisting of the following members shall prepare an appropriate procedure therefor which shall be implemented and supervised by the Director-General, from time to time: -

(i) an officer of the Department of Wildlife Conservation nominated by the Director-General;

(ii) Director-General of Department of National Zoological Gardens or his representative;

(iii) a Veterinary Surgeon nominated by the Director-General of Department of Animal Production and Health;

(iv) Registered Traditional Doctor who treats elephants nominated by the Secretary to the Ministry of the Minister assigned the subject of Indigenous Medicine; and

(v) the chairperson, secretary or the treasurer of the Tamed elephants Owners' Organization;

(y) A trained and experienced mahout shall be engaged to take care of such elephant and such person who owns or has the custody of an elephant and the person who owns or has the custody of such elephant shall ensure that the mahout is not consuming any liquor or any harmful drug while employed. Any such mahout shall follow the training programme conducted by the Department of Wildlife Conservation in collaboration with the Department of National Zoological Gardens and the Tamed Elephants Owners' Organization. Such person shall not engage in service without having in his possession, a permit and an identity card issued by the Director-General of Wildlife upon submitting to the Director-General Wildlife the certificate issued to such person in proof of following such programme;

(z) Where it is necessary to cut a tusk or tush of an elephant in order to prevent any threat or damage to the health of such elephant that shall be done under the supervision of a Veterinary Surgeon or a Registered Traditional Doctor who treats elephants. Within one month after cutting such tusk or tush it shall be informed to the Director-General and shall be duly recorded in the data sheet and get such record endorsed by the Director-General Wildlife when the permit in respect of tamed elephants is renewed.”

On perusal of the above Regulations, it emanates that the expressed intention of such Regulations is to ensure the welfare and safety of elephants when they are under human care, as well as the safety of the mahouts, the public, and property. The regulations mandate that elephants, especially when behaving violently or under musth, should be controlled using

minimal force and traditional methods to avoid unnecessary pain or oppression. Certain requirements are provided in those Regulations for the transportation of elephants, including vehicle specifications, duration limits, and speed limits to ensure safe and humane transport. Similarly, in terms of Regulation 2(r) and 2(s), elephants must be allowed sufficient time to sleep, especially young elephants under five years old and only traditional tools with specific standards are allowed for training and control, prohibiting other sharp weapons and anesthetics to prevent harm.

The question that arises here is whether those Regulations override the provisions of FFPO. I have already dealt with the impugned Regulations in Part II comparing them with the provisions of the enabling statute. I am unable to find any implicit violation of the provisions of the FFPO by promulgating Regulation 2(a) to 2(z) in Part I of the impugned Regulations. The Respondent's primary contention against the said Regulations 2(a) to 2(z) is that those provisions encourage using elephants for commercial purposes etc. I do not intend to reject bluntly such contentions of the Respondents as I need further deliberations and more evidence upon such elements.

I am unable to ignore the fact that several tamed elephants are in the custody of private individuals and State authorities. I am aware that those tamed elephants are currently being used for religious processions and the promotion of tourism by private owners etc. Anyhow, my fervent view is that any kind of safety and welfare of those tamed elephants upon whom due licenses have been issued should not be hindered until a public policy is taken by the authorities to allow those tamed elephants to continue to be under private owners/State or release all of them to the wild. This Court has no expertise in examining the psychology and physiology of a tamed elephant who is in the custody of a private owner/State. Further, a reasonable doubt arises as to whether favorable steps would be taken by the authorities or the politicians in respect of the existing set of tamed elephants who are duly registered and licensed in the Country in the event this Court was to quash the Regulations reflected in Part I of the impugned Regulations. Hence, I am not inclined to disturb the existence of Regulations 2(a) to 2(z) in Part I of the impugned Regulations at this stage.

Decisions of the Learned Magistrates

The Petitioners in the Applications bearing No. CA/Writ/423/2021 and CA/Writ/433/2021 inter alia, seek an Order in the nature of a Writ of Certiorari quashing the Order dated 06.09.2021 of the learned Magistrate of the Chief Magistrate's Court of Colombo in case No. B23073/01/15 ('P14' in CA/Writ/423/2021 and 'X5' in CA/Writ/433/2021) and the Order dated 06.09.2021 of the learned Magistrate of Magistrate's Court of Matale in the case bearing No. B941/14 ('P15' in CA/Writ/423/2021). Further, the Petitioners in CA/Writ/433/2021 seek a mandate in the nature of a Writ of Prohibition, prohibiting the learned Chief Magistrate of the Magistrate's Court of Colombo from making an order to hand over any elephant inclusive of elephant-bearing Registration No. 206, presently in judicial and/or State custody, to anybody. Further, the Petitioners in CA/Writ/423/2021 seek an order in the nature of a Writ of Mandamus directing and/or compelling the Director General of Wildlife Conservation, Criminal Investigations Department ('CID'), Inspector General of Police and the Hon. Attorney General to prosecute all individuals who are/were possessing elephants which have not been lawfully registered in terms of section 22A of FFPO or any regulations made thereunder.

The CID reported facts to the Chief Magistrate's Court of Colombo under the case bearing No. B23073/01/15 and to the Magistrate's Court of Matale under the case bearing No. B941/14 upon unlawful possession of the elephants subjected to the said cases. Based on a further report filed by the CID, the learned Chief Magistrate of Colombo has released the elephants mentioned in the said 'P14' to the purported registered owners/custodians. It is paramount to note that the learned Chief Magistrate of Colombo and the learned Magistrate of Matale have made those orders based on the impugned Regulations, particularly under the guise of Regulations 5(1) or 5(2). This position is evinced on the face of the record as per the order marked 'X5'. On a careful perusal of 'P15' it is observed that the learned Magistrate of Matale also released the elephants subjected to the respective case to the purported owners/custodians based on the aforesaid Regulations.

The learned President's counsel who appears for the Petitioners in CA/Writ/433/2021 made submissions drawing the attention of this Court to the provisions of sections 124 and 431 of

the Code of Criminal Procedure Act (No. 15 of 1979). He submitted that once an order is made under section 25 of the FFPO no further steps can be taken in respect of the elephant. Further, he submitted that the impugned order of the learned Magistrate had been issued under section 431 of the said Code of Criminal Procedure Act; but the learned Magistrate has no jurisdiction to make the said impugned order which is ex facie wrong.

At this stage, I must closely examine the decisions of the Cabinet of Ministers referred to above and the background to it as reflected in the documents tendered to the Court. It appears that such Cabinet Memorandums and Decisions allegedly suggest a concerted effort to address legal and regulatory challenges surrounding the ownership and management of tamed elephants subjected to those cases. However, it is pertinent to note that such an alleged effort appears to have multiple layers, including regulatory changes aimed at resolving pending court cases. In the process of settlement of Pending Cases, the Cabinet has directed the Ministry of Wildlife to seek the Attorney General's advice/assistance to resolve the criminal cases involving tamed elephants or to withdraw such cases. A significant component of the Cabinet's strategy paved the way for the registration of tamed elephants, including those without licenses. A reasonable question arises as to whether the emphasis on reaching amicable settlements in pending court cases and the directive to withdraw such criminal cases reflect a motive to encourage the authorities to override the legal provisions of FFPO.

I take the view that the Cabinet of Ministers' decisions regarding the regularization of the registration of tamed elephants reveal a significant disregard for legal principles and statutory mandates. The concerted effort to settle pending criminal proceedings or to withdraw such cases without a solid legal foundation, as evidenced by the documents presented, raises significant concerns about the rule of law and adherence to established legal principals. The Cabinet's directive to the Ministry of Wildlife to seek the Attorney General's advice for settling cases related to tamed elephants, rather than allowing these cases to proceed through the judicial system, undermines the integrity of the legal process. This approach suggests a preference for expediency over justice, potentially compromising the fair adjudication of criminal cases.

I take the view that the decision to regularize the registration of tamed elephants, including those without current licenses, through administrative mechanisms rather than through strict legal compliance, directly contravenes the FFPO. The FFPO is designed to protect wildlife through stringent regulations, and any attempt to bypass its provisions undermines its purpose and effectiveness. The Cabinet's actions lack a reasonable legal basis, as they prioritize the swift resolution of cases over adherence to the statutory framework. The absence of a vigorous legal justification for these decisions suggests an ulterior motive that prioritizes the interests of certain individuals or groups over the principles of justice and legal consistency.

By allowing tamed elephants to be handed over to their purported "present owners" without thorough legal scrutiny, the Cabinet has opened the doors to potential abuses. These decisions could enable individuals to retain or acquire elephants without proper authorization, encouraging illegal possession and exploitation of these elephants. In summary, the Cabinet's decisions to settle ongoing legal proceedings regarding tamed elephants without reasonable legal grounds and in violation of the main statute represent a questionable departure from the principles of justice and the Rule of Law. Any action taken under the impugned Regulations 5(1), 5(2), 6(1) and 6(2), not only undermines the judicial process but also poses a significant threat to the protection and welfare of wildlife as mandated by the FFPO.

In addition to the above, I cannot possibly overlook the substance of paragraph 42 of the Written Submissions of the Petitioners in the case bearing No. 423/2021 which reads;

“It is respectfully submitted that as a part of this illegal racket elephant calves are captured from the wild in secret, kept hidden away in the forest till they can be transported surreptitiously by some vehicle, and maintaining in secrecy till they are tamed without any proper care or facilities probably causing much greater mortality in these calves.

(Copies of newspaper articles in proof are marked as "P10(a)" to "P10(d)" to the Petition).

A copy of the Research paper titled "Illegal capture and internal trade of wild Asian elephants (Elephas maximus) in Sri Lanka" published on November 3rd in the Nature Conservation Journal is marked as "P11 (a)" to the Petition.”

Several Respondents made assertions on the submissions made by the learned Deputy Solicitor General (who appeared before the Magistrate’s Court in Colombo) on 16.09.2021 in the Magistrate’s Court of Colombo in the case bearing No. B23073/01/15 to emphasize the fact that the investigations against several Added Respondents have been concluded due to the lack of adequate evidence. The learned DSG has submitted to Court that the elephants subjected to the said case have not been found from forest or other places (the said learned DSG submitted in Sinhala language as follows: “ඔබතුමා දන්නවා මෙම නඩු වලදී මුලින්ම මෙම අලින් කැලාවලින් හෝ වෙනත් ස්ථාන වලින් සොයාගත් අලින් නෙවේ.”). I am not inclined to embrace such submissions of the learned DSG in a situation where the impugned Regulations have been published as a result of the Cabinet Decision to resolve or withdraw the pending cases. Similarly, I simply cannot believe the version of the CID reflected in the final ‘B’ Report filed in the respective Magistrate’s Courts seeking an order to release the elephants based on ‘no evidence’.

The below-mentioned paragraph of His Lordship Justice Janak De Silva (with the concurrence of His Lordship Justice E.A.G.R. Amarasekara and Her Ladyship Justice K.K.Wickremasinghe) reflected in the Order dated 01.12.2021 [‘1R8(b)’] in the case bearing No. SC (FR) 109/2021. (The aforementioned Cabinet Memorandum marked ‘1R7(a)’ has been challenged in the said Supreme Court in the said case; However, the Supreme Court has refused granting leave in the said Case upon reasons not known to this Court.)

“The Attorney-General is vested with extensive statutory powers in relation to criminal investigations and prosecutions. Such powers are held in public trust. They must be exercised for the due administration of justice according to the rule of law which is the basis of our Constitution. Any type of dictation from whatever quarter will compromise the independence of the Attorney-General unless such dictation is permitted by law. Any compromise of the independence of the Attorney-General will have a negative impact on the rule of law. The heart of the Petitioners' complaint is that the 1st and 2nd Respondents and the Cabinet of Ministers are interfering with the statutory powers of the Attorney General.

This is a serious allegation, which if true, has far reaching ramifications. According to Article 4(d) of the Constitution, it is the bounden duty of this Court to secure and advance the fundamental rights guaranteed by the Constitution. These are proceedings brought on behalf of

the public at large. I hold that this Court must not allow procedural defects of the nature alleged in this matter to shackle its constitutional duty to examine the allegation of the Petitioners at the leave to proceed stage. Accordingly, I overrule the third objection. I allow the amended petition dated 16th August 2021.”

I have already concluded that Regulations 5(1), 5(2), 6(1), 6(2), 6(3), 7(1), 7(2) and 7(3) have been unlawfully promulgated usurping the power to make regulations and without confining to the scope and authority granted by the FFPO and accordingly, those Regulations 5(1), 5(2), 6(1), 6(2), 6(3), 7(1), 7(2) and 7(3) are liable to be quashed.

In this backdrop, I now advert to examine the legality of the impugned Orders of the learned Magistrates of Colombo and Matale. As emphasized above in detail, the said learned Magistrates issued those impugned Orders based on such Regulations 5(1) and/or 5(2).

At this stage, it is important to draw my attention to the judgement in ***Kelani Valley Plantations PLC (formerly Kelani Valley Plantations Limited) v. Chairman of the National Housing Development Authority Others S.C. Appeal No. 70/2015 decided on 03.04.2024***. The Supreme Court in addition to the main issue has considered whether the Gazette Notification subjected to the said case (No.1145/19) can be impugned within its proceedings by way of a collateral challenge. His Lordship Justice Janak De Silva (concurring with Their Lordships Justice Vijith K. Malalgoda, P.C. and Justice Arjuna Obeyesekere) in the said case has referred to ***Rajakulendran v. Wijesundera (1 Sriskantha’s Law Reports 164 at 168) and Bandahamy v. Senanayake (62 NLR 313)*** in which cases, the statement made by Lord Denning ***in Macfoy v. United Africa Company Limited [(1961) 3 All E.R. 1169 at 1172]*** have been adopted. In the said ***Macfoy*** case, Lord Denning has stated:

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

However, His Lordship Justice Janak De Silva has observed,

“Nevertheless, the position in English law is different. This was examined by a divisional bench of 5 judges in the Colombo Port City Economic Commission Bill Special Determination [Decisions of the Supreme Court on Parliamentary Bills, 2021, Vol. XVI, page 23 at 33] where it was held:

“However, Court observes that Clive Lewis, Judicial Remedies in Public Law, 5th ed., South Asian Edition (2017) in discussing the meaning of null and void in Administrative Law states (page 185):

“The primary concern here is the meaning of nullity or voidness solely in the context of the remedies granted by courts. The concept of nullity has been used to solve other problems arising in administrative law. For remedial purposes, the orthodox view is that an ultra vires act is regarded as void and a nullity. An act by a public authority which lacks legal authority is regarded as incapable of producing legal effects. Once its illegality is established, and if the courts are prepared to grant a remedy, the act will be regarded as void from its inception and retrospectively nullified in the sense that it will be regarded as incapable of ever having produced legal effects.” (emphasis added)

.....In fact, Wade and Forsyth (supra, page 305), states that the statement of Lord Denning in Macfoy v. United Africa Co. Ltd.(supra) is not the correct position of the law. Wade and Forsyth, Administrative Law, (supra, page 304), after restating the above statement of Lord Radcliffe states as follows:

“This must be equally true even where the ‘brand of invalidity’ is plainly visible for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council, without distinction between patent and latent defects. Lord Diplock spoke still more clearly [F Hoffmann-La Roche & Co. v. Secretary of State for Trade and Industry (1975) AC 295 at 366], saying that;

It leads to confusion to use such terms as ‘voidable’, ‘voidable ab initio’, ‘void’ or ‘a nullity’ as descriptive of the status of subordinate legislation alleged to be ultra vires for patent or for latent defects, before its validity has been pronounced on by a court of competent jurisdiction.” (emphasis added)

This approach is consistent with the ‘presumption of validity’ according to which administrative action is presumed to be valid unless or until it is set aside by a court [Hoffmann-La Roche & Co. v. Secretary of State for Trade and Industry (1975) AC 295]. However, this ‘presumption of validity’ exists pending a final decision by the court [Lord Hoffmann in R v. Wicks (1998) AC 92 at 115, Lords Irvine LC and Steyn in Boddington v. British Transport Police (1999) 2 AC 143 at 156 and 161, and 173-4].”

His Lordship Justice Janak De Silva has even referred to a judgement pronounced by His Lordship in the Court of Appeal in *McCallum Brewing Company (Private) Limited v. Commissioner General of Excise and Another [C.A. Writ 469/2008, C.A.M. 18.12.2019]* where it was held (at page 5) that an ultra vires act can be challenged in two ways including collateral challenge. Finally, the Supreme Court for the reasons given therein, rejected the contention of the respondent that the validity of the order published in the said Gazette Notification No. 1145/19 can be impugned in those proceedings by way of collateral challenge.

In the above circumstances, I arrive at the conclusion that the decision of the Chief Magistrate’s Court of Colombo in the case bearing No. B23073/01/15 on 06.09.2021 and the decision of the Magistrate’s Court of Matale in the case bearing No. B941/14 is a nullity. Similarly, any decision taken following Regulations 5(1), 5(2), 6(1), 6(2), 6(3), 7(1), 7(2) and 7(3) by a public authority will be nullity and void *ab initio*. It is up to the learned Magistrate to consider whether evidence is available against any perpetrator who was keeping the elephants under illegal custody

Obtaining Tamed Elephants for Historical Cultural Processions

Some of the Petitioners challenge the Regulations stipulated in Part III of the impugned Regulations which deals with obtaining tamed elephants for a historical cultural procession. Strong concerns were raised about the ‘Tamed Elephants Owners’ Organization’ described in

Regulation 17 of the said Part III. I need to examine the submissions of the learned Counsels in this regard from a broader and more realistic perspective, considering both the circumstances of these cases and the elements of law.

Although both elephants and humans are classified as mammals, elephants, despite their advanced capabilities and complex social behavior, cannot speak. This limitation prevents elephants from providing verbal testimony or effectively communicating their preferences. Nevertheless, it is crucial to recognize that changes in their behavior, movements, and gestures can offer insights into their attempts to communicate with humans, despite their inability to use words.

Likewise, in noting that elephants' communication cannot be ascertained through words, my attention is drawn to the following excerpt from the poem *'I know Why the Caged Bird Sings'* by the acclaimed American poetess Maya Angelou. Even though the underlying circumstances of the poem are in relation to the struggle of the black Americans yesteryear, the following may be relevant;

“But a bird that stalks
down his narrow cage
can seldom see through
his bars of rage
his wings are clipped and
his feet are tied
so he opens his throat to sing”

When interpreting the above excerpt in its literal meaning, it suggests that, while a tame and domesticated elephant might be restrained with chains and confined to limited spaces, the loud trumpeting could indicate the agony and suffering the elephant experiences, in addition to observable changes in its behavior. Therefore, although elephants cannot communicate verbally, they certainly express themselves through their actions and sounds.

Thus, any of the parties to these instant Applications and their respective learned Counsel or this Court are not competent to consider whether elephants genuinely desire to a) participate in *peraheras* and other cultural pageants, b) prefer to be in the custody of a private owner, c) prefer to be in the custody of the State or d) wishes to be released to the wild. Therefore, I must deal with the assertions in respect of the elephants by human parties who are represented in these instant Applications under the detailed special circumstances mentioned above and bearing in mind the scope of the power vested in this Court under Article 140 of the Constitution.

There is widespread concern that the population of domesticated elephants is rapidly declining, particularly due to the significant threat this poses to cultural events such as *peraheras*. (I have perused the 'data records' on present and future tamed elephants in Sri Lanka tendered to Court by Mr. Kuvera De Zoysa, President's Counsel on 13.01.2023.) From the period Kings reigned the country tame elephants have been part of the country's culture but the numbers are declining. In the 1980's, the tame elephant population was over 500. By 1990 it was around 300. Presently, the number of tame elephants has dropped to under hundred. There is written evidence that tame elephants were used in the construction industry such as building tanks, building *stupas* and also in the timber industry.

Considering the above circumstances mentioned under the above subtopic, I cannot directly cross off the constituting of a 'Tamed Elephants Owner's Organization'. This is merely because the prime intention of all stakeholders should be to protect and provide welfare to elephants. I presume that an experienced mahout (elephant herder) or a genuine private owner of an elephant may be more aware of the likes and dislikes of an elephant than the public officials/activists who operate from air-conditioned rooms in the town. Hence, I do not see any grave injustice in the adoption of tame elephants by a guardian who has traditional knowledge and experience of elephants, as well as suitable environmental conditions for an elephant to live in. I am making all these observations on the footing that there is no current policy decision in this country to completely disband holding the possession of a tamed elephant by a private party. Similarly, I cannot gather any policy or a future plan which provides protection and welfare for tamed elephants who are currently in the custody of private owners, religious places etc.

Based on such circumstances I am not inclined to quash the provisions of Part III of the impugned Regulations. I am of the view that the provisions in the said Part III should be effective until the relevant authorities promulgate detailed rules and regulations to cater to the multiple dimensions of the tale of the correlation between humans and elephants in Sri Lanka.

It was drawn to our attention that a proposal has been made to prepare a pool of tame elephants under the intervention of the State and provide elephants for cultural activities. Implementation of such a decision should be done subject to stringent conditions in favor of the protection and welfare of elephants. Based on the special circumstances of this case, such as the inability to communicate on the part of the elephants, I need to observe that the State parties or Government is bound to protect the Sri Lankan culture which has been in existence since the King's era and formulate appropriate rules in that regard for the further protection /wellbeing of the elephants. In view of promulgating such rules and making policies, the authorities may take cognizance of the opinions of the experts/experienced private individuals. I take the view that amongst several recommendations, the following proposals made by the Committee on Preservation of Wild Life, mentioned in Chapter 5 (under the heading 'Our Elephants') in its report published in Sessional Paper XIX-1959, Published on 16.11.1959 are apt here:

“With the immense usefulness of the elephant to man and its capacity to be domesticated, we consider that an endeavour should be made to breed elephants in captivity or in the semi-wild state. Money, will of course, be needed for such a purpose, but as we consider it worthwhile we recommend that a State-aided experiment be carried out and an elephant capturing-breeding-and-training centre be established, as suggested by the Sub-Committee referred to earlier. We would urge that very early steps be taken to ascertain the elephant population and its distribution; also that their migratory routes be determined with a view to confirming the jungle corridors necessary to enable them to pass from one Reserve to another, (as indicated in Appendix 2), or be driven along them when their haunts are threatened by agricultural encirclement.

We would also urge the banning of licences to individuals for the capturing of elephants for any purpose. Until the Department of Wild Life is able to build up an organisation of expert elephant trappers the capture of elephants should be entrusted to the Zoo working in conjunction with the Department of Wild Life.

.....*The issue of free licences for the destruction of rogue elephants should be stopped and the control and destruction of dangerous elephants should be the function solely of the Department of Wild Life. There is considerable abuse and cruelty under the present practice of issuing licences to individuals for the capture of elephants as well as for the destruction of dangerous ones. We further stress that the capture of baby elephants by private parties without authority should be completely prohibited. In cases of baby elephants found abandoned, the Department of Wild Life should make arrangements for taking them on.*”

The above committee has been appointed in December 1957 with Mr. K. Somasuntharam as Chairman and several gentlemen including Dr. R.L. Spittel have served as members who have commenced the said Chapter 5 stating “The elephant is a pride of Ceylon”.

Conclusion

I need to reiterate here that, the learned Counsel who appears for all the Petitioners and all the Respondents in the Applications bearing Nos. CA/WRIT/420/2021, CA/WRIT/423/2021, CA/WRIT/431/2021 and CA/WRIT/433/2021 after concluding their oral submissions, invited this Court to pronounce a one judgement in respect of all above 4 Applications. In light of the reasons given above while also bearing in mind the special circumstances of this Case and on a careful consideration of the whole matter, I should exercise my discretion to issue,

- I. A Writ of Certiorari quashing the Regulations 5(1), 5(2), 6(1), 6(2), 6(3), 7(1), 7(2) and 7(3) of the Fauna and Flora (Protection, Well-being and Regularization of Registration of Tamed Elephants) Regulations No. 01 of 2021 published in Gazette Extraordinary No. 2241/41 on 19.08.2021.

- II. A Writ of Certiorari quashing all decisions registering or granting approval for the issuances of licenses taken based on the Regulations in 5(1), and 5(2), 6(2) and 7(1) of the Fauna and Flora (Protection, Well-being and Regularization of Registration of Tamed Elephants) Regulations No. 01 of 2021 published in Gazette Extraordinary No. 2241/41 on 19.08.2021.

- III. A Writ of Certiorari quashing the decision of the Chief Magistrate's Court of Colombo in the case bearing No. B23073/01/15 on 06.09.2021 ('P14' in CA/WRIT/423/2021) and the decision of the Magistrate's Court of Matale in the case bearing No. B941/14 on 06.09.2021 ('P15' in CA/WRIT/423/2021).
- IV. A Writ of Mandamus directing the Director General of Wildlife Conservation, Criminal Investigations Department ('CID'), Inspector General of Police and the Hon. Attorney General to take necessary steps to prosecute all individuals who illegally kept the elephants referred to in the Magistrate's Court of Colombo and Matale in Case Nos. B23073/01/15 and B941/14 respectively, who have not been lawfully registered in terms of section 22A of FFPO.
- V. A Writ of Prohibition prohibiting the Director General of Wildlife Conservation from making any decision to hand over the custody of any of the elephants who were ordered to be released by the Orders of the Magistrate's Court of Colombo and Matale issued on 06.09.2021 in Case Nos. B23073/01/15 and B941/14 respectively, until a lawful order from an appropriate court of law is issued in that regard.

Applications are partly allowed

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal