



2025:KER:78926

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 24TH DAY OF OCTOBER 2025/2ND KARTHIKA, 1947

W.P(C).NO.27187 OF 2019

PETITIONER:

JAMES MATHEW
AGED 59 YEARS
S/O.LATE K.POULOSE, KALATHIL HOUSE, KALANJOOR P.O.
PATHANAMTHITTA DISTRICT - 689 694.

BY DR.ABRAHAM P.MEACHINKARA
BY ADV.SRI.GEORGE CLEETUS
BY ADV.SRI.M.V.LALU MATHEWS
BY ADV.SRI.P.A.SAINUDEEN

RESPONDENTS:

- 1 STATE OF KERALA (DELETED)
REPRESENTED BY CHIEF SECRETARY GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM 695 001.
[RESPONDENT NO.1 IS DELETED FROM THE ARRAY OF PARTIES
AS PER ORDER DATED 11/02/2020 IN W.P(C).NO.27187/2019]
- 2 PRINCIPAL SECRETARY,
(FORESTS AND WILDLIFE), SECRETARIAT,
THIRUVANANTHAPURAM 695 001.
- 3 INSPECTOR GENERAL OF FOREST AND WILDLIFE,
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE



2025:KER:78926

GOVERNMENT OF INDIA, INDIRA PARYAVARANA BHAWAN,
JOR BAGH ROAD, NEW DELHI 110 003.

- 4 THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
(WILD LIFE) AND CHIEF WILD LIFE WARDEN, KERALA,
FOREST HEADQUARTERS, WILD LIFE OFFICE,
THIRUVANANTHAPURAM - 659 014.
- 5 DIVISIONAL FOREST OFFICER,
MALAYATOOR FOREST DIVISION, KODANADU POST,
ERNAKULAM - 683 544.
- 6 RANGE FOREST OFFICER,
KODANADU RANGE, KODANADU POST, ERNAKULAM - 683 544.
- 7 MOHANLAL.V.
AGED 58 YEARS
S/O.LATE VISWANATHAN NAIR, VISMAYAM VEDU, THEVARA
ERNAKULAM, NOW RESIDING AT "SREE GAENSH", RAJIV NAGAR,
ELAMAKKARA P.O., KOCHI - 682 026.
- 8 SHRI. P.N. KRISHNAKUMAR,
S/O.NANU EZHUTHACHAN NO.117 (KRISHNA), HILL GARDENS,
KUTTANELLUR HOUSING COMPLEX, OLLUR VILLAGE, THRISSUR
DISTRICT - 680 014.
- 9 SHRI.K. KRISHNAKUMAR (DELETED)
S/O.KRISHN MENON, NAYANAM NORTH F GATE, AMBUJALAYAM,
THRIPUNITHURA, MUTHUKULANGARA TEMPLE ROAD, ERUR, NADAMA
VILLAGE, KANAYANNUR TALUK, ERNAKULAM - 682 301.
[RESPONDENT NO.9 IS DELETED FROM THE ARRAY OF PARTIES AS
PER ORDER DATED 11/02/2020 IN I.A.NO.1/2019].
- 10 NALINI RADHAKRISHNAN, (DELETED)
W/O.PUZHANKARA KRISHNAN, RADHAKRISHNAN, PENISULA
APARTMENT, FLAT NO.6/D, TAILORS ROAD, PENISULA HIGH
ROAD 778, CHENNAI - 600 031.
[RESPONDENT NO.10 IS DELETED FROM THE ARRAY OF PARTIES
AS PER ORDER DATED 05/03/2020 IN W.P(C).NO.27187/2019].
- 11 SHRI.MARA PANDIYAM
IAS (RETIRED), MILLENIUM APARTMENTS, JAGATHY,
POOJAPPURA, THYCAUD POST, THIRUVANANTHAPURAM - 695 014.
- 12 G. HARIKUMAR,
IFS (RETIRED), "HARINI", T.C.36/582, ERA 81,
NEAR KARIMPALI TEMPLE, PALKULANGARA,
THIRUVANANTHAPURAM - 695 008.



2025:KER:78926

- 13 K J MARTIN LOWEL,
ASSISTANT CONSERVATOR OF FORESTS, DIVISIONAL FOREST
OFFICE, MUNNAR DIVISION, DEVIKULAM P.O.
IDUKKI DISTRICT - 685 613.
- 14 DIRECTOR OF INCOME TAX (INVESTIGATION)
DIRECTORATE OF INCOME TAX, MADAPARAMBIL BUILDING,
SOUTH RAILWAY STATION ROAD, KOCHI - 682 016.

BY SRI.GRACIOUS KURIAKOSE, ADDL. DIRECTOR GENERAL OF
PROSECUTION
BY ADV.SRI.S.SREEKUMAR (SR.)
BY ADV.SRI.K.R.RADHAKRISHNAN NAIR
BY ADV.SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER
BY SRI.S.BIJU, SENIOR PANEL COUNSEL
BY ADV.SRI.BIJU BALAKRISHNAN
BY ADV.SRI.K.P.ABDUL AZEES
BY ADV.SMT.O.M.SHALINA, DEPUTY SOLICITOR GENERAL OF
INDIA
BY SRI.NAGARAJ NARAYANAN, SPL. GOVT. PLEADER (FOREST)
BY ADV.SRI.AKHIL SURESH
BY ADV.SMT.V.S.RAKHEE
BY ADV.SRI.P.VIJAYAKUMAR
BY ADV.SMT.T.ARCHANA
BY ADV.SMT.SAYUJYA RADHAKRISHNAN
BY ADV.SRI.HARIKUMAR G. (GOPINATHAN NAIR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22.10.2025 ALONG WITH W.P(C).NO.11074 OF 2019, THE COURT ON
24.10.2025 DELIVERED THE FOLLOWING:



2025:KER:78926

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 24TH DAY OF OCTOBER 2025/2ND KARTHIKA, 1947

W.P(C) .NO.11074 OF 2019

PETITIONER:

PAULOSE.A.A,
AGED 47 YEARS
S/O.AUGUSTINE, ANTHIKADU HOUSE, ELOOR SOUTH,
UDYOGAMANDAL P.O,ERNAKULAM DISTRICT ,PIN 683501

BY DR.ABRAHAM P.MEACHINKARA
BY ADV.SRI.M.V.LALU MATHEWS
BY ADV.SRI.GEORGE CLEETUS
BY ADV.SRI.P.A.SAINUDEEN

RESPONDENTS:

- 1 MOHANLAL,
AGED ABOUT 58 YEARS,
S/O.LATE VISWANATHAN NAIR, VISMAYAM VEDU, THEVARA,
ERNAKULAM, NOW RESIDING AT "SREE GANESH", RAJIV NAGAR,
ELAMAKKARA P.O, KOCHI - 682 026
- 2 STATE OF KERALA,
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY
TO GOVERNMENT, FOREST AND WILD LIFE DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695 001
- 3 THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
(WILD LIFE) AND CHIEF WILD LIFE WARDEN,
KERALA, FOREST HEADQUARTERES, WILD LIFE OFFICE,
THIRUVANANTHAPURAM, PIN - 695 014.



2025:KER:78926

BY SRI.GRACIOUS KURIAKOSE, ADDL. DIRECTOR GENERAL OF
PROSECUTION
BY ADV.SRI.S.SREEKUMAR (SR.)
BY ADV.SRI.K.R.RADHAKRISHNAN NAIR
BY ADV.SRI.P.K.RAVISANKAR
BY ADV.SRI.BABU S. NAIR
BY SRI.NAGARAJ NARAYANAN, SPL. GOVT. PLEADER (FOREST)
BY SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22.10.2025 ALONG WITH W.P(C).NO.27187 OF 2019, THE COURT ON
24.10.2025 DELIVERED THE FOLLOWING:



2025:KER:78926

"C.R."

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

The above two writ petitions, being in the nature of public interest litigations, were initially posted before the bench of the Hon'ble the Chief Justice, who by his order on the administrative side thought it apposite to post these matters before this bench. It is thus that these matters were taken up by us for consideration and disposal on merits.

Brief Facts:

2. The petitioners before us are essentially aggrieved by the action of the respondent State Government in issuing notifications in terms of Section 40(4) of the Wild Life Protection Act, 1972 [hereinafter referred to as the "1972 Act"] that permitted a celebrated film actor from the State to declare two pairs of Ivory Tusks and 13 Ivory artifacts before the Chief Wild Life Warden of the State, and the subsequent action of the State Government in issuing ownership certificates to the said person in respect of the same Ivory items in terms of Section 42 of the 1972 Act. It would appear that criminal proceedings had already been initiated against the respondent actor, at the instance of certain complainants, and those proceedings were pending before the Judicial First Class Magistrate Court, Perumbavoor, when the State Government exercised its power under Section 40(4) of the 1972 Act in favour of the respondent



2025:KER:78926

actor. Although in these writ petitions, there is a prayer seeking a direction to the official respondents of the State to expedite the said criminal proceedings, we find that those proceedings are well underway and there are presently a Criminal Revision Petition and Criminal Miscellaneous Cases, that arose therefrom, that are pending consideration before this Court. We do not, therefore, propose to consider the said prayer in these proceedings and the said prayer is accordingly rejected.

3. The challenge to the permission granted under Section 40(4), and to the ownership certificate granted in terms of Section 42 of the 1972 Act, is premised on two contentions, namely (a) that the power under Section 40(4) of the 1972 Act was not exercised in the manner prescribed under the Statute since the notifications in question were not published in the official gazette; and (b) that even if the notification granting permission to declare the items was valid, there was no proper enquiry as to whether the possession of the Ivory articles by the respondent actor was lawful in terms of the 1972 Act. It was in respect of the above two issues that we heard the arguments of the learned counsel on either side.

The submissions made before us:

4. The submissions of Dr. Abraham P. Meachinkara, the learned counsel appearing on behalf of the petitioners in both the writ petitions, briefly stated, are as follows:



- The notifications issued by the State Government that permitted the respondent actor to submit declarations as mandated under Section 40(1) of the 1972 Act in respect of the Ivory tusks and artifacts in his possession were not published in the official gazette as mandated under Section 40(4) of the 1972 Act. Therefore, the notifications cannot be seen as resulting from a valid exercise of the State Government's power under the statutory provision and are hence illegal and unenforceable in law. Consequently, the respondent actor could not have obtained any benefit such as immunity from prosecution or an entitlement to ownership certificates in respect of the Ivory tusks and artifacts in his possession. Reliance is placed on the judgments in **Rajendra Agricultural University v. Ashok Kumar Prasad and Others - [(2010) 1 SCC 730]**; **Sammuhu Nath Jha v. Kedar Prasad Sinha and Others - [(1972) 1 SCC 573]**; **Poonam Verma and Others v. Delhi Development Authority - [(2007) 13 SCC 154]**; **I.T.C Bhadrachalam Paperboards and Another v. Mandal Revenue Officer, A.P. and Others - [(1996) 6 SCC 634]**.

- Alternatively, even if the notifications in question are seen as valid and enforceable, the authorities under the 1972 Act could not have issued a valid ownership certificate in respect of the Ivory tusks and artifacts to the respondent actor, because the enquiry contemplated under Sections 41 and 42 of the 1972 Act read with Rules 35 to 37 of the Kerala Wild Life (Protection) Rules, 1978 would have rendered it impossible to grant the said ownership certificates to the respondent actor who could not have demonstrated that his possession of the Ivory tusks and artifacts was lawful in nature. This was more so because criminal cases had already been registered against the respondent actor for the unlawful possession of the said artifacts. Reliance is placed on the judgments in **Pyarelal v. The State (Delhi Administration) - [AIR 1995 SC 1159]**; **Wildlife Warden v. Komarikkal Elias - [(2018) 8 SCC 114]**; **Principal Chief Conservator of Forests,**



Thiruvananthapuram and Another v. Secretary, Paramekkavu Devaswom - [2015 (3) KHC 351 (DB)]; Indian Handicrafts Emporium and Others v. Union of India and Others - [(2003) 7 SCC 589]; Vishalakshi Amma v. State of Kerala and Others - [2023 (4) SCALE 442].

5. *Per Contra*, the submissions of the learned Additional Director General of Prosecution Sri.Grashious Kuriakose appearing for the State, and the learned Senior Counsel Sri.S.Sreekumar, assisted by Adv.Sri.K.R. Radhakrishnan Nair appearing for the respondent actor, briefly stated, are as follows:

- That merely because the notifications issued in terms of Section 40(4) of the 1972 Act were not notified in the official gazette, the said notifications would not be illegal or unenforceable. This was more so because the notifications were given due publicity by circulating it among all those mentioned in the notification itself as also to the press. That apart, since there was no scope for anyone to object to the declaration being made by an individual person, the absence of publication in the gazette could not be seen as causing prejudice to any person or to the general public. For the same reason, the *locus standi* of the petitioners to maintain public interest litigations is also questionable. Reliance is placed on the judgments in **Bangalore Woollen, Cotton and Silk Mills Co. Ltd v. Corporation of the City of Bangalore - [AIR 1962 SC 562]; Municipal Board, Sitapur v. Prayag Narain Saigal and Firm Moosaram Bhagwandas - [(1969) 1 SCC 399]; B. K. Srinivasan and Another v. State of Karnataka and Others - [(1987) 1 SCC 658]; Collector of Central Excise v. New Tobacco Co. - [(1998) 8 SCC 250].**



2025:KER:78926

● In the alternative, it is submitted that the term “official gazette” is not defined under the 1972 Act and hence going by the definition of the phrase under the General Clauses Act, 1897 that defines “official gazette” as meaning the Gazette of India or the Official Gazette of a State, the notifications in the instant cases have to be seen as published in a gazette of the State of Kerala. It is pointed out that a “gazette” is defined to mean an official newspaper in which acts of State, appointments, notices of bankruptcy and other legal matters are reported and hence the notifications in the present case, which were published in the website of the State Government must be seen as satisfying the requirement of publication in the official gazette. It is further pointed out that by a Government order dated 18.06.2021 in the State Higher Education Department, the State Government has notified its proposal to effect future gazette publications through the e-gazette portal of the State and therefore the publication of the notification through electronic media should be seen as satisfying the requirements of the 1972 Act.

Discussions and Findings:

6. Before we proceed to analyse the arguments of the learned counsel referred to above, we might notice the statutory provisions against the backdrop of which that analysis has to be undertaken. Sections 39, 40, 40A, 41 and 42 of the 1972 Act read as follows:

Section 39:

39. Wild animals, etc., to be Government property.— (1)

Every—

(a) wild animal, other than vermin, which is hunted under section 11 or sub-section (1) of section 29 or sub-section (6) of section 35 or kept or bred in captivity or hunted in contravention of any provision of this Act or any rule or order made thereunder or found dead, or killed by mistake; and

(b) animal article, trophy or uncured trophy or meat derived from any wild animal referred to in clause (a) in respect of which any offence against this Act or any rule or order made thereunder has been committed,



2025:KER:78926

(c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed;

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act, shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat derived from such animal or any vehicle, vessel, weapon, trap or tool used in such hunting shall be the property of the Central Government.

(2) Any person who obtains, by any means, the possession of Government property, shall, within forty-eight hours from obtaining such possession, make a report as to the obtaining of such possession to the nearest police station or the authorised officer and shall, if so required, hand over such property to the officer-in-charge of such police station or such authorised officer, as the case may be.

(3) No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorised officer—

- (a) acquire or keep in his possession, custody or control, or
- (b) transfer to any person, whether by way of gift, sale or otherwise, or
- (c) destroy or damage, such Government property.

Section 40:

40. Declarations.— (1) Every person having at the commencement of this Act the control, custody or possession of any captive animal specified in Schedule I or Part II of Schedule II, or animal article, trophy or uncured trophy derived from such animal or salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, shall, within thirty days from the commencement of this Act, declare to the Chief Wild Life Warden or the authorised officer the number and description of the animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept.

(2) No person shall, after the commencement of this Act, acquire, receive, keep in his control, custody or possession, sell, offer for sale or otherwise transfer or transport any animal specified in Schedule I or Part II of Schedule II or any uncured trophy or meat derived from such animal, or the salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, except with the previous permission in writing of the Chief Wild Life Warden or the authorised officer.

(2A) No person other than a person having a certificate of ownership, shall, after the commencement of the Wild Life (Protection) Amendment Act, 2002 acquire, receive, keep in his control, custody or possession any captive animal, animal article, trophy or uncured trophy specified in Schedule I or Part II of Schedule II, except by way of inheritance.

(2B) Every person inheriting any captive animal, animal article, trophy or uncured trophy under sub-section (2A) shall, within ninety days of such inheritance make a declaration to the Chief Wild Life Warden or the authorised officer and the provisions of sections 41 and 42 shall apply as if the declaration had been made under sub-section (1) of section 40:



2025:KER:78926

Provided that nothing in sub-sections (2A) and (2B) shall apply to the live elephant.

(3) Nothing in sub-section (1) or sub-section (2) shall apply to a recognised zoo subject to the provisions of section 38-I or to a public museum.

(4) The State Government may, by notification, require any person to declare to the Chief Wild Life Warden or the authorised officer any animal or animal article or trophy (other than a musk of a musk deer or horn of a rhinoceros) or salted or dried skins derived from an animal specified in Schedule I or Part II of Schedule II in his control, custody or possession in such form, in such manner, and within such time, as may be prescribed.

Section 40A:

40A. Immunity in certain cases.— (1) Notwithstanding anything contained in sub-sections (2) and (4) of section 40 of this Act, the Central Government may, by notification, require any person to declare to the Chief Wild Life Warden or the authorised officer, any captive animal, animal article, trophy or uncured trophy derived from animals specified in Schedule I or Part II of Schedule II in his control, custody or possession, in respect of which no declaration had been made under sub-section (1) or sub-section (4) of section 40, in such form, in such manner and within such time as may be prescribed.

(2) Any action taken or purported to be taken for violation of section 40 of this Act at any time before the commencement of the Wild Life (Protection) Amendment Act, 2002 shall not be proceeded with and all pending proceedings shall stand abated.

(3) Any captive animal, animal article, trophy or uncured trophy declared under sub-section (1), shall be dealt with in such manner and subject to such conditions as may be prescribed.

Section 41:

41. Inquiry and preparation of inventories.— (1) On receipt of a declaration made under section 40, the Chief Wild Life Warden or the authorised officer may, after such notice, in such manner and at such time, as may be prescribed,—

(a) enter upon the premises of a person referred to in section 40;

(b) make inquiries and prepare inventories of animal articles, trophies, uncured trophies, salted and dried skins and captive animals specified in Schedule I and Part II of Schedule II and found thereon; and

(c) affix upon the animals, animal articles, trophies or uncured trophies identification marks in such manner as may be prescribed.

(2) No person shall obliterate or counterfeit any identification mark referred to in this Chapter.

Section 42:

42. Certificate of ownership.— The Chief Wild Life Warden may, for the purposes of section 40, issue a certificate of ownership in such form, as may be prescribed to any person who, in his opinion, is in lawful possession of any wild animal or any animal article, trophy, uncured trophy and may, where possible, mark, in the prescribed manner, such animal



2025:KER:78926

article, trophy or uncured trophy for purposes of identification:

Provided that before issuing the certificate of ownership in respect of any captive animal, the Chief Wild Life Warden shall ensure that the applicant has adequate facilities for housing, maintenance and upkeep of the animal.

Rules 35 to 37 of the Kerala Wild Life (Protection) Rules, 1978 that were promulgated by the State Government in exercise of its rule making powers under Section 64 of the 1972 Act, read as follows:

Rule 35:

35. Declarations.- Notwithstanding any declaration that a person may have made under subsection (1) of section 40, any person who has in his control, custody or possession, any animal, animal article or trophy (other than the musk of a musk deer or the horn of a rhinoceros or salted or dried skins derived from an animal specified in Schedule I or Part II of Schedule II to the Act shall, make a declaration on or before 30th day of September 1991 in Form No.13 to the Chief Wild Life Warden or an Officer authorised by him in this behalf (hereinafter referred to as the authorised officer.

Rule 36:

36. Enquiry and preparation of inventories.- (1) On receipt of declaration under rule 35 or under subsection (1) of section 40, the Chief Wild Life Warden or the authorised officer shall give a notice within a period of 30 days in Form No.14 and such notice shall be served on the person making the declaration or sent to him by Registered Post.

(2) The Chief Wild Life Warden or the authorised officer shall make an inventory in Form No.15 of such animals or objects found upon the premises.

(3) The Chief Wild Life Warden or the authorised officer shall affix upon the objects referred to in sub-rule (2), identification marks in indelible ink or paint.

Rule 37:

37. Certificate of Ownership.- The Chief Wild Life Warden may, for the purposes of section 40, issue a certificate of ownership in Form No. 16 to a person who, in his opinion is in lawful possession of any animal, animal article, trophy or uncured trophy.

7. The Declaration of Wild Life Stock Rules, 2003 was promulgated by the Central Government in exercise of its powers under Section 40A(1) and (3) read with Section 63 of the 1972 Act. Since in



2025:KER:78926

these proceedings, we are not dealing with the legality of the exercise of power by the Central Government under Section 40A of the 1972 Act, we do not deem it apposite to extract the provisions of the 2003 Rules. The reference to the 2003 Rules is made merely to indicate the similarity in the nature of proceedings envisaged under the Act to regularise an irregularity noticed in any person's possession of an animal article or trophy.

8. What is apparent from a reading of the statutory provisions extracted above is that the wildlife protection laws in our country mandate that there shall be no trade or commerce of wild animals, animal articles or trophies. Such animals, animal articles and trophies are to be seen as the property of the State Governments concerned with effect from the date of commencement of the 1972 Act and no person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorised officer, either acquire or keep in his possession, custody or control, or transfer to any person, whether by way of gift, sale or otherwise, or destroy or damage such government property. Section 40 of the 1972 Act obliges a person having control, custody or possession of such government property at the commencement of the Act to declare the same within the prescribed time limit of 30 days from the commencement of the Act. If no such declaration is made by such persons, their continued control, custody or possession of the animal, animal article or trophy has to be seen as unlawful. In the State of Kerala, since the Kerala Wild Life (Protection) Rules were promulgated



2025:KER:78926

only in 1976, and it was through the said Rules that the procedure for making the declarations in terms of Section 40 of the 1972 Act was prescribed, the period for making such declarations stood extended up to 30.09.1991 through Rule 35 of the 1976 Rules. It is not in dispute in these proceedings that the respondent actor did not make any declaration in respect of the artifacts in his possession within the time permitted under the 1972 Act or the 1976 Rules.

9. Sub-sections (2), (2A) and (2B) of Section 40 of the 1972 Act deal with the prohibition against acquisition, receipt, keeping in control, custody or possession and commercial alienation or transportation of animals, animal articles and trophies by any person, except by way of inheritance, after the commencement of the 1972 Act. Sub-section (4) of Section 40 is a provision designed to empower a State Government to grant immunity in certain cases, akin to the power granted to the Central Government under Section 40A of the 1972 Act. Accordingly, if the State Government intends to grant an immunity from proceedings under the Act, to any person or class of persons who have not made a declaration in terms of the 1972 Act, it can require such person(s) to make the declaration by issuing a 'notification' containing that requisition. The term 'notification' is defined in Section 2(22) of the 1972 Act as meaning a notification published in the Official Gazette. Thus, the statutory scheme mandates that if the State Government intends to permit persons, who have not made any declaration within the period mandated under the 1972 Act or the 1976 Rules, to make such a declaration at a



2025:KER:78926

subsequent stage, then it must publish a notification in the official gazette calling upon such person(s) to make such declaration in such manner and within such time as prescribed in the notification. On such persons making the necessary declaration, to the satisfaction of the State Government, and on the State Government accepting the said declaration, the continued control, custody or possession of the animal, animal article or trophy by the declarant becomes lawful for the purposes of the 1972 Act and 1976 Rules. It would then be open to the State Government to grant an ownership certificate in respect of the animal, animal article or trophy to the declarant in terms of Section 42 of the 1972 Act.

10. In these proceedings, while it appears that notifications were issued by the State Government requiring the respondent actor to declare the Ivory tusks and artifacts before it within a stipulated time period, and the respondent actor had complied with the terms of those notifications and obtained ownership certificates in respect of the Ivory tusks and artifacts, the issue that arises is whether the notifications issued by the State Government satisfied the requirements of the 1972 Act ? It is significant in this regard to notice that the State admits that the notifications in question were not published in the official gazette. Their justification, however, is that since adequate publicity was given to the notifications, there was no prejudice caused to any person and hence the non-publication of the notification in the official gazette can only be viewed as a technical irregularity with no legal consequence.



11. We are afraid, we cannot accept the said contention of the State Government. The provisions of Section 40(4) of the 1972 Act are special provisions that empower a State Government to confer immunity on person(s) who are otherwise to be seen as having breached the provisions of the Act and thereby in unlawful control, custody or possession of an animal, animal article or trophy. The power granted to the State Government under the 1972 Act has therefore to be exercised strictly in the manner prescribed under the Act, and cautiously, keeping in mind the objectives of the Act. If a statutory power is not exercised in the manner prescribed under the Act, then that power cannot be seen as having been exercised at all **[Nazir Ahmad v. The King-Emperor - [AIR 1936 PC 253(2)]]**. That apart, as noticed by the Supreme Court in **B.K.Srinivasan v. State of Karnataka - [(1987) 1 SCC 658]**, when a Statute requires Rules to be published in the official gazette, such publication is a mandatory condition for the Rules to become operational. Highlighting the rationale for such action it was observed that '*unlike parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not..... [W]here the parent statute prescribes the mode of publication or promulgation that mode must be followed.*' In the same vein, in **I.T.C.**



2025:KER:78926

Bhadrachalam Paperboards v. Mandal Revenue Officer, A.P. and Others - [(1996) 6 SCC 634] where the issue that arose for consideration was whether the government order which did not comply with the mandatory requirement of publication in the gazette could be relied upon by a person who acted upon it, to invoke the principle of promissory estoppel against the Government and claim the benefit under the government order on the ground that it contained a representation held out by the Government to the members of the public, it was observed that the statutory requirement relating to publication of the government order in the gazette was mandatory, and that where an enactment requires an act (making a government order) to be done by the Government only in the manner prescribed therein, then non-compliance with the mandatory statutory requirement will make the act (making of a government order) invalid and consequently, the government order cannot be considered a valid and binding one, nor as a representation held out by the Government, creating any right to seek the benefit of that government order by invoking the principle of promissory estoppel against the Government.

12. We have chosen to rely on the judgment in **I.T.C. Bhadrachalam (supra)** solely to repel the argument of the State Government that the lapse on its part, in not publishing the notifications in the official gazette, was a mere technical irregularity with no legal consequence. The judgments relied upon by the State Government, as noticed above, are clearly distinguishable on facts. The said judgments



2025:KER:78926

were rendered in particular contexts where it was found, as a matter of fact, that there was no prejudice caused to the general public on account of the non-publication in the gazette. The aspect of improper exercise of power and consequent legal invalidity of the notifications was not gone into in the said judgments. We are also not impressed with the contention raised on behalf of the respondent actor that the publication of the notifications in the electronic media would tantamount to sufficient compliance with the requirements of the 1972 Act. In our view, when the statutory provisions clearly state that the publication of the notification must be in the official gazette, the publication has to be in the official gazette of the State either in print format or in the electronic format. In the light of the clear provisions of the Statute, we cannot venture to provide any alternate meaning to the term “gazette” as contended by the respondents. The effect of not exercising a statutory power (of issuing a notification) strictly in the manner prescribed under the statute is that the notifications in question will have to be seen as ‘stillborn’ and unenforceable. For the same reason, a publication of the notifications in the official gazette at this belated stage will not have the effect of legitimising the actions taken by the respondent actor or the State Government, pursuant to the said notifications since the *de facto* doctrine cannot be invoked in respect of notifications that are declared as illegal and unenforceable from the very inception.

13. As regards the objections regarding *locus standi* of the petitioners to maintain these public interest litigations, we might only



refer to the observations of the Supreme Court in **Noida Toll Bridge Co. Ltd. v. Federation of NOIDA Residents Welfare Association & Ors. - [(2025) 6 SCC 717]** where the Court observed that the rules of standing are essentially designed to weed out frivolous litigation from courts and to ensure that there is no abuse of the process of the court. While public interest litigations serve as effective tools for addressing the grievances of the public, it must be carefully scrutinised to prevent misuse or abuse by those with ulterior motives. The courts must look beyond the surface to assess whether the litigation has been genuinely initiated in the interest of the public or as a result of mischief. This is because the essence of PIL lies in its aim to remedy genuine public wrongs or injuries rather than being driven by personal vendetta or malice. On the facts of the instant cases, we find that the petitioners were essentially aggrieved by the legal *mala fides* occasioned by the State in exercising a power that they have in favour of the respondent actor without following the mandatory procedure that was a pre-requisite for the exercise of the power. Under such circumstances, the object of the writ petitions was essentially to remedy a genuine public wrong or injury and we do not see the writ petitions as being driven by personal vendetta or malice.

14. We therefore conclude by holding that the Government orders dated 16.12.2015 and 17.02.2016 are void *ab initio* and legally unenforceable. However, while striking down the said Government orders, as also the ownership certificates dated 16.01.2016 and 06.04.2016 issued to the respondent actor pursuant thereto, as illegal



2025:KER:78926

and unenforceable, we refrain from dealing with the arguments advanced on behalf of the writ petitioners as regards the manner in which the power to issue the ownership certificates in question were exercised. We feel that any finding on the said issues might prejudice the respondent actor in the criminal proceedings that are pending against him. We would only observe that the State Government is at liberty to issue a fresh notification, in terms of Section 40(4) of the 1972 Act, for conferring the immunity envisaged under the said provision, to persons or class of persons envisaged under the statutory provision.

The Writ petitions are allowed as above. No Costs.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
JOBIN SEBASTIAN
JUDGE

prp/



2025:KER:78926

APPENDIX OF W.P(C) .NO.27187/2019

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE REPRESENTATION DATED 10.8.2017 BEFORE THE 2ND AND 4TH RESPONDENTS.
EXHIBIT P2	TRUE COPY OF THE APPLICATION DATED 1.8.2018 PREFERRED BY THE PETITIONER.
EXHIBIT P3	TRUE COPY OF THE STATUS FROM THE PUBLIC GRIEVANCE REDRESSAL PORTAL OF THE MINISTRY OF ENVIRONMENT AND FOREST DATED 06.09.2018.
EXHIBIT P4	TRUE COPY OF LETTER NO.F.NO.8-39/2017-WL FROM THE GOVERNMENT DATED 10.9.2018.
EXHIBIT P5	TRUE COPY OF THE LETTER DATED 16.2.2019 ISSUED BY THE STATE PUBLIC INFORMATION OFFICER AND DEPUTY CONSERVATOR OF FORESTS.
EXHIBIT P6	TRUE COPY OF THE LETTER INCLUDING THE LIST/INVENTORY OF OTHER ASSETS FOUND AT THE RESIDENCE OF 7TH RESPONDENT VIDE COMMUNICATION NO.132/CHN-11/TVM/2011-12 DATED 23.08.2011 SUBMITTED TO THE DIVISION FOREST OFFICER, FLYING SQUAD DIVISION, PALLARIVATTOM, ERNAKULAM.
EXHIBIT P7	TRUE COPY OF THE COMMUNICATION BY THE INCOME TAX DEPARTMENT BEARING NO.F.NO.DI(INV)/132.VM/2011-12 DATED 29.7.2011 TO THE CHIEF CONSERVATOR OF FOREST (WILDLIFE) GOVERNMENT OF KERALA, VAZHUTHAKAD, THIRUVANANTHAPURAM.
EXHIBIT P8	TRUE COPY OF THE CHARGE SHEET DATED 2.12.2015.
EXHIBIT P9	TRUE COPY OF THE ORDER NO. GO (RT) NO. 538/2015/FOREST AND WLD DATED 16.12.2015.
EXHIBIT P10	TRUE COPY OF DECLARATION DATED 30.12.2015 MADE BY THE 7TH RESPONDENT.
EXHIBIT P11	TRUE COPY OF INVENTORY MADE BY ASSISTANT CONSERVATOR, SOCIAL FORESTRY, ERNAKULAM DATED 7.1.2016.
EXHIBIT P12	TRUE COPY OF THE CERTIFICATE OF OWNERSHIP DATED 16.1.2016.
EXHIBIT P13	TRUE COPY OF THE ORDER IN CRL MC 3318/2012 DATED 29.2.2016.
EXHIBIT P14	TRUE COPY OF THE ORDER NO. GO (RT) NO. 74/2016/F & WLD DATED 17.2.2016.
EXHIBIT P15	TRUE COPY OF THE DECLARATION DATED 24.2.2016 MADE BY 7TH RESPONDENT ON THE BASIS OF EXHIBIT P14.



2025:KER:78926

EXHIBIT P16	TRUE COPY OF THE INVENTORY REPORT PERTAINING TO 13 ITEMS OF WILDLIFE ARTICLES MADE OF IVORY IN THE POSSESSION OF THE 7TH RESPONDENT PREPARED BY ASSISTANT CONSERVATOR OF FOREST, SOCIAL FORESTRY DIVISION, ERNAKULAM DATED 4.3.2016 SUBMITTED TO 4TH RESPONDENT.
EXHIBIT P17	TRUE COPY OF OWNERSHIP CERTIFICATE DATED 6.4.2016 WITH RESPECT TO THE ADDITIONAL 13 ITEMS OF WILDLIFE ARTIFACTS MADE OF IVORY IN THE POSSESSION OF 7TH RESPONDENT.
EXHIBIT P18	TRUE COPY OF RTI COMMUNICATION DATED 27.5.2017 ISSUED BY 4TH RESPONDENT TO THE PETITIONER.
EXHIBIT P19	TRUE COPY OF RELEVANT PAGES OF THE REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA ON ECONOMIC SECTOR FOR THE YEAR ENDED MARCH 2017, GOVERNMENT OF KERALA REPORT NO.06 OF THE YEAR 2018 AVAILABLE IN GOVERNMENT WEBSITE WWW.AGKER CAG. GOV. IN.
EXHIBIT P20	TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 4TH RESPONDENT HEREIN W.P©.NO.11074 OF 2019.
EXHIBIT P21	TRUE COPY OF THE REPORT DATED 30.9.2019 FILED BY THE 6TH RESPONDENT IN M.P.NO.549 OF 2019 IN O.R.NO.14 OF 2012 BEFORE THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE III, PERUMBAVOOR.
EXHIBIT P8A	ENGLISH TRANSLATION OF EXHIBIT P8
Additional Exhibit P22	TRUE COPY OF THE ORDER DATED 15-10-2019 IN THIS WRIT PETITION.
Additional Exhibit P23	TRUE COPY OF THE JUDGMENT DATED 19-5-2022 IN O.P.(CRL.).NO.205 OF 2022 PASSED BY THIS HON'BLE COURT.
Additional Exhibit P24	TRUE COPY OF THE JUDGMENT DATED 22.2.2023 IN CRL.R.P.NO.754 OF 2022 AND CONNECTED CASES OF THIS HON'BLE COURT.
Additional Exhibit P25	TRUE COPY OF THE ORDER DATED 17-8-2023 IN CMP.NO.628 OF 2020 IN CC 368 OF 2019 IN O.R.NO.14 OF 2012 OF MEKKAPALA FOREST STATION, PENDING BEFORE THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE III, PERUMBAVOOR.

RESPONDENTS EXHIBITS:

Exhibit R8(b)	TRUE COPY OF CONSENT LETTER DT. 25.02.1998 GIVEN TO THE 7TH RESPONDENT.
Exhibit R8(a)	TRUE COPY OF THE CERTIFICATE OF OWNERSHIP DT. 12.09.1986



2025:KER:78926

APPENDIX OF W.P(C) .NO.11074/2019

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE ORDER IN CRIMINAL M.P NO. 739 OF 2016 DATED 15-10-2016 OF THE COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE), MUVATTUPUZHA.
EXHIBIT P2	TRUE COPY OF G.O(RT) NO. 538/2015/F &WLD DATED 16-12-2015 ISSUED UNDER SECTION 40(4) OF THE WILD LIFE (PROTECTION) ACT 1972, GRANTING PERMISSION TO THE 1ST RESPONDENT TO DECLARE THE ELEPHANT TUSKS.
EXHIBIT P3	TRUE COPY OF ORDER DATED 29-02-2016 IN CRIMINAL M.C NO. 3318 OF 2012
EXHIBIT P4	TRUE COPY OF THE JUDGMENT DATED 15-6-2017 IN W.P(C) NO. 35610 OF 2016
EXHIBIT P5	TRUE COPY OF THE DECLARATION MADE BY THE 1ST RESPONDENT ON 1-1-2016.
EXHIBIT P6	TRUE COPY OF THE LETTER BEARING NO.E2-43/16 DATED 7-1-2016 ISSUED BY THE ASSISTANT CONSERVATOR OF FORESTS, TO THE PRINCIPAL CHIEF CONSERVATOR OF FOREST.
EXHIBIT P7	TRUE COPY OF THE DECLARATION OF OWNERSHIP MADE BY MR. K. KRISHNA KUMAR DATED 4.9.2011.
EXHIBIT P8	TRUE COPY OF PROCEEDINGS NO. BDC2-504/14, OCT NO.01/2016 DATED 16-01-2016.
EXHIBIT P9	TRUE COPY OF THE INFORMATION RECEIVED FROM THE PUBLIC INFORMATION OFFICER OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT III, AT PERUMBAVOOR DATED 2-2-2019.
EXHIBIT P9 (A)	TRUE TRANSLATION OF EXHIBIT P9
ADDITIONAL EXHIBIT P10	TRUE COPY OF THE SEIZURE REPORT ALONG WITH MAHAZAR AND STATEMENT PRODUCED IN OR 14/2012 UNDER SECTION 52 OF THE FOREST ACT DATED 12TH JUNE, 2012 BY THE DEPUTY RANGER, MEEKAPPALA FOREST STATION.
ADDITIONAL EXHIBIT P10 (A) :	TRUE COPY OF ENGLISH TRANSLATION OF EXHIBIT P10.
ADDITIONAL EXHIBIT P11:	TRUE COPY OF THE REPORT REGARDING THE STATEMENT GIVEN BY THE 1ST RESPONDENT DURING THE COURSE OF ENQUIRY BEARING NO.P2-197/PTN/2012/TD DATED 2ND JULY, 2017 FORWARDED BY ACP, THRIKKAKARA TO D.C.P., KOCHI.
ADDITIONAL EXHIBIT P11 (A) :	TRUE COPY OF ENGLISH TRANSLATION OF EXHIBIT P11.



2025:KER:78926

ADDITIONAL EXHIBIT P12:	TRUE COPY OF THE LETTER ISSUED BY SHRI.K.KRISHNAKUMAR TO THE CHIEF CONSERVATOR OF FOREST AND WILD LIFE, KERALA STATE DATED 4TH SEPTEMBER, 2011
Additional Exhibit P13	TRUE COPY OF THE INTERVENTION PETITION BEARING CMP NO. 549/2019 IN O.R. NO. 14/2012 FILED BEFORE JUDICIAL FIRST CLASS MAGISTRATE III, PERAMBAVOOR.
Additional Exhibit P14	TRUE COPY OF THE REPORT FILED BY THE G.DHANIKAL, RANGE FOREST OFFICER, KODANAD DATED 30/08/2019 IN CMP NO. 579/2019 IN O.R. NO. 14/2012 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE III, PERAMBAVOOR.
Additional Exhibit P15	TRUE COPY OF RELEVANT PAGES OF THE REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA ON ECONOMIC SECTOR FOR THE YEAR ENDED MARCH, 2017, GOVERNMENT OF KERALA REPORT NO. 06 OF THE YEAR 2018 AVAILABLE IN GOVERNMENT WEBSITE : WWW.AGKER.CAG.GOV.IN.

RESPONDENTS EXHIBITS:

Exhibit R3(a)	TRUE COPY OF ORDER DATED 13/09/2012 IN MP NO. 1259/2012 IN OR NO. 14/2012
Exhibit R3(b)	TRUE COPY OF THE LETTER DATED 29/04/2015.
Exhibit R3(c)	TRUE COPY OF THE LETTER NO. WL2-3903/86 DATED 12/09/86 ISSUED BY THE CHIEF WILDLIFE WARDER AS TO THE OWNERSHIP OF THE TUSKS.
Exhibit R3(d)	TRUE COPY OF STAMP PAPER AGREEMENT DATED 28/02/1988 ALONG WITH ITS ENGLISH TRANSLATION.
Exhibit R3(e)	TRUE COPY OF THE UNDERTAKING GIVEN TO THE 1ST RESPONDENT.
Exhibit R3(f)	TRUE COPY OF THE STATEMENT GIVEN BY THE 1ST RESPONDENT SRI.V.MOHANLAL ALONG WITH ITS ENGLISH TRANSLATION.
Exhibit R3(g)	TRUE COPY OF THE STATEMENT GIVEN BY SRI.P.N.KRISHNAKUMAR ALONG WITH ITS ENGLISH TRANSLATION.
Exhibit R3(h)	TRUE COPY OF THE STATEMENT GIVEN BY SRI.K.KRISHNAKUMAR ALONG WITH ITS ENGLISH TRANSLATION.
Exhibit R3(i)	TRUE COPY OF THE STATEMENT GIVEN BY SMT.NALINI RADHAKRISHNAN ALONG WITH ITS ENGLISH TRANSLATION.
EXHIBIT-R1/18	TRUE COPY OF THE DECLARATION OF MR.K.KRISHNA KUMAR DATED 3.4.2005.



2025:KER:78926

EXHIBIT-R1/3	TRUE COPY OF THE LETTER DATED 1 JANUARY 2016 ALONG WITH THE FORM OF DECLARATION SUBMITTED BY THE ANSWERING RESPONDENT TO THE STATE GOVERNMENT.
EXHIBIT-R1/16	TRUE COPY OF THE OWNERSHIP CERTIFICATE DATED 12 SEPTEMBER 1986 IN FAVOUR OF MR. P.N.KRISHNAKUMAR.
EXHIBIT-R1/1	TRUE COPY OF THE LETTER DATED 14.12.2015 ISSUED BY THE PRINCIPAL CHIEF CONSERVATOR OF FOREST (WILDLIFE) AND CHIEF WILDLIFE WARDEN, KERALA.
EXHIBIT-R1/9	TRUE COPY OF THE ORDER DATED 12 SEPTEMBER 2012 PASSED BY THE LEARNED MAGISTRATE, PERUMBAVOOR IN M.P.NO.1259/2012.
EXHIBIT-R1/10	TRUE COPY OF THE ORDER DATED 29 FEBRUARY 2016 IN CRL.M.C NO.3318/2012 OF THIS HONBLE COURT.
EXHIBIT-R1/11	TRUE COPY OF THE ORIGINAL PETITION (CRL) NO.1896/2013 (WITHOUT EXHIBIT).
EXHIBIT-R1/12	TRUE COPY OF THE JUDGMENT DATED 18 JUNE 2013 IN OP(CRL) NO.1896/2013 OF THIS HONBLE COURT.
EXHIBIT-R1/13	TRUE COPY OF THE LETTER DATED 19 FEBRUARY 2015 OF THE ANSWERING RESPONDENT TO THE HONBLE PRIME MINISTER OF INDIA.
EXHIBIT-R1/14	TRUE COPY OF THE LETTER DATED 29APRIL 2015 OF THE GOVERNMENT OF INDIA. MINISTRY OF ENVIRONMENT AND FOREST AND CLIMATE CHANGE (MOEF) WILDLIFE DIVISION.
EXHIBIT-R1/4	TRUE COPY OF THE INVENTORY REPORT (FORM 15) ALONG WITH THE COVER LETTER DATE D7 JANUARY 2016 OF THE ASSISTANT CONSERVATOR OF FOREST. A/W TYPED COPY.
EXHIBIT-R1/5	TRUE COPY OF THE OWNERSHIP CERTIFICATE DATED 16 JANUARY 2016 ISSUED BY THE CHIEF CONSERVATOR OF FOREST.
EXHIBIT-R1/15	TRUE COPY OF THE LETTER DATED 1 JUNE 2015 SENT BY THE ANSWERING RESPONDENT TO THE THEN CHIEF MINISTER OF KERALA.
EXHIBIT-R1/8	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 15 JUNE 2017 IN WPC NO. 35610/2016 OF THIS HON'BLE COURT.
EXHIBIT-R1/2	TRUE COPY OF THE NOTIFICATION DATED 16 DECEMBER 2015 OF THE FOREST AND WILDLIFE DEPARTMENT, GOVERNMENT OF KERALA.
EXHIBIT R1/6	TRUE COPY OF THE ORDER DATED 15 OCTOBER 2016 OF THE LEARNED SPECIAL JUDGE, MUVATTUPUZHA.
EXHIBIT-R1/7	TRUE COPY OF THE WRIT PETITION NO.35610/2016 FILED BY THE ANSWERING RESPONDENT BEFORE THIS HONBLE COURT (WITHOUT EXHIBITS).



2025:KER:78926

EXHIBIT-R1/17

TRUE COPY OF THE STATEMENT FILED BY THE DY
SUPERINTENDENT OF POLICE, VIGILANCE IN WPC
NO.35610/2016 OF THIS HONBLE COURT.

//TRUE COPY//

P.S. TO JUDGE