



GAHC010017262024



2024:GAU-AS:13103

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/466/2024

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS (PETA) INDIA
REPRESENTED BY ONE OF ITS DIRECTOR, KHUSHBOO GUPTA, AGED
ABOUT 35 YEARS, WIFE OF SHUBHAM SACHDEVA, PRESENTLY WORKING
AS DIRECTOR OF ADVOCACY PROJECTS IN PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS (PETA), INDIA, HAVING ITS REGISTERED
OFFICE AT F-110, 1ST FLOOR, JAGDAMBA TOWER, PLOT NO. 13,
COMMUNITY CENTRE, PREET VIHAR, NEW DELHI- 110092.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT OF ASSAM,
BLOCK-C, 3RD FLOOR, ASSAM SACHIVALAYA, DISPUR- 781006,
GUWAHATI

2: COMMISSIONER AND SECRETARY
HOME AND POLITICAL DEPARTMENT
GOVERNMENT OF ASSAM
2ND FLOOR
CMS BLOCK
ASSAM SECRETARIAT
DISPUR
GUWAHATI-6

3: ANIMAL WELFARE BOARD OF INDIA
THROUGH DR. O.P. CHAUDHARY
CHAIRMAN
AWBI AND JOINT SECRETARY
MOFAHD
42 KM STONE
DELHI-AGRA HIGHWAY
NATIONAL HIGHWAY-2



VILLAGE- SEEKRI BALLABHGARH
FARIDABAD
HARYANA- 121004 INDI

Linked Case : WP(C)/468/2024

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For the Petitioner(s) : Mr. D. Das, Senior Advocate
Mr. D.J. Das, Advocate
For the Respondent(s) : Mr. B.J. Talukdar, Addl. Senior Govt. Advocate

Date of Hearing : **17.12.2024**
Date of Judgment : **17.12.2024**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Heard Mr. D. Das, the learned Senior Counsel assisted by Mr. D.J. Das, the learned counsel appearing on behalf of the petitioners in both the writ petitions. Mr. B.J. Talukdar, the learned Additional Senior Government Advocate appears on behalf of the respondent Nos. 1 and 2.

2. It is seen from the materials on record that service has been duly affected upon the respondent No. 3 but none has appeared on behalf of the respondent No. 3.

3. People for Ethical Treatment of Animals (PETA) is the writ petitioner in both the writ petitions. The writ petitioner claims to be a Charitable Company incorporated under Section 25 of the Companies Act, 1956 and continues to operate under the Companies Act, 2013. The writ petitioner further claims to be a reputed organization working for the promotion and protection of animal

welfare and animal rights in India. In both the writ petitions, the writ petitioner had challenged the Notification dated 27.12.2023 whereby the Governor of Assam have issued an SOP/guidelines to ensure that buffalo and other traditional birds fight are allowed to be organized in all places where it has been traditionally organized with specific provision for regulation by the District Administration to ensure that cruelty to animals is not allowed to be inflicted.

4. In WP(C) No. 466/2024, the Notification dated 27.12.2023 is challenged on the aspect pertaining to the *Buffalo Fight (Moh-Juj)* whereas in WP(C) No. 468/2024 the Notification dated 27.12.2023 is assailed on the aspect pertaining to *Bulbuli Bird Fights*.

5. Before embarking upon the adjudication as regards the legality and validity of the Notification dated 27.12.2023, this Court finds it relevant to mention the circumstances which led to the issuance of the impugned Notification dated 27.12.2023. It is seen from the very impugned Notification dated 27.12.2023 that the event of *Buffalo Fights (Moh-Juj)* is claimed by the Government of Assam as an integral part of the culture and tradition of Morigaon and Nagaon Districts etc., in Assam for centuries. It is mentioned therein that events of *Buffalo Fights* were organized formerly during the Ahom Rule, especially in Rang Ghar and it was a part of the *Magh-Bihu* festival. It is also mentioned that the politico-economic relationship between the Tiwa Chief (Gobha Raja) of the then undivided Nagaon District and Ahom Barphukan and the tradition of the Jonbeel festival bridged the gap between the two historical kingdoms of Assam which smoothened the road through which the tradition of *Moh-Juj* was transplanted to undivided Nagaon district (Nagaon and Morigaon district) from Rang Ghar. It also appears from the said impugned Notification that Historians believed that

Moh-Juj was practiced in undivided Nagaon district in a different forms (unorganized and unprofessional) before the 17th century and the relationship between the Ahom and Tiwa Chief resulted in intermixing of culture and traditions between the people of both the kingdoms, which culminated in formal introduction of *Moh-Juj* in undivided Nagaon district.

6. Furthermore, it is also seen that a writ petition was filed by an Organization in the name and style of Oitigya Mandita Ahatguri Anchalik Moh-Juj and Bhogali Bihu Utsav Samiti along with Another which was registered and numbered as WP(C) No. 73/2016 whereby the petitioners therein assailed the order dated 13.01.2015 of the Officer-in-Charge of Dharamtul Police Station as the petitioners therein were directed not to conduct the *Buffalo Fights*.

7. It is further noticed that vide a judgment and order dated 10.10.2023, the learned Coordinate Bench of this Court categorically opined that the well being of the buffaloes were adversely affected because of certain provocative acts being committed by the organizers of the *Buffalo Fights* like subjecting the buffaloes to commotions and keeping them tied and hungry for days to make them aggressive and also on many occasions the buffaloes were forcefully fed local intoxicants for creating anxiety etc. The learned Coordinate Bench of this Court had observed in the said judgment that the prevalence of *Buffalo Fights* during *Magh Bihu* was a long standing tradition in the State of Assam. On the basis thereof, the learned Coordinate Bench of this Court while disposing of the writ petition vide judgment and order dated 10.10.2023 at paragraph 15 observed as herein under:

“15. In the circumstance, the respondents in the State of Assam

through the Chief Secretary to the Government of Assam to look into the aspect of the long standing tradition of buffalo fights being performed in the State of Assam during the festival of Magh Bihu which is a part of the tradition as well as the aspect of the well-being of the animals being put to jeopardy because of any provocative acts being inflicted by the organizers and thereupon, to take a conscious decision on the matter. Any resultant decision that may be taken be informed to the court. For the purpose the Chief Secretary may also take note of the provisions of the Hon'ble Supreme Court in paragraph 44(ii) of the judgment rendered in Animal Welfare Board of India-II by referring to the paragraphs as appears in the judgment of Animal Welfare Board of India and others v. Union of India and another reported in (2023) SCC OnLine SC 661."

8. From the above quoted portion of the judgment and order dated 10.10.2023, it is seen that the Chief Secretary to the Government of Assam was directed to look into the aspect of long standing tradition of *Buffalo Fights* being performed in the State of Assam during the festival of *Magh Bihu* which is a part of the tradition by keeping in mind the well-being of the animals being put to jeopardy on account of provocative acts being inflicted by the organizers and thereupon to take a conscious decision on the matter. It was also observed that while taking such decision, the Chief Secretary shall also take note of the judgment of the Supreme Court in the case of ***Animal Welfare Board of India and Another Vs. Union of India and Another reported in (2023), 9 SCC 322*** and more particularly, to paragraph 45.2 (which corresponds to paragraph 44(ii) in *2023 SCC OnLine SC 661*).

9. It appears that basing on the said directions, a Cabinet decision was taken on 08.12.2023 to allow the buffalo and other traditional fights to be organized in all places where it has been done traditionally over the years and further

directed the Home and Political Department, Government of Assam to come up with a comprehensive SOP to ensure that the *Buffalo Fights* are allowed to be organized in all places where it had been done traditionally with specific provisions for regulation by the District Administration to ensure that cruelty upon the animals are not allowed to be inflicted. It is in terms with the Cabinet decision dated 08.12.2023, the impugned Notification was issued prescribing the Standard Operating Procedure (SOP/guideline) for *Buffalo fights (Moh-Juj)*.

10. Let this Court now take up the aspect pertaining to *Bulbuli Bird Fights*. The Bulbuli Birds in question are the red-vented bulbul species having the scientific name *Pycnonotus Cafer*. It is relevant to take note of that the red-vented Bulbul is mentioned at serial No. 63 of Part B of Schedule II to the Wildlife (Protection) Act, 1972. From the impugned Notification dated 27.12.2023, it is seen that there appears to be no documented history about when the *Bulbuli Bird Fights* started. It was however mentioned that as could be learnt the *Bulbuli Bird Fights* started sometime during the reign of the Great Ahom King Swargadeo Pramatta Singha from 1744 and 1751. It is further mentioned that it is believed that the said Ahom King saw two Bulbul birds fight while descending the stairs of a temple. It is on the said basis now thousands of people from Assam converge into the town of Hajo in lower Assam's Kamrup District to witness the famous Bulbul fight that takes place during the *Bhogali Bihu* celebrations every year.

11. In view of the Cabinet decision so taken on 08.12.2023, not only the *Buffalo Fights* were allowed by the Government of Assam vide the impugned Notification dated 27.12.2023, the *Bulbuli Bird Fights* were also allowed subject to certain guidelines being laid in the impugned Notification.

12. In the backdrop of the above, let this Court take note of the submissions so made by the learned counsels appearing on behalf of the parties.

13. Mr. D. Das, the learned Senior Counsel submitted that the impugned Notification is contrary to the provisions of the Prevention of Cruelty to Animals Act, 1960 (for short the 'Act of 1960') as well as the judgment of the Supreme Court in the case of ***Animal Welfare Board of India Vs. A. Nagaraja and Others reported in (2014) 7 SCC 547***. Elaborating his argument, the learned Senior Counsel submitted that by nature the buffaloes are docile and thrive in peaceful environment. They can only be made to fight by agitating them through physical or mental torture and in order to make these buffaloes fight they are beaten and tortured. In that regard, the learned Senior Counsel drew the attention of this Court to Annexure-11 to the writ petition which is an investigative report made by the petitioner on 24.01.2024 much after the impugned Notification. The attention of this Court was drawn to the various photographs enclosed to the said report which evidences as to how the buffaloes were incited to fight with another buffalo which results in egregious torture upon the animals.

14. Mr. D. Das, the learned Senior Counsel described on the basis of the investigation report as to how the *Buffalo Fights* are carried out. He submitted that the owners/handlers jabs the buffaloes with wooden sticks to force the animal to fight. In the process of fighting, the buffaloes bleeds profusely. The learned Senior Counsel further submitted that such torture so meted out upon the buffaloes is in violation to Section 3 and 11 of the Act of 1960. He further submitted that there is also a restriction imposed by the Central Government vide a Notification dated 11.07.2011 in exercise of the powers under Section 22

(ii) of the Act of 1960. He drew the attention of this Court to Annexure-1 to the writ petition which is the Notification whereby the Central Government had specified various categories of animals which shall not be exhibited or trained as performing animals with effect from the date of publication of the Notification and it includes amongst other bulls. The learned Senior counsel further submitted that the term "bulls" used in the Notification dated 11.07.2011 are male buffaloes and this aspect would be seen from the fact that the Indian Council for Agricultural Research-Central Coastal Agricultural Research Institute have termed male buffaloes as bulls, bullocks as well as buffalo bulls. The learned Senior Counsel therefore submitted that the impugned Notification by which the *Buffalo Fights* are allowed is contrary to the Notification dated 11.07.2011.

15. The learned Senior Counsel further submitted that insofar as the *Bulbuli Bird Fights* are concerned, the same is contrary to the provisions of the Wildlife (Protection) Act, 1972 (for short "the Act of 1972") as well as the Act of 1960. The learned Senior Counsel submitted that the term "animal" had been defined in Section 2(a) of the Act of 1960 to mean any living creature other than a human being. He further submitted that these Bulbuli Birds are red-vented bulbul species and are protected under Schedule II of Part B of the Act of 1972.

16. Mr. D. Das, the learned Senior Counsel drew the attention of this Court to the investigation report dated 15.01.2024 as had been enclosed to the writ petition at Annexure-P8. The learned Senior Counsel submitted that in order to carry out these *Bulbuli Bird Fights*, two handlers/judges sits at the stage and hold the birds by short ropes in order to conduct the fights. These birds are kept hungry before the match day. Half of a banana is dangled in front of the two

birds by the handlers and the hungry birds peck on the banana in order to consume, thereupon the bananas are brought closer to both the birds so that the birds cross path. When the birds see each other pecking the banana they attack each other. The learned Senior Counsel submitted that essentially these two starving birds are made to attack and fight each other over food. To demonstrate the same, the learned Senior Counsel further drew the attention of this Court to the various photographs which were part of the report. The learned Senior Counsel submitted that the bird's state of health upon fighting can be seen from the photographs. He submitted that when these birds get tired after fighting, the handlers of the bird in question blows air inside the beak of the birds through their mouth in order to startle them and to force them to move and fight again. The learned Senior Counsel therefore submitted that the manner in which the *Bulbuli Bird Fights* are carried out are not only in violation to Section 3 and Section 11 of the Act of 1960, but also is in violation to Section 9 of the Act of 1972 *inasmuch* as there is a prohibition of hunting any wild animal specified in Schedule I and Schedule II, except as provided in Sections 11 and 12 of the Act of 1972. The learned Senior Counsel submitted that the term "hunting" has been specifically defined in Section 2(16) of the Act of 1972, which includes amongst others capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so. The learned Senior Counsel therefore submitted that an act which is otherwise prohibited under law had been sought to be legalized by the impugned Notification. He therefore submitted that the impugned Notification insofar as permitting the *Buffalo Fights* as well as the *Bulbuli Bird Fights* are required to be interfered with.

17. The materials on record do not show that there is any affidavit-in-

opposition filed by the Respondent Authorities justifying the impugned Notification. However, there is an affidavit filed on 02.09.2024, by the Joint Secretary to the Government of Assam, Home and Political Department. A perusal of the said affidavit only shows that the Respondent Authorities have permitted the carrying out of the *Buffalo Fights (Moh-Juj)* as well as the *Bulbuli Bird Fights* in terms of the impugned Notification.

18. Be that as it may, Mr. B.J. Talukdar, the learned Additional Senior Government Advocate submitted that both the *Buffalo Fights (Moh-Juj)* as well as the *Bulbuli Bird Fights* are long standing traditions being performed in the State of Assam during the *Magh Bihu* and the *Bohag Bihu* Festival respectively. The learned Additional Senior Government Advocate submitted that this aspect of the matter was duly recognized by the learned Coordinate Bench of this Court vide the judgment and order dated 10.10.2023 passed in WP(C) No. 73/2016. The learned Additional Senior Government Advocate further submitted that taking into account the directions which were passed in the judgment and order dated 10.10.2023 in WP(C) No. 73/2016, the Cabinet of the Government of Assam had taken a decision on 08.12.2023, to permit the *Buffalo Fights (Moh-Juj)* as well as the *Bulbuli Bird Fights* subject to following the guidelines so that the Buffaloes as well as the Bulbuli Birds are not inflicted with any physical cruelty. On the basis of the said Cabinet decision, the impugned Notification dated 27.12.2023 was been issued. He further submitted that the perusal of the guidelines mentioned in the impugned Notification would show that due care has been taken so that no physical torture and cruelty is made upon the Buffaloes as well as the Bulbuli Birds. He therefore submitted that taking into account that the *Buffalo Fights* and the *Bulbuli Bird Fights* have been in existence for ages and taking into consideration that the impugned Notification

duly takes care of the animals and birds, this Court ought not to interfere with the impugned Notification.

19. This Court heard the counsels appearing on behalf of the petitioner as well as the respondents at length and have perused the materials on record.

20. The points for determination which arises in both the writ petitions are as herein under:

(i) Whether the *Buffalo Fights (Moh-Juj)* as well as the *Bulbuli Bird Fights* can be permitted to be carried out as per the provisions of law on the ground that the same have been in existence since ages and being a part of the culture and tradition?

(ii) Whether the impugned Notification dated 27.12.2023 is liable to be interfered with?

21. To answer the first point for determination, it is relevant to observe that the Respondent Authorities have not placed any materials that the *Buffalo Fights (Moh-Juj)* as well as the *Bulbuli Bird Fights* are long standing traditions in the State of Assam. It is only in the impugned Notification as observed in the previous segments of the instant judgment that the *Buffalo Fights (Moh-Juj)* and the *Bulbuli Bird Fights* have been stated to be long standing traditions in the State of Assam.

22. This Court further takes notice of the fact that in the judgment and order dated 10.10.2023 passed in WP(C) No. 73/2016, the learned Coordinate Bench of this Court had given certain indications to the effect that the *Buffalo Fights*

(*Moh-Juj*) is a long standing tradition in the State of Assam. Therefore, the question which arises is even assuming that the *Buffalo Fights (Moh-Juj)* as well as the *Bulbuli Bird Fights* are long standing traditions, can the said be permitted if the provisions of law stipulate otherwise. The answer to the same can be found from the judgment of the Constitution Bench of the Supreme Court in the case of ***Animal Welfare Board of India and Other (supra)*** and more particularly at paragraph 32 of the said judgment which is reproduced herein below:

“32. In order to come to a definitive conclusion on this question, some kind of trial on evidence would have been necessary. It is also not Court’s jurisdiction to decide if a particular event or activity or ritual forms culture or tradition of a community or region. But if a long-lasting tradition goes against the law, the law courts obviously would have to enforce the law. The learned counsel appearing for the parties, however, have cited different ancient texts and modern literature to justify their respective stands. In public interest litigations, this Court has developed the practice of arriving at a conclusion on subjects of this nature without insisting on proper trial to appreciate certain social or economic conditions going by available reliable literature. In paras 53 and 73 in A. Nagaraja, there is judicial determination about the practice being offensive to the provisions of the Central statute. It would be trite to repeat that provisions of a statute cannot be overridden by a traditional or cultural event. This, we accept the argument of the petitioners that at the relevant point of time when the decision in A. Nagaraja was delivered, the manner in which Jallikattu was performed did breach the aforesaid provisions of the 1960 Act and hence conducting such sports was impermissible.”

(emphasis supplied on the underlined portion)

23. It is seen from the above quoted paragraph of the judgment of the Supreme Court that a long lasting tradition cannot be permitted if it goes against the law and it is the bounden duty of the law Courts to enforce the law. In view of the above, the question therefore arises is as to whether the *Buffalo Fights (Moh-Juj)* as well as the *Bulbuli Bird Fights* are contrary to any statute.

24. This Court finds it relevant at this stage to take note of that vide the Constitution of India (42nd Amendment) Act, 1976, Article 48A and Article 51A were inserted to the Constitution of India. A reading of Article 48A, cast a duty upon the State to make an endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51A (g) imposes a duty upon every citizen of India to protect and improve the natural environment, including forests, lakes, river and wildlife and to have compassion for living creatures. It would therefore be seen that vide Article 48A, which comes within the ambit of the Directive Principles of State Policy, a duty is cast upon the State to apply the said principles in making laws. Similarly, every citizen of India is endowed with the duty to protect and improve amongst others the wildlife and to have compassion for living creatures. In addition to the above, Article 48 of the Constitution also casts a duty upon the State to take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle. Therefore, a duty is cast upon the State to safeguard the Buffaloes as well as the Bulbuli Birds. Similarly a duty is cast upon every citizen of India to have compassion towards the Buffaloes as well as the Bulbuli Birds.

25. At this stage, this Court finds it very pertinent to take note of the investigative reports enclosed to both the writ petitions as already referred to

herein above. The photographs enclosed to those investigative reports, however, portrays a very sorry state of affairs in respect to the performance of the duty of the State to safeguard the wildlife of the country as well as in performance of the duties by each citizen of India.

26. In the backdrop of the above, let this Court take note of the various provisions of the Act of 1960 as well as the Act of 1972.

27. Entry 17 of List III of Schedule 7 of the Constitution of India empowers both the Union as well as the State Government to frame laws for Prevention of Cruelty to Animals. On the basis of the said power, the Act of 1960 was enacted by the Parliament. The Preambular object of the Act of 1960 is to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to Prevention of Cruelty to Animals. A perusal of the provisions of the said Act of 1960 would show that the said Act is a welfare legislation which has to be construed bearing in mind the purpose and object of the said Act.

28. It is well settled that in matters of welfare legislation the provisions of law should be liberally construed in favour of the weak and infirm and the Court should be vigilant to see that benefits conferred by such remedial and welfare legislations are not defeated by subtle devices. It is also trite that in every case where ingenuity is expanded to avoid welfare legislations a duty is cast upon the Court to lift the veil and discover the true state of affairs. In the judgment of the Supreme Court in **A. Nagaraja (supra)**, it was categorically observed that the Court can go behind the form and see the substance of the device and examine whether the guidelines or the regulations so framed are to achieve some other

purpose than the welfare of the animals. It was further observed that regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the welfare legislation and the constitutional principles, the Court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation.

29. Section 3 of the Act of 1960 would show that a duty is cast upon every person having the care or charge of an animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering. The imposition of the duty upon every person having the care or charge of an animal confers a corresponding right upon the animal that the person having the care or charge of the animal shall take reasonable measures to ensure the well-being of such animal and also that the animal would not be inflicted with unnecessary pain or suffering. In the case of **A. Nagaraja (supra)**, the Supreme Court observed that the term "well-being" means state of being comfortable, healthy or happy. The question therefore arises as to whether the persons who are in charge of the Buffaloes as well as the Bulbuli Birds have taken due care and have ensured the well-being of the animal which is a statutory mandate. The investigative reports enclosed to the writ petitions as well as the pictures forming part of the investigative report show a dismal state of affairs insofar as the well-being of the animals and the birds in question. Under such circumstances, the manner in which the *Buffalo Fights (Moh-Juj)* and *Bulbuli Bird Fights* are being conducted as would be seen from the investigative reports appears to be contrary to the mandate of Section 3 of the Act of 1960.

30. Moving forward, let this Court now take note of Section 11 of the Act of

1960. Section 11 generally deals with the cruelty to animals. The said Section in no manner confers any right on the organizers to conduct *Buffalo Fights (Moh-Juj)* or *Bulbuli Bird Fights*. Rather it is a beneficial legislation enacted for the welfare and protection of the animals and it is also penal in nature.

31. Mr. D. Das, the learned Senior Counsel drew the attention of this Court to Clauses (m) and (n) of Section 11(1) of the Act of 1960. The said provisions are reproduced here in below:

“11. Treating animals cruelly.- (1) if any person-

(a).....

(m) solely with a view to providing entertainment-

(i) confines or causes to be confined any animal (including tying of an animal as a bait in a tier or other sanctuary) so as to make it an object of prey for any other animal; or

(ii) incites any animal to fight or bait any other animal; or

(n) organizes, keeps, uses or acts in the management of, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person too any place kept or used for any such purposes;”

32. A perusal of the above quoted provisions would show that if any person solely with a view to providing entertainment confines or causes to be confined any animal (including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object of prey for another animal; or incites any animal to

fight or bait any other animal, the same is a penal offence. In terms with Clause (n) if a person organizes, keeps, uses or acts in the management of, any place for animal fighting or for the purpose of baiting any animal, or permits or offers any place to be so used, or receives money for admission of any other person to any place kept or used for any such purpose, the same is also a penal offence. The investigative reports enclosed to the writ petitions clearly shows that the Buffaloes as well as the Bulbuli Birds are incited to fight each other. The Buffaloes are starved, forcefully intoxicated as well as beaten up to fight against each other. Similarly the Bulbuli Birds are starved and lured to a piece of banana/fruit to incite the birds to fight.

33. In the opinion of this Court the *Buffalo Fights* and the *Bulbuli Birds Fights* plays foul to the provisions of Section 11(1) (m) and (n) and under such circumstances, as the State is the custodian of law, it is the bounden duty of the State to protect and prevent such actions of cruelty upon the animals. However, vide the impugned Notification, the State have permitted to go ahead with the *Buffalo Fights (Moh-Juj)* as well as the *Bulbuli Bird Fights* thereby aiding to a violation of statutory provisions of law.

34. This Court further finds it relevant to take note of Section 21 and 22 of the Act of 1960. Section 21 defines the terms "exhibit" and "train". The word "exhibit" has been defined to mean exhibit at any entertainment to which the public are admitted through sale of tickets and "train" means trained for the purpose of any such exhibition and the expression exhibitor and trainer have respectively the corresponding meanings. Section 22 empowers the Central Government to specify an animal which shall not be exhibited or trained as a performing animal by issuance of a Notification in the Official Gazette.

35. This Court therefore finds it relevant to take note of the Notification dated 11.07.2011, issued by the Ministry of Environment and Forest, Government of India, whereby in exercise of the powers under Section 22 of the Act of 1960, the Central Government specified the various animals mentioned therein which shall not be exhibited or trained as performing animals with effect from the date of publication of the Notification. Amongst the various animals the "bulls" finds place in the said Notification.

36. Mr. D. Das, the learned Senior Counsel appearing on behalf of the petitioner had submitted that the Indian Council for Agricultural Research-Central Coastal Agricultural Research Institute identifies male buffaloes as bulls, bullocks as well as buffalo bulls. The learned Senior Counsel further submitted that in the Oxford English Dictionary "bulls" are referred to as male bovines including male buffaloes.

37. No materials have been placed by the respondents to show that the bulls are not male buffaloes. In the opinion of this Court, the question of exhibiting or training a male buffalo is therefore forbidden in terms with the Notification dated 11.07.2011 or in other words, the male buffaloes in terms with the Notification dated 11.07.2011 cannot be used for *Buffalo Fights*. At this stage, this Court further finds it relevant to mention that the another Notification dated 07.01.2016 was issued whereby certain exceptions were made in respect to events of Jallikattu in Tamil Nadu and bullock cart races in Maharashtra, Karnataka, Punjab, Haryana, Kerala and Gujarat. However, the said Notification dated 07.01.2016 was withdrawn as would be seen from the order dated 31.01.2017 in the case of *Compassion Unlimited Plus Action Vs. Union of India* (WP(C) No. 24/2016) of the Supreme Court.

38. This Court further finds it relevant to take note of the Act of 1972, which was enacted with an object for the conservation, protection and management of wildlife and for matters connected therewith or ancillary or incidental thereto. It is further seen from the Statements of Objects and Reasons of the Act of 1972 that the said Act was enacted in order to stop the rapid decline of India's wild animals and birds, which have become a cause of great concern inasmuch as some of the wild animals and birds have already become extinct in the country and others are in the danger of being so. The said Act prohibits hunting, as would be seen in Section 9 of the said Act. A perusal of Section 9 would show that no person shall hunt any wild animal specified in Schedule I and II, except as provided under Section 11 and 12 of the Act of 1972.

39. This Court finds it relevant to take note of Section 2(16) of the Act of 1972 which defines the term "hunting".The same being relevant is reproduced here in under:

"(16) "hunting", with its grammatical variations and cognate expressions, includes,-

(a) killing or poisoning of any wild animal or captive animal and every attempt to do so;

(b) capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so;

(c) injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;"

40. A perusal of the above quoted provision would show that "hunting"

includes capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so. It also includes injuring. This Court has also taken note of that the Bulbuli Birds who are being made to fight are red-vented Bulbul which appears at Serial No. 63 of Part B of Schedule II. Under such circumstances, there is a prohibition of capturing, coursing, snaring, trapping, driving or baiting, including causing injury to the Bulbuli Birds. In the opinion of this Court, the State of Assam therefore ought not to have permitted the *Bulbuli Bird Fights* that too when even capturing of a Bulbuli Bird is prohibited and is an offence under Section 51 of the Act of 1972.

41. This Court further finds it relevant to take note of the judgment of the Constitution Bench in the case of ***Animal Welfare Board of India (supra)***, in view of the fact that the learned Coordinate Bench of this Court had directed the Chief Secretary to arrive at a conscious decision taking into account the said judgment. A perusal of the said judgment would show that after the judgment was rendered in the case of ***A. Nagaraja (supra)*** and the dismissal of the review petition, the three States of Tamil Nadu, Maharashtra and Karnataka made amendments to the Act of 1960 and such amendment had also received the Presidential assent. The Constitution Bench of the Supreme Court in the said judgment held that the amendments which were carried out with the Presidential assent minimized the cruelty to animals in the sports concerned and once the amendment Act along with the Rules are implemented, the sports would not come within the mischief sought to be remedied by Section 3, 11(1) (a) (m) and (n) of the Act of 1960. In the instant case, it is relevant to take note of that for the State of Assam there is no such amendment being made to the Act of 1960 or even to the provisions of the Act of 1972. By way of an impugned Notification the State of Assam have permitted carrying out of the

Buffalo Fights (Moh-Juj) as well as the *Bulbuli Bird Fights* that too contrary to the provisions of Sections 3, 11(m) and (n) and 22 of the Act of 1960; the Notification dated 11.07.2011 as well as the provision of Section 9 of the Act of 1972. In that view of the matter, this Court answers the two points for determination as formulated above as herein under:

(a) The *Buffalo Fights (Moh-Juj)* as well as *Bulbuli Bird Fights*, irrespective of being long traditions and practiced in the State of Assam cannot be permitted as it offends the statutory provisions of the Act of 1960 as well as the Act of 1972.

(b) The impugned Notification permitting *Buffalo Fights (Moh-Juj)* and *Bulbuli Bird Fights* is contrary to the Act of 1960 and the Act of 1972 and accordingly interfered with.

42. The writ petitions stands disposed of with the following observations and directions:

(i) The impugned Notification dated 27.12.2023 is set aside and quashed.

(ii) This Court directs the State of Assam to ensure that the provisions of the Act of 1960 and more particularly, Section 3, Section 11 (m) and (n) and Section 22 is strictly enforced. In addition to that, the State of Assam is further directed to take steps for enforcing Section 9 of the Act of 1972.

(iii) This Court further observes and directs that the



judgment in the case of ***A. Nagaraja (supra)***, as well as the ***Animal Welfare Board of India (supra)***, are law within the meaning of Article 141 of the Constitution of India. The State of Assam is bound to confirm with the law laid down in the said judgments.

43. Before parting with the record, this Court finds it relevant to observe as regards a submission made by the learned Additional Senior Government Advocate, Assam to the effect that the judgment passed herein should not preclude the State of Assam to take appropriate actions similar to what the States of Tamil Nadu, Maharashtra and Karnataka had taken. This Court would not like to make any comment on the said submission as it relates to something which is absolutely within the domain of the State Legislature.

JUDGE

Comparing Assistant