IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13th DAY OF MARCH, 2020

PRESENT

THE HON'BLE Mrs. JUSTICE B.V. NAGARATHNA

AND

THE HON'BLE MR. JUSTICE B.M. SHYAM PRASAD

WRIT PETITION No.29328 OF 2018 (GM-FOR)

BETWEEN:

SRI B.R. GANAPATHI SINGH
S/O. LATE B.K.R.N. SINGH,
AGED ABOUT 77 YEARS,
R/AT NO.195, 4TH MAIN ROAD,
CHAMARAJPET,
BENGALURU – 560 018. ... PETITIONER

(BY SRI ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SRI M.M. SWAMY ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
DEPARTMENT OF FOREST,
ECOLOGY & ENVIRONMENT,
M.S. BUILDING,
DR. AMBEDKAR VEEDHI,
BENGALURU – 560 001
REP. BY ITS PRINCIPAL SECRETARY.

2. THE ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF FOREST,
ENVIRONMENT AND ECOLOGY,
4TH FLOOR, M.S. BUILDING,
BENGALURU – 560 001.

3. THE PRINCIPAL SECRETARY,
DEPARTMENT OF REVENUE,
GOVERNMENT OF KARNATAKA,
M.S. BUILDING,
DR. AMBEDKAR VEEDHI,
BENGALURU – 560 001.

4. THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS,
4TH FLOOR, ARANYA BHAVAN,
18TH CROSS, MALLESWARAM,
BENGALURU – 560 003. ... RESPONDENTS

(BY SRI DHYAN CHINNAPPA, ADDITIONAL ADVOCATE GENERAL A/W SMT. SWETHA KRISHNAPPA, ADDITIONAL GOVERNMENT ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 29.06.2018 PASSED BY RESPONDENT NO.2 TITLED AS PROCEEDINGS OF THE OFFICE OF THE ADDITIONAL CHIEF SECRETARY, FOREST, ENVIRONMENT AND ECOLOGY DEPARTMENT, M.S. BUILDING, BANGALORE VIDE ANNEXURE–J.

THIS WRIT PETITION COMING ON FOR *FINAL HEARING* ON 20.02.2020 AND IT HAVING BEEN HEARD AND RESERVED, AND BEING LISTED FOR *PRONOUNCEMENT OF ORDERS* TODAY, ***NAGARATHNA J.,*** PRONOUNCED THE FOLLOWING:

O R D E R

This writ petition has been re-heard by this Bench pursuant to order of the Hon'ble Supreme Court dated 13.11.2019 passed in the case of ***Samaj Parivartana Samudaya & others vs. State of Karnataka & others,*** pending in ***Writ Petition (Civil) No.562 of 2009*** *(Samaj Parivartana Samudaya)* along with ***S.L.P. (C) Nos.4579-4611 of 2019 (IV-A)*** by which, the earlier order dated 16.11.2018 passed by a co-ordinate Bench of this Court in this Writ Petition connected with other Writ Petitions, were assailed in SLP (C) Nos.4579-4611 of 2019. The said special leave petitions have been disposed and a direction

has been issued to this Court to decide on the issue ***"Whether the land in question is revenue or forest land?"***. Further, the Hon'ble Supreme Court has observed as under:

> "No effective order in these interlocutory applications can be passed till a decision on the issue whether the land in question is revenue or forest land is arrived at.
>
> x x x
>
> ……..If the High Court is of the view that the said question would involve issues, determination of facts which would require appreciation of facts and scrutiny of records, the High Court may either call for a report from the designate authority under the Karnataka Forest Act or refer the matter to such authority for disposal. ……
>
> x x x
>
> S.L.P. (C) Nos.4579-4611 of 2019 are, accordingly, disposed of. "

On perusal of the aforesaid order, it is understood by us that the earlier order passed in this writ petition has been set aside with the aforesaid direction. Hence, we have heard the writ petition afresh.

The Hon'ble Supreme Court has expected these matters to be decided within four months from 13.11.2019.

2. We have heard learned senior advocate, Sri.Ashok Haranahalli and learned counsel Sri.M.M.Swamy, for the petitioner and Sri.Dhyan Chinnappa, learned Additional Advocate General for the State and other Departments.

3. We have perused the material on record.

Factual Background:

4. Before venturing to answer the question *whether the land in question is revenue land or forest land,* it would be necessary to succinctly state the facts of this case.

4.1 Petitioner claims to be a lessee in respect of land bearing Sy.No.130 (Part) measuring 26 Acres (10.53 Hectares) situated at Chikkanayakanahalli Taluk, Tumkur District. In respect of the aforesaid land, Mining Lease was renewed under ML No.2570 for a period of 20 years from 30.12.2003 to 29.12.2023 to extract iron ore under the

provisions of the Mines and Minerals (Development & Regulation) Act, 1957 (hereinafter referred to as 'the MMDR Act' for short). According to the petitioner, the subject land is revenue land and the petitioner has been carrying on mining activities on the subject land since long. A copy of the lease deed dated 29.12.2007 is at Annexure 'A' to the writ petition.

4.2 According to the petitioner, having regard to the proceedings in *Samaj Parivartana Samudaya* before the Hon'ble Supreme Court, the petitioner approached the Monitoring Committee for issuance of permission to resume and re-commence the mining operations in the subject land. The controversy is, as to, whether, the subject land is forest land or revenue land.

4.3 In this regard, it is necessary to note that the State of Karnataka had issued Notification dated 04.08.1994 under Section 4 of the Karnataka Forest Act, 1963 (for short 'the Act') proposing to reserve certain lands for the purpose of conserving and declaring them as Reserved Forest. That a Final Notification under Section 17 of the Act had not yet been issued but, a Corrigendum

dated 04.09.2014 to the notification dated 04.08.1994 was issued. According to the petitioner, as a result, as many as 104 survey numbers in seven villages were included under the corrigendum as Reserved Forest, including the subject land.

4.4 Several aggrieved persons filed writ petitions before this Court in Writ Petition Nos.38290 to 38311 of 2015 (GM-FOR), Writ Petition Nos.38312 to 38333 of 2015 (GM-FOR) and Writ Petition Nos.50244 to 50248 of 2014 (GM-FOR). A co-ordinate Bench of this Court, by its orders dated 14.09.2015 and 06.10.2015 (Annexures 'B1', 'B2' & 'B3'), of which one of us (Nagarathna, J.) was a member, directed the petitioners to make a representation to the Secretary, Department of Forest, Ecology and Environment, Government of Karnataka, Bengaluru, so as to ventilate their grievances. That, if such representations were made, the same were to be considered by the said authority and disposed of by a speaking order. Accordingly, representations were made to the Secretary, Forest Department; and on hearing of parties, the then Additional Chief Secretary passed an order in "Appeal No.2/2015" dated 21.12.2015 and set aside not only the

Corrigendum dated 04.09.2014, but also the very Notification issued earlier under Section 4 of the Act dated 04.08.1994 which was declared as invalid.

4.5 According to the petitioner, the subject land was no longer forest land. The said order was not challenged by any person. It was also published in the Karnataka Gazette on 30.12.2015 (Part-IV-A), vide Annexure 'C'. Thus, according to the petitioner, the subject land remained revenue land and even in the revenue records, it was shown as revenue land, vide Annexure 'D' (RTC). According to the petitioner, when the work permission to restart the mining operation was sought, the Monitoring Committee appointed by the Hon'ble Supreme Court insisted on obtaining the status of land and until then, did not grant the permission. Hence, the petitioner filed Writ Petition No.12737 of 2017 [GM-MM-S] seeking a direction to the concerned Department to inform the Monitoring Committee as to the status of 26 acres of land, i.e., 26 Acres in Sy.No.130 of Honnebagi village of Chikkanayanakanahalli Taluk, Tumkur District i.e., the subject land within a period of four weeks.

Annexure 'E' is the copy of order dated 06.04.2017 in the said writ petition.

4.6 Since, there was non-compliance of the directions issued in the above mentioned writ petition, C.C.C.No.875 of 2017 (Civil) was filed before this Court and in the said proceedings an unconditional apology was tendered stating that a report with regard to the status of the subject land would be furnished to the Monitoring Committee and accordingly, the contempt proceeding was disposed of on 23.08.2017.

4.7 According to the petitioner, the status report was that the subject land was Government land and not forest land, even then the Monitoring Committee did not permit the petitioner to conduct mining operation. Hence, an application was filed in Writ Petition (Civil) No.562 of 2009 before the Hon'ble Supreme Court seeking a direction to the Monitoring Committee to permit the petitioner to resume mining operation as the subject land was revenue land in terms of the status report filed by the Department. The said application is still pending consideration.

4.8 When the matter stood thus, by order dated 29.06.2018, the Additional Chief Secretary, Forest, Ecology and Environment Department, Government of Karnataka, Bengaluru, after hearing the petitioner and other similarly situated persons passed the order at Annexure 'J', by which the representations made by the petitioners and others were rejected in view of the provisions of the Forest Act and the persons who made representations pursuant to the earlier direction issued by this Court were requested to put forth the claims of their rights and privileges before the Forest Settlement Officer (Assistant Commissioner, Tiptur) as per the provisions of the Act.

4.9 The said order dated 29.06.2018 was assailed by the petitioner in this writ petition and by order dated 16.11.2018, the writ petitions along with connected matters were allowed. It is against the said order, SLP (Civil) Nos.4579-4611 of 2019 were filed and the Hon'ble Supreme Court passed the order dated 13.11.2019 disposing of the said SLPs with a direction to this Court to decide whether the subject land is revenue land or forest

land. The said direction has been issued in Writ Petition No.562 of 2009 (*Samaj Parivartana Samudaya*).

Submissions:

5. It is in the above background, we have heard learned senior counsel and instructing counsel for the petitioner and learned Additional Advocate General for the respondents and perused the material on record.

6. Learned senior counsel and learned counsel for the petitioner submitted that the land in question is subject to a Mining Lease and permission was sought from the Hon'ble Supreme Court to conduct mining operations and an application was filed in the case of *Samaj Parivartana Samudaya*, as in the said case, the Hon'ble Supreme Court has appointed a Monitoring Committee in the matter of Leases granted in the State of Karnataka. The said Committee had opined that in view of the Notification dated 04.08.1994, Mining Leases could not be granted in the lands covered under the said Notification as they were forest lands. In order to adjudicate the said issue, the application of the petitioner herein was kept pending. But, in the aforesaid case, the State sought

permission to amend the Notification dated 04.08.1994 and issue a Corrigendum dated 04.09.2014. As a result, several villages and hundreds of survey numbers including the subject land have been declared as reserved forest. Being aggrieved by the Corrigendum, the petitioner and several others had filed writ petitions before this Court. A Division Bench of this Court had directed the petitioners to make their representations to the Secretary, Department of Forest, Ecology and Environment, Government of Karnataka, in a month's time and if such representations were made, to consider and dispose them of by a reasoned and speaking order. Representations were made to the said respondent and he rightly quashed the Corrigendum dated 04.09.2014 and in fact, set aside the earlier Notification also dated 04.08.1994 by his order dated 21.12.2015. The said order was a correct order, but subsequently, another Officer in the rank of respondent No.2 has reviewed the said order and as a result, passed the impugned order dated 29.06.2018. The same was assailed in this writ petition by the petitioner herein and several others. A co-ordinate Bench of this Court allowed the writ petitions, but the State preferred special leave

petitions before the Hon'ble Supreme Court and the order passed by the co-ordinate Bench of this Court has been virtually set aside and the matter has been remanded to give a finding, as to, *whether, the land in question is revenue or forest land*.

7. Learned senior counsel and learned counsel for the petitioner contended that the entire exercise carried out by the respondents—in issuing the notification under Section 4 of the Act and thereafter, the Corrigendum and subsequently, passing the impugned order dated 29.06.2018—is not justified. If indeed there were errors in Notification dated 04.08.1994, the same could have been withdrawn by the State Government and a fresh notification could have been issued rather than issuing a Corrigendum after two decades on 04.09.2014. The impugned order dated 29.06.2018 was wholly unnecessary as the earlier order dated 21.12.2015 was correct and in accordance with law. That, it is unnecessary to give a finding as to whether the land in question is a forest land or not. In view of the order dated 21.12.2015, passed by respondent No.2 whereby the Notification dated 04.08.1994 and the subsequent Corrigendum dated

04.09.2014 having been declared to be invalid and set aside, there was no impediment for consideration of the case of the petitioner for the purpose of conducting mining operations in the land in question. They contended that by the impugned order dated 29.06.2018, their right to conduct the mining operation has been stalled. That the land in question is not a forest land, but a revenue land. In fact, it was declared to be a revenue land (C and D Class lands) and a direction was issued that the said land could not be subject matter of any notification under the Act. In other words, it could not be declared to be forest land. Therefore, the query of the Hon'ble Supreme Court would not really call for any answer by this Court, except by concluding that the subject land is a revenue land and not forest land as the Notification dated 04.08.1994 and the Corrigendum dated 04.09.2015 have been invalidated by respondent No.2 herein. Learned Senior Counsel and learned counsel for the petitioner contended that the impugned order dated 29.06.2018 has been rightly set aside by a co-ordinate Bench of this Court in this very matter. The same would not call for any interference, as such, the writ petition may be allowed. Hence, to the

query of the Hon'ble Supreme Court, as to, whether, the subject land is revenue land or forest land, the answer would be that it is a revenue land and the same could not have been notified as forest land. Therefore, the said counsel sought allowing of the writ petition by invalidating Government Order dated 29.06.2018.

8. *Per contra*, learned Additional Advocate General submitted that there was an error in the Notification dated 04.08.1994, as the schedule to the said Notification did not correspond to the boundaries stated in the Notification. If the boundaries to the said Notification are taken into consideration, it would squarely correspond with the Schedule in the Corrigendum of the said Notification, as the lands within the said boundaries of the said Notification comprised of several villages and thousands of acres of land, whereas the Schedule to the Notification dated 04.08.1994 was incorrect. Therefore, by the Corrigendum, the Schedule was modified and corresponded with the boundaries to the lands indicated in the Notification dated 04.09.2014. Hence, the Co-ordinate Bench of this Court rightly directed the representations of the petitioner and other similarly situated be considered in

accordance with law without interfering with the aspect of the validity or otherwise of the Corrigendum dated 04.09.2014.

9. Learned Additional Advocate General further submitted that in respect of Schedule of land, boundaries would prevail over the extent; that the boundaries indicated in the initial Notification dated 04.08.1994 declaring the lands within the said boundaries to be reserved forest has not been a subject matter of challenge in this writ petition. But, since the Schedule in the Notification dated 04.08.1994 did not tally with the boundaries, a need was felt to issue a Corrigendum on 04.09.2014. The same was issued after seeking permission from the Hon'ble Supreme Court and on the request made by the Central Government to consider the order dated 21.12.2015. He contended that respondent No.2 neither had any authority nor was he empowered to set aside the Corrigendum as well as Notification dated 04.08.1994. As a result, the declaration of, *inter alia,* the subject land as a reserved forest was quashed. Such a manner of quashing of a constitution of reserved forest under Section 4 of the Act, which was by way of a

Notification, was impermissible. In the circumstances, another Officer had to correct the order dated 21.12.2015 and to issue a fresh order. Such an exercise was carried out by way of the impugned order dated 29.06.2018. The same was also at the instance of the Central Government and on the application made by respondent No.3. Even in the absence of any application being made, *suo moto*, power is vested with the authority to rectify an erroneous order. The same has been made in the instant case. Hence, there is no merit in the writ petition, particularly, when neither the initial Notification dated 04.08.1994 nor the Corrigendum has been questioned by the petitioner.

10. Learned Additional Advocate General next contended that a State Government Notification cannot be set aside by an Order, i.e., by order dated 21.12.2015 in the instant case. Such an order was also passed without jurisdiction and hence, it was a nullity. Therefore, it has to be ignored. It is in the above background that the Hon'ble Supreme Court has remanded the matter to this Court with a mandate to this Court to give a finding as to whether the land in question is a forest land or not. The answer to the said question is inextricably linked to the question

regarding the correctness or otherwise of the impugned order dated 29.06.2018. If this Court comes to the conclusion that the subject land is forest land, then the impugned order dated 29.06.2018 would be justified and correct. On the other hand, if this Court comes to the conclusion that the land in question was not forest land, then the issue regarding the correctness or otherwise of the impugned order would have to be gone into. In any case, prior to the passing of the impugned order, the petitioner and other similarly placed persons were heard in the matter. Therefore, the only finding that could be given now is, that, the subject land, once constituted to be reserved forest, would remain as forest land, unless the same is excluded by the statutory exercise being carried out by the Forest Settlement Officer when a party seeks exclusion of the said land from the contours of forest land. That such an exercise has not been completed on account of the erroneous order dated 21.12.2015 which order has now been rectified by order dated 29.06.2018.

11. Further, learned Additional Advocate General contended that the order dated 21.12.2015 passed by respondent No.2, being a nullity, has to be ignored and the

impugned order dated 29.06.2018 also passed by respondent No.2 may be sustained. In the circumstances, learned Additional Advocate General contended that the review of the order dated 21.12.2015 was illegal and hence, the order dated 29.06.2018 is valid and in accordance with law, just and proper, and the same would not call for any interference at the hands of this Court. He contended that there is no merit in the writ petition and the same may be dismissed by giving a finding that the subject land is forest land.

12. During the course of submission, learned counsel for the parties relied upon the following citations, which shall be adverted to later:

GOVERNMENT NOTIFICATIONS:

13. Before proceeding further, it would be necessary to refer to the following Notifications:

Notification dated 04.08.1994:

The State Government issued *Notification bearing No.AHFF 205 FAF 88, Bangalore, dated 04.08.1994*

(Document No.R1). The said Notification is not a subject matter of challenge by the petitioner. It reads as under:

"Forest, Environment & Ecology Secretariat

NOTIFICATION

No.AHFF 205 FAF 88, Bangalore, Dated 4th August 1994

In exercise, of the powers conferred by section 4 of the Karnataka Forest Act, 1963 (Karnataka Act 5 1964) the Government of Karnataka hereby:-

1. Declares that it has been decided to constitute the land in the Janeeru village, Chickanayakanahalli Taluk, Tumkur District, the situation and limits of which are specified in the schedule below as "Reserve Forest".

2. Appoints the Forest Settlement Officer, Asst. Commissioner, Tiptur, to be the Forest settlement officer for the purpose of clause (c) of Sub-section (10) of the said section and,

3. Appoints the Divisional Forest Officer, Tumkur Division, Tumkur to represent the State Government in the enquiry by the said Forest Settlement Officer.

SCHEDULE

Name of the Dist : Tumkur
Name of the Taluk : Chickanayakanahalli
Name of the Hobli :
Name of the Village: Janeeru

Field Sy.Nos. : 41,42,43

Area in Hect : 323.88

Name of the Block : Janeeru

BOUNDARY DESCRIPTIONS

NORTH:- The line start from station No.1 of beside village moves towards east direction at bearing of 150 degree of enclose to distance of 165 chains and reaches No.24. The line runs North-East as follows:

Station	Station	Bearing	Distance
1	2	150°	7 Chains
2	3	150°	7 "
3	4	150°	7 "
4	5	150°	7 "
5	6	150°	7 "
6	7	150°	7 "
7	8	150°	7 "
8	9	150°	7 "
9	10	150°	7 "
10	11	100°	8 "
11	12	75°	7 "
12	13	75°	7 "
13	14	75°	7 "
14	15	75°	7 "
15	16	75°	7 "
16	17	75°	7 "
17	18	150°	8 "
18	19	200°	8 "
19	20	190°	7 "
20	21	170°	8 "
21	22	70°	7 "
22	23	70°	9 "
10(Adjoining Station)	24	270°	7 "

EAST:- The line runs from station No.24 of village boundary Uggaraguda moves almost to South with bearing of 270 degree and to a distance

of 325 chains, It reaches station No.70. The line moves as follows:

Station	Station	Bearing	Distance
24	25	270°	7 Chains
25	26	240°	7 "
26	27	240°	7 "
27	28	255°	8 "
28	29	255°	7 "
29	30	255°	7 "
30	31	260°	8 "
31	32	250°	7 "
32	33	270°	7 "
33	34	250°	7 "
34	35	252°	7 "
35	36	252°	7 "
36	37	252°	9 "
37	38	252°	7 "
38	39	245°	7 "
39	40	245°	7 "
40	41	245°	7 "
41	42	260°	8 "
42	43	278°	7 "
43	44	278°	7 "
44	45	275°	7 "
45	46	270°	7 "
46	47	263°	7 "
47	48	263°	7 "
48	49	263°	7 "
49	50	263°	7 "
50	51	263°	7 "
51	52	255°	9 "
52	53	280°	7 "
53	54	280°	7 "
54	55	280°	7 "
55	56	290°	7 "
56	57	252°	7 "
57	58	252°	8 "
58	59	265°	7 "
59	60	215°	7 "
60	61	215°	7 "
61	62	215°	7 "
62	63	235°	7 "
63	64	286°	7 "
64	65	286°	7 "

65	66	286°	7 "
66	67	286°	7 "
67	68	286°	7 "
68	69	290°	8 "
69	70	355°	8 "

SOUTH:- The line runs from station No.70 moves almost towards West with bearing of 355 degree to a distance of 65 chains. The line reaches a station No.79. The line runs South-West as follows:

Station	Station	Bearing	Distance
70	71	355°	10 Chains
71	72	355°	7 "
72	73	355°	7 "
73	74	355°	7 "
74	75	355°	7 "
75	76	355°	8 "
76	77	355°	9 "
77	78	355°	7 "
78	79	85°	7 "

WEST:- The line runs from station No.79 towards north beside village of Kodihally and it distance is 325 chains and reaches the station No.1. The line runs west-north as follows:

Station	Station	Bearing	Distance
79	80	85°	7 Chains
80	81	85°	7 "
81	82	85°	7 "
82	83	85°	7 "
83	84	85°	7 "
84	85	85°	7 "
85	86	85°	7 "
86	87	70°	7 "
87	88	70°	7 "
88	89	70°	7 "
89	90	70°	7 "
90	91	70°	7 "
91	92	70°	7 "

92	93	86°	8 "
93	94	86°	7 "
94	95	86°	7 "
95	96	86°	7 "
96	97	86°	7 "
97	98	86°	7 "
98	99	86°	7 "
99	100	110°	9 "
100	101	110°	7 "
101	102	110°	7 "
102	103	110°	7 "
103	104	96°	7 "
104	105	96°	7 "
105	106	96°	7 "
106	107	96°	7 "
107	108	96°	7 "
108	109	96°	7 "
109	110	178°	7 "
110	111	178°	7 "
111	112	85°	7 "
112	113	85°	7 "
113	114	8°	7 "
114	115	8°	7 "
115	116	8°	7 "
116	117	8°	7 "
117	118	85°	8 "
118	119	85°	8 "
119	120	85°	7 "
120	121	85°	7 "
121	122	85°	7 "
122	123	50°	5 "
123	124	50°	7 "
124	125	50°	7 "

*****

Corrigendum dated 04.09.2014:

Subsequently, by a *Corrigendum bearing No.FEE 188 FAF 2014, Bangalore, dated 04.09.2014* (Document No.R2), the Schedule to the Notification dated 04.08.1994 was substituted. According to the said Notification, the

same was required, as the Schedule to the Notification dated 04.08.1994 was not in conformity with the boundary description of the said Notification. The Corrigendum dated 04.09.2014 reads as under:

"FOREST, ENVIRONMENT AND ECOLOGY SECRETARIAT

CORRIGENDUM

No.FEE 188 FAF 2014, Bangalore, Dated: 04-09-2014

In exercise of the powers conferred by Section 4 of the Karnataka Forest Act, 1963 the Government of Karnataka had notified "Janeeru Block" in Chikkanayakanahalli Taluk, Tumkur District vide Notification No: AHFF 205 FAF 88 dated 4th August 1994 which was published in Karnataka State Gazette on 31st October 1996. On verification, it has been found that the SCHEDULE mentioned in the said Notification is not in conformity with the boundary description. Hence, in continuation of the above said Notification, for the Schedule mentioned at Notification No. AHFF 205 FAF 88 dated 04-08-1994 published in Gazette dated 31-10-1996 the following shall be substituted:

SCHEDULE

Name of the District : Tumkur

Name of the Taluk : Chickanayakanahalli

Name of the Hobli, Village & Sy.Nos :

Hobli : Kasaba

Village	Sy.Nos.
Hosahalli	53,54,55,56,57,58,59,60,61,62,63, 64,65,66,67,68,69,70,71,72,73,74, 75,76,77,79,80,81,82,86,87,89,90, 91, 96, 98 & 119
Gollarahalli	10,11,12 & 13
Honnebagi	127,128,129,130,131,132,133 & 134

Hobli : Shettikere

Village	Sy.Nos.
Bullenahalli	1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,22,44, 45 & 46
Manchikatte	16,36,37,43,44,45,46 & 50
Bagganahalli	62,64,65,66,67,68,69,70,71,72,73 ,92,93,94,95,112,113,127 & 128
Sondenahalli	18,19,20,21,22,67,122,123 & 124

Area : 3817-32 (A-G) or 1545.04 (Ha.)
Name of the Block : Janeeru

1) "Janeeru Village" mentioned in para-1 is replaced herewith by "Hosahalli, Gollarahalli, Honnebagi, Bullenahalli, Manchikatte, Bagganahalli & Sondenahalli Villages".

2) The bearings mentioned in the notification are with respect to the Geographical West.

By Order and in the name of
the Governor of Karnataka,
Sd/-
S.P. PATIL
Under Secretary to Government
Forest, Environment and Ecology
Department**"**

The Corrigendum was a subject matter of challenge in Writ Petition Nos.38290 to 38311 of 2015 and two other

matters filed by several persons and this Court by its orders dated 14.09.2015 and 06.10.2015 did not consider the correctness of the Corrigendum, instead, disposed of the writ petitions reserving liberty to the petitioners to make representations to the Secretary, Department of Forest, Ecology and Environment, Government of Karnataka, in a month's time and if such representations were made, to consider and dispose them by a reasoned and speaking order. Accordingly, representations were made by the petitioner herein and other similarly placed persons. The said representations were considered as "*Appeal No.2 of 2015 in the Court of Additional Chief Secretary, Forest, Ecology and Environment Department, Bangalore*" and by order dated 21.12.2015, the representations were allowed and the Corrigendum dated 04.09.2014 was set aside and while doing so, the Notification issued under Section 4 of the Act dated 04.08.1994 was also declared as invalid apparently with reference to the report of the Forest Settlement Officer and the earlier Government Order issued from Revenue Department from time to time.

Order dated 21/12/2015:

14. It is necessary to note the following contents of the order dated 21/12/2015 as it is this order which has been revoked by the impugned order dated 29.06.2018, in order to answer about the correctness of the revocation order and as to, whether, the subject land is forest land or not.

- As already noted, the order dated 21.12.2015 was made pursuant to the liberty given by a co-ordinate Bench of this Court to make representations with regard to the Corrigendum Notification;

- The Corrigendum Notification substituted the Schedule whereby seven new villages were included and several survey numbers were added including the subject land (Sy.No.130 of Honnebagi village). Thus, the Corrigendum Notification was brought in conformity with earlier Notification dated 04.08.1994.

- That the Revenue Department vide Government Order No.RD 106 LGP 88, dated

03.01.1991 had transferred certain lands as C and D class lands with detailed instructions regarding utilization of the said lands. Thereafter by Circular No.RD 106 LGP 88, dated 17.09.1991, it was stated that all C and D class lands had been resumed to the Revenue Department. Thereafter, Government Order dated 07.06.1993 was issued stating that the Revenue Department had to draw the said lands from the land bank wherever necessary for Government and for any public purpose and said lands would continue to be C & D class lands. That another order bearing No.RD 106 LGP 88 dated 20.07.1994, was issued stating that the said lands should not be notified as reserved forest.

- When the matter stood thus, on 04.08.1994, Notification under Section 4 of the Act was issued proposing to declare the said lands as reserved Forest;

- The said order notices that the Notification dated 04.08.1994 was issued under Section 4 of the Act proposing to constitute in Janeeru village of Chickanayakanahalli Taluk, Tumkur District as per the Schedule as '***Reserved Forest***'. The said Notification was published in the Official Gazette on 31.10.1996. Subsequently, the Corrigendum was issued on 04.09.2014 as the Schedule mentioned in the Notification dated 04.08.1994 was not in conformity with the boundary description given therein.

- It appears that the Forest Settlement Officer and Assistant Commissioner, Tiptur by his report dated 07.11.2006 stated that the proposed lands were transferred to the Revenue Department as C & D class lands and therefore, could not have been notified as Reserved Forest;

- The order records that the report dated 07.11.2006 submitted by the Forest

Settlement Officer had attained finality as the same had not been challenged before the Appellate Authority;

- That, the then Chief Conservator of Forest in his Working Plan dated 15.12.2009 also referred that Notification dated 04.08.1994 was flawed and defective;

- The High level Committee, under the Chairmanship of Additional Chief Secretary (ACS), Department of Forest, Ecology and Environment, at its meeting on 07.07.2010, after verification of the relevant documents, found that the Notification dated 04.08.1994 was defective and therefore, revised Notification should be submitted and copies of the proceedings of the meeting was sent to all the concerned authorities in the Forest Department vide letter No.Apaji 90 FFM 2010, dated 08.09.2010 and therefore, a revised Notification could be issued;

- When the matter stood thus, in Writ Petition (Civil) 562 of 2009, submission was made before the Hon'ble Supreme Court that there was a typographical error in the Notification dated 04.08.1994 with regard to survey numbers and villages which were to be treated as 'reserved forest' and hence, permission was sought to take appropriate steps in that regard. The prayer being allowed by the Hon'ble Supreme Court, Corrigendum dated 04.09.2014 was issued. It is held in the order dated 21.12.2015 that the Notification dated 04.08.1994 was defective as C and D class lands could not be notified as reserved forests under Section 4 of the Act and also the Forest Department had decided to issue a revised Notification. Hence, Notification dated 04.08.1994 was invalid;

- The next aspect considered in the order dated 21.12.2015 was whether the Corrigendum dated 04.09.2014 was issued within the

parameters of the order of the Hon'ble Supreme Court dated 01.09.2014 granting permission to take steps to rectify the earlier Notification dated 04.08.1994. In that regard, it is observed that the Corrigendum was issued after twenty years and it included several villages, survey numbers and a larger extent of area. That a Corrigendum could be issued only to correct the typographical error, not an omission. The Corrigendum cannot have the effect of taking away the vested rights of persons conferred in law. That when earlier Notification dated 04.08.1994 was invalid, issuance of Corrigendum does not arise. Therefore, instead of issuance of a Corrigendum, a fresh Notification could have been issued under the Act. In the circumstances, Corrigendum dated 04.09.2014 was set aside and Notification dated 04.08.1994 was declared invalid.

Government Order dated 29.06.2018 - Impugned in this writ petition:

15. When the matter stood thus, Annexure 'J' order dated 29.06.2018 was issued, which is the subject matter of challenge in this writ petition. Hence, it is necessary to high light the salient aspects of the said order as under:

- It is stated that although Notification dated 04.08.1994 was issued under Section 4 of the Act proposing to notify lands in Janeeru Block as Reserved Forest including the subject land, to an extent of 323.88 Hectares in Sy.Nos.41, 42 & 43 of Janeeru village, subsequently, it was noticed that there was a typographical error in the said Notification and an application was filed by the Karnataka Forest Department in IA No.212 of 2014 in Writ Petition (Civil) No.562 of 2009 before the Hon'ble Supreme Court. A prayer was sought to correct the typographical error and it was granted by the Hon'ble Supreme Court.

- Consequently, Corrigendum dated 04.09.2014 was issued under which seven villages were included in Janeeru Block and the Corrigendum was assailed before the Hon'ble Supreme Court along with IA No.231 of 2014 in Writ Petition (Civil) No.562 of 2009.

- That several writ petitions were also filed before this Court challenging the Corrigendum. They were disposed off permitting the writ petitioners to make representation to the Secretary, Department of Forest, Ecology and Environment, within one month.

- The representations were made and considered and termed as "Appeal No.2 of 2015" by the Additional Chief Secretary, Department of Forest, Ecology and Environment, who, by his order dated 21.12.2015 set aside the Corrigendum dated 04.09.2014 and invalidated the

Notification dated 04.08.1994 issued under Section 4 of the Act.

- That the Principal Chief Conservator of Forests (Head of Forest Force) by letter dated 11.03.2016 sought for reconsideration of the order dated 21.12.2015.

- On considering order dated 21.12.2015, the Ministry of Environment, Forests and Climate Change, Government of India, vide communications dated 03.05.2016 and 21.07.2016 stated that order dated 21.12.2015 is illegal and untenable. The State Government was further requested to take necessary action to annul the said order and initiate disciplinary proceedings against the erring officials involved in the violation.

- Further, as per the minutes of the meeting dated 30.01.2018 of the Central Empowered Committee (CEC) appointed by

the Hon'ble Supreme Court, it has been recorded that order dated 21.12.2015 is an illegal order and the same has to be remedied by the Government of Karnataka, especially when a request was made by the Principal Chief Conservator of Forests and also when serious objections being raised by the Regional Office of the Ministry of Environment, Forests and Climate Change (GOI). That if order dated 21.12.2015 is enforced, it would benefit mining lessees who were operating in the lands notified under Section 4 of the Act without obtaining Forest Clearance under Section 2 of the Forest (Conservation) Act, 1980. Further, the lessees who have failed to get any relief from the Hon'ble Supreme Court would also benefit from the order dated 21.12.2015.

- In the background of the aforesaid points, order dated 21.12.2015 was reconsidered after issuance of notices to the persons who had made representations.

16. It is also stated in the impugned order dated 29.06.2018 that the opinion of the learned Advocate General on the following three points was obtained:

> *(I) "Whether the State Government is competent to annul the order of the Additional Chief Secretary dated 21.12.2015?*
>
> *(II) Whether the affidavit filed by the State Government, before the Hon'ble High Court, with respect to the 'legal status of the land involved' will come in the way of such annulment?*
>
> *(III) What is the appropriate legal recourse to nullify the order [dated 21.12.2015] of the Additional Chief Secretary to the Government?"*

17. It was opined that the State Government was competent to reconsider and remedy the order dated 21.12.2015 after affording an opportunity to the writ petitioners / who had made the representations.

18. Accordingly, notices were issued to the persons who had made representations, their advocates were

heard and on hearing the following points have been noted in the impugned order:

- That there is no power to invalidate a Notification issued under Section 4 of the Act. Hence, the order dated 21.12.2015 invalidating the said Notifications is illegal and *ultra vires* of the provisions of the Act.

- That the exercise undertaken to reconsider order dated 21.12.2015 is not a review proceeding initiated at the behest of the Principal Chief Conservator of Forests (Head of Forest Force) but the proceedings of reconsideration have been undertaken on the directions of Government of India, Ministry of Environment, Forests and Climate Change and at the behest of Central Empowered Committee constituted by the Hon'ble Supreme Court.

- That under Section 21 of the Karnataka General Clauses Act, 1899 (for short 'General Clauses Act'), power is envisaged

to add to, amend, vary or rescind any order that has been issued. That the proceedings of reconsideration are not review proceedings, but initiated at the behest of the Central Empowered Committee and Central Government and also the Principal Chief Conservator of Forest (Head of Forest Force).

- It is further stated in the impugned order, the reason as to why the Corrigendum had to be issued. It was because in the original Notification dated 04.08.1994, the Schedule was not in conformity with the boundary description. That the meridian from which all bearings are being measured and recorded, was ***west***. But, in Notification dated 04.08.1994, the expression "*from west*" which had to be mentioned after the word "*bearing*" wherever it occurred, had been left out. That the Corrigendum dated 04.09.2014 had been issued due to the need to change the alignment of the forest

notified as per the notification dated 04.08.1994. As a result, the alignment had changed but not the shape of the extent of land. Accordingly, the total area encompassed as per the boundary description was 1545.04 Hectares, which is exactly the same in the Corrigendum. There is no change in the extent as per boundary description in the Notification dated 04.08.1994 and Corrigendum dated 04.09.2014. The change is only in the change of meridian. That on account of the typographical error being corrected and matching it with the boundary description, the matching Survey numbers and village names had been automatically included. That there is no time frame or period prescribed under the Act to complete the enquiry once the Notification is issued under Section 4 of the Act; only a Notification has to be issued under Section 17 of the Act on conclusion of enquiry.

- That the High Court had only directed the then Additional Chief Secretary, Department of Forest, Ecology and Environment to consider the representations, there was no authority empowering the setting aside of the Corrigendum dated 04.09.2014, or for that matter the earlier Notification dated 04.08.1994. That once the lands are notified as reserved forest, they can be excluded only after an enquiry is held by the Forest Settlement Officer under the provisions of the Act and not while considering the representations made by the writ petitioners pursuant to the directions issued by this Court. That the Corrigendum dated 04.09.2014 was issued in terms of Section 21 of the General Clauses Act and after bringing to the notice of the Hon'ble Supreme Court the flaw in the earlier Notification dated 04.08.1994.

- That the report of the Forest Settlement Officer-cum-Assistant Commissioner, Tiptur, dated 07.11.2006 could not have been the basis for setting aside the Corrigendum dated 04.09.2014 and earlier Notification dated 04.08.1994 issued under Section 9 of the Act.

- The report dated 07.11.2006 was not as per the procedure prescribed under the Act. That the then Additional Chief Secretary (Forest), Department of Forest, Ecology and Environment could not have usurped the powers of the Forest Settlement Officer by setting aside the Corrigendum dated 04.09.2014 and invalidating the earlier Notification dated 04.08.1994 issued under Section 4 of the Act.

- In the above premise, exercising power under Section 21 of the General Clauses Act, the order dated 29.12.2015 was declared to be non-est and invalid and the

representations made by the writ petitioners pursuant to the directions issued by this Court were rejected and liberty was reserved to the petitioners to put forth their claims with regard to their rights and privileges before the Forest Settlement Officer (Assistant Commissioner, Tiptur) during the course of the enquiry to be held by the said Officer as provided under the Act and Karnataka Forest Rules, 1969.

19. Having perused the order dated 21.12.2015 and the impugned order dated 29.06.2018 in detail and in the background of the aforesaid contents of the said orders recorded above, we now proceed to answer question as to ***whether the subject land is revenue land or forest land*** with reference to the Act and other materials on record as well as decide on the validity of the impugned order dated 29.06.2018 in light of the State Act as well the Forest conservation Act, 1980 ('F.C. Act', for short) which is a central enactment.

The Karnataka Forest Act, 1963:

20. The Karnataka Forest Act, 1963 was enacted to consolidate and amend the law relating to the forest and forest produces in the State of Karnataka. It received the Presidential assent on 28.01.1964. In order to answer the vital question raised in this matter, it is necessary to refer to the following provisions of the Act. Sub-section (14) of Section 2 of the Act defines 'Reserved Forest' as under:

> **"2. Definitions:** In this Act, unless the context otherwise requires.—
>
> (14) **"Reserved Forest"** means any land settled and notified as such in accordance with the provisions of Chapter II of this Act;**"**

21. Sections 3 to 28 of the Act which are in Chapter II are extracted as under:

> **" 3. Powers to constitute reserved forests.**—The State Government may constitute any land which is the property of the Government or over which the Government has proprietary rights, or to the whole, or any part of the forest produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

4. Notification by Government.—(1) Whenever it has been decided to constitute any land a reserved forest the State Government shall issue a notification,–

(a) declaring that it has been decided to constitute such land a reserved forest;

(b) specifying, as nearly as possible, the situation and limits of such land; and

(c) appointing an officer (hereinafter called the "Forest Settlement Officer") to inquire into and determine the existence, nature and extent of any rights claimed by or alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest produce, and to deal with the same as provided in this Chapter.

Explanation.—For the purpose of clause (b) it shall be sufficient to describe the limits of the forest by roads, rivers, bridges, or other well-known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of sub-section (1) shall, be a person not holding any forest office except that of Forest Settlement Officer; but a Forest Officer may be

appointed by the State Government to represent it in the inquiry under this Chapter by the Forest Settlement Officer.

5. Proclamation by Forest Settlement Officer.—When a notification has been issued under Section 4, the Forest Settlement Officer shall publish in Kannada and in any other regional language of the area, at the headquarters of each taluk in which any portion of the land comprised in such notification is situate and in every town and village in the neighbourhood of such land a proclamation,—

(a) specifying, as nearly as possible, the situation and limits of the proposed forest;

(b) setting forth the substance of the provisions of Section 6;

(c) explaining the consequences which, as hereinafter provided, will ensue on such forest being constituted a reserved forest; and

(d) fixing a period of not less than three months from the date of publishing such proclamation, and requiring every person claiming any right or making any claim referred to or mentioned in Section 4, either to present to such officer within such period a written notice specifying or to appear before him within such period and state the nature of such right or claim (if any)

and in either case to produce all documents in support thereof.

The Forest Settlement Officer shall also serve a notice to the same effect on every known or reputed owner or occupier of any land included in or adjoining the land proposed to be constituted a reserved forest or on his recognised agent or manager. Such notice may be sent by registered post to persons residing beyond the limits of the district in which such land is situate.

6. Bar of accrual of forest rights.—(1) After the issue of a notification under Section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right, or power to create such right, was vested when the notification was issued; and on such land no new house shall be built or plantation formed, no fresh clearings for cultivation or for any other purpose shall be made and no trees shall be cut for the purpose of trade or manufacture except as hereinafter provided. No patta or right of occupancy shall without the previous sanction of the State Government be granted, in respect of such land, and every patta or right of occupancy

granted without such sanction shall be *null* and *void*.

(2) Nothing in this section shall be deemed to prohibit any act done under the written permission of the Forest Settlement Officer.

(3) No Civil Court shall, between the dates of publication of the notification under Section 4 and of the final notification to be issued under Section 17 entertain any suit to establish any right in or over any land or to the forest produce of any land included in the notification under Section 4.

7. Inquiry by Forest Settlement Officer.—The Forest Settlement Officer shall take down in writing all statements made under clause (d) of Section 5 and shall, at some convenient place, inquire into all claims duly preferred under that section and into the existence and extent of any rights mentioned in Section 4 and not claimed under Section 5 so far as the same may be ascertainable from the records of the Government and the evidence of any persons likely to be acquainted with the same.

The Forest Settlement Officer shall at the same time, consider and record any objection

which the Forest Officer, if any, appointed under sub-section (2) of Section 4 may make to any such claim or any information which he may afford with regard to the existence and extent of any such right.

8. Powers of Forest Settlement Officer.—For the purpose of such inquiry, the Forest Settlement Officer may exercise the following powers, that is to say,—

(i) power to enter, by himself or any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and

(ii) the powers of a Civil Court in the trial of suits.

9. Extinction of rights.—Rights in respect of which no claim has been preferred under Section 5, and of the existence of which no knowledge has been acquired by inquiry under Section 7, shall be extinguished unless, before the final notification under Section 17 is published, the person claiming them satisfies the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed under Section 5 in which case the Forest Settlement Officer shall proceed to dispose of the claim as hereinafter provided.

10. Treatment of claims relating to shifting cultivation.—(1) In the case of a claim relating to the practice of shifting cultivation the Forest Settlement Officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regularised, and submit the statement to the State Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(2) On receipt of the statement and opinion, the State Government may make an order permitting or prohibiting the practice wholly or in part.

(3) If such practice is permitted wholly or in part, the Forest Settlement Officer may arrange for its exercise,—

(a) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or

(b) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practice shifting cultivation therein under such conditions as he may prescribe.

(4) All arrangements made under sub-section (3) shall be subject to the previous sanction of the State Government.

(5) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the State Government.

11. Power to acquire land over which right is claimed.—(1) In the case of a claim to a right in or over any land, other than a right of way or right of pasture, or a right of forest produce or a watercourse or in respect of any building standing on such land, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part.

(2) If such claim is admitted in whole or in part, the Forest Settlement Officer shall either,—

(i) exclude such land or, building from the limits of such reserved forest; or

(ii) come to an agreement with the owner for the surrender of his rights; or

(iii) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894.

(3) For the purpose of so acquiring such land or building,—

(a) the Forest Settlement Officer shall be deemed to be a Deputy Commissioner proceeding under the Land Acquisition Act, 1894;

(b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under Section 9 of that Act;

(c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and

(d) the Forest Settlement Officer, with the consent of the claimant, or the court (as defined in the said Act), with the consent of the claimant and the Deputy Commissioner of the district, may award compensation in land, or partly in land and partly in money.

12. Order on claims to rights of way or pasture or to forest produce or water.— In the case of claim to rights of way or pasture or to forest produce or water, the Forest Settlement Officer shall pass an order specifying the particulars of such claims and admitting or rejecting the same in whole or in part.

13. Record to be made where claim is admitted.—If the Forest Settlement Officer admits in whole or in part any claim under Section 12, he shall record the extent to which

the claim is so admitted, specifying as far as may be practicable,—

(a) the name, father's name, residence, and occupation of the person claiming the right;

(b) the designation, position and area of all fields or groups of fields (if any) and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed;

(c) in the case of rights of way, by whom they may be enjoyed, the width of the way, and whether for vehicular traffic or for men and cattle only, and the conditions, if any, attached to the right;

(d) in the case of pasturage, the number and description of cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasturage is permitted, and any conditions attached to the rights;

(e) in the case of forest produce, the quantity of timber or other forest produce which the claimant is entitled to take or receive, whether the benefit of such timber or other forest produce may be leased, sold or bartered and such other particulars as may be necessary in order to define the nature, incidents and extent of the right;

(f) in the case of water, by whom and for what purposes the water may be utilised, and any condition attached to its use.

14. Exercise of rights admitted.—(1) After making such record, the Forest Settlement Officer, shall to the best of his ability and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted.

(2) For this purpose, the Forest Settlement Officer may,—

(a) provide some other reasonably convenient right of way; or

(b) set out some other forest tract of sufficient extent and in a locality reasonably convenient, for the exercise of rights to pasturage or other forest produce, and record an order conferring such rights on claimants to the admitted extent; or

(c) so alter the limits of the proposed reserved forest as to exclude the tract over which rights of way or water extend or to exclude forest land of sufficient extent and in a locality reasonably convenient for the purpose of the claimants with regard to pasturage or other forest produce and the land so excluded may be either outside the boundaries of the forest as finally settled or within them, in which latter case, it shall be demarcated and notified as an enclosure within which the rules relating to reserved forests shall not apply; or

(d) record an order, continuing to claimants the right of way or to pasturage or other forest produce or water (as the case may be) to the admitted extent, at such seasons within such portions of the proposed reserved forest, and under such rules, as may be prescribed to ensure the continuance but non-abuse of such rights.

15. Compensation for rights.—In case the Forest Settlement Officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under Section 14, as shall ensure the continued exercise of the said rights to the extent so admitted, he shall direct payment by the State Government of compensation determined on the basis of the value of such right on the date of notification under section 4, in accordance with the provisions of the Land Acquisition Act, 1894, insofar as such provisions are applicable.

16. Appeal from order passed under Section 11, Section 12, Section 14 or Section 15.—(1) Any person who has made a claim under this Chapter or any Forest Officer or other person generally or specially empowered by the State Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement Officer under Section 11,

Section 12, or Section 14, appeal to the Karnataka Appellate Tribunal and the decision of the said Tribunal on such appeal shall be final.

(2) Any person aggrieved by an order under Section 15 may, within three months from the date of the order appeal to the District Court and the decision of the District Court on such appeal shall be final.

17. Notification declaring forest a reserved forest.—(1) When the following events have occurred, namely,—

(a) the period fixed under Section 5 for preferring claims has elapsed, and all claims, if any, made under that section or Section 9 have been disposed of by the Forest Settlement Officer;

(b) if any such claims have been made, the period limited by Section 16 for appealing from the orders passed on such claims has elapsed and all appeals (if any) presented within such period have been disposed of; and

(c) all proceedings prescribed by sections 11 and 14 have been taken and all lands and buildings (if any) to be included in the proposed reserved forest, which the Forest Settlement Officer has under Section 11 elected to acquire under the Land Acquisition Act, 1894, have become vested in the Government under Section 16 of that Act,

the State Government shall publish a notification specifying clearly according to the boundary marks erected or otherwise, the limits of the forest which is intended to constitute a reserved forest and declaring the same to be a reserved forest from the date fixed by such notification, subject to the exercise of rights (if any) specified in such notification.

(2) From the date so fixed, such forest shall be deemed to be a reserved forest.

18. Publication of notification.—The Deputy Commissioner shall, before the date fixed by such notification, cause a translation thereof into Kannada and any other regional language of the area, to be published in the official Gazette and at the headquarters of the taluk in which the forest is situated, and in every town and village in the neighbourhood of such forest, in the manner prescribed for the proclamation under Section 5.

19. Power to revise arrangements made under section 14 and to redefine the limits of reserved forests in certain cases.—(1) The State Government may, within five years from the publication of any notification under Section 17 revise any

arrangement made under Section 14 and may for this purpose rescind or modify any order made under Section 14 and direct that any one of the proceedings specified in Section 14 be taken in lieu of any other such proceedings or that the rights admitted under Section 12 be compensated under Section 15.

(2) Where the description of the limits of any reserved forest notified under Section 17 is defective or is not clear in reference to existing facts, the State Government may, by notification, declare its intention to redefine the limits of such reserved forest so as to remove the defect or to make the description clear in reference to existing facts. Such notification shall specify as nearly as possible the corrections which it is proposed to effect to the limits of the reserved forest.

(3) On the issue of a notification under sub-section (2), the Deputy Conservator of Forest shall publish at the headquarters of each taluk, in which any portion of the land comprised in such notification is situate and in every town and village in the neighbourhood of such land, a notice,—

(a) specifying the corrections proposed by the notification under sub-section (2); and

(b) stating that any objections which may be made in person or in writing to the Deputy Conservator of Forest, within a period of thirty days from the date of publication of the notice will be considered by him.

(4) After the expiry of the period referred to in clause (b) of sub-section (3) and after considering the objections, if any, received by him, the Deputy Conservator of Forest shall submit to the State Government the record of the proceedings held by him together with a report thereon.

(5) The State Government may, after considering the report of the Deputy Conservator of Forest, by notification, redefine the limits of the reserved forest, as proposed by the notification under sub-section (2) with such modifications as it thinks fit or without any modifications:

Provided that if the notification redefining the limits of the reserved forest affects the rights of any person in such reserved forest, the procedure laid down in Sections 5 to 17 shall *mutatis mutandis* be applicable.

(6) Save as provided in sub-sections (2) to (5) of this section it shall not be necessary to follow the procedure laid down in Sections 4

to 17 before issuing a notification under sub-section (5).

20. No right acquired over reserved forest, except as provided.—No right of any description shall be acquired in or over a reserved forest, except by succession or under a grant or contract in writing made by or on behalf of the State Government or some person in whom such right or the power to create such right was vested when the notification under section 17 was published.

21. Alienation of right in reserved forest.—(1) Notwithstanding anything contained in Section 20, no right continued under Section 14 shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the State Government:

Provided that, when any such right is appendant to any land or building it may be sold or otherwise alienated with such land or building without such sanction.

(2) The benefit of any right continued under Section 14 shall not in any case be leased, sold or bartered except to the extent defined by the order recorded under that

section or under Section 16, and any such lease, sale or barter shall be void.

(3) Any person leasing, selling, or bartering the benefits of any right continued under Section 14 in contravention of sub-section (2) shall, on conviction, be punishable with fine which may extend to one thousand rupees.

22. Power to stop ways and water courses in reserved forests.—(1) The Forest Officer may, with the previous sanction of the Chief Conservator of Forests by order notified in the official Gazette, stop any public or private way or water course in a reserved forest:

Provided that for the way or water course so stopped, another way or water course which is equally convenient, already exists or has been provided or constructed:

Provided further that no water course feeding a tank or other reservoir shall be stopped except after consulting the Executive Engineer having jurisdiction over such tank or reservoir.

(2) Any person aggrieved by an order under sub-section (1) may within ninety days

from the date of publication of the order in the official Gazette, appeal to the Karnataka Appellate Tribunal and its decision thereon shall be final.

23. Reserved forests constituted previous to passing of this Act.—(1) Any forest which has been notified as a State Forest under the Mysore Forest Act, 1900, or as a reserved forest under the Indian Forest Act, 1927, the Madras Forest Act, 1882, or the Hyderabad Forest Act, 1355F, prior to the date on which this Act comes into force, shall be a reserved forest under this Act:

Provided that if the rights of private persons to or over any land or forest produce in such forest shall not have been inquired into, settled and recorded in a manner which the State Government deems sufficient, the same shall be inquired into, settled and recorded in the manner provided by this Act; and until such inquiry, settlement and record have been completed, the operation of this section shall not abridge, or affect such rights.

(2) All questions decided, orders issued and records prepared in connection with the constitution of such forest as a State Forest or reserved forest shall be deemed to have been

decided, issued and prepared under this Act, and the provisions of this Act relating to reserved forests shall apply to forests to which the provisions of sub-section (1) are applicable.

24. Acts prohibited in reserved forests.—Any person who,—

(a) makes any fresh clearing prohibited by section 6; or

(b) sets fire to a reserved forest or in contravention of any rules made by the State Government in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest; or

(c) in contravention of the rules made in this behalf by the State Government,—

(i) kindles, keeps or carries any fire except at such seasons as the Forest Officer may notify in this behalf;

(ii) trespasses or pastures cattle, or permits cattle to trespass;

(d) causes any damage by negligence in felling any tree or cutting or dragging any timber;

(e) fells, cuts, girdles, lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages the same;

(f) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest produce;

(g) clears or breaks up any land for cultivation or any other purpose; or

(gg) unauthorisedly occupies land for any purpose; or;

(h) damages, alters or removes any cairn, wall, ditch, embankment, fence, hedge, or railing;

(i) poisons or dynamites water; or

(j) in contravention of any law or rules, enters any reserved forest with fire arms or any other weapon meant for hunting hunts, shoots, fishes or sets traps or snares, or

who abets committing of any of the above prohibited acts shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both,

and in addition be liable to pay such compensation for the damage done to the forests as the convicting court may direct to be paid.

25. Acts excepted from Section 24.—Nothing in Section 24 shall be deemed to prohibit,—

(a) the exercise, in accordance with the rules, if any, made under Section 14, of any right continued under that section; or

(b) the exercise of any right created by grant or contract in the manner described in Section 20; or

(c) any act done with the permission in writing of a Forest Officer duly empowered to grant such permission, or under any rule made by the State Government.

26. Privileges may be granted in reserved forests.—The State Government may, in any reserved forest, grant such privileges as may be consistent with the due maintenance of the forest; and may, without assigning reason therefor, cancel such grant:

Provided that all privileges so granted shall previously be specified and recorded by the Deputy Commissioner in the manner provided in Section 13:

Provided further that the exercise of any privilege under this section shall be for the use of the person entitled thereto, and not for the purpose of export, barter or merchandise.

27. Penalties for offences committed by persons having rights in reserved forest.—Whenever fire is caused wilfully or by gross negligence in a reserved forest by a person having rights in such forest or by any person in his employment, or whenever any person having rights in such forest contravenes the provisions of Section 21, the State Government may, without prejudice to any punishment under this Act, direct that in such forest, or any specified portion thereof, the exercise of all or any of the rights of pasture or to forest produce of any such person shall be extinguished, or for such period as it thinks fit, be suspended.

28. Power to declare forests no longer reserved forests.—(1) The State Government may, by notification, direct that, from a date to be specified in such notification,

any forest or any portion thereof constituted as reserved forest under this Act, shall cease to be a reserved forest:

Provided that no such notification shall be issued unless a resolution to that effect has been passed by both Houses of the State Legislature:

Provided further that no such resolution shall be necessary where the proposal relates to regularisation of unauthorised occupation of any reserved forest or portion thereof, if such occupation was prior to the date of commencement of the Karnataka Forest (Amendment) Act, 1978.

From the date so specified such forest or portion shall cease to be a reserved forest but the rights, if any, which have been extinguished therein shall not revive in consequence of such cessation."

22. The specific question, therefore, is, whether in the absence of any declaration under Section 17 of the Act, the land notified under Section 4 of the Act in the instant case cannot be construed to be Forest Land and therefore, Clearance is not required under the provisions of Forest conservation Act (for short F.C. Act or 'Central Act').

23. What has to be discerned is whether the very issuance of the Notification under Section 4 of the Act declaring that it has been decided to constitute any land as reserved forest would bring into play the provisions of Central Act mandating clearance under F.C. Act for all non-forest activities. In order to answer the same, it is necessary to first give a finding whether a declaration made under Section 4 of the Act would constitute land as forest land.

24. Further, in order to answer the question, as to, whether the land in question is revenue or forest land, two aspects of the matter require our consideration:

(i) The first is, Notification dated 04.08.1994 has been issued under Section 4 of the Act. Whether, such a Notification could have been held to be invalid by an order dated 21.12.2015 passed by respondent No.2 herein on the representations made by petitioner herein and other similarly situate persons pursuant to the directions issued by this Court in the writ petitions?

(ii) The second aspect is, what is the effect of the Forest (Conservation) Act, 1980 ('FC

Act' for the sake of brevity) on the provisions of Chapter-II of the Act (Karnataka Forest Act, 1963)?

The said aspects shall be considered *in seriatim* and while doing so, the question, as to, whether the subject land is forest land or revenue land, shall be answered.

25. In the instant case, by virtue of Notification dated 04.08.1994 and as per the boundaries indicated therein, certain lands were declared to be constituted as reserved forest i.e., by specifying the constitution and limits of such land, by intelligible boundaries. It is also not in dispute that a Corrigendum to the said Notification was issued on 04.09.2014 with regard to the Schedule to Notification dated 04.08.1994, the purpose being, to bring the Schedule in conformity with the boundaries of the lands notified under Notification dated 04.08.1994. The same was issued after obtaining leave from the Hon'ble Supreme Court.

26. A reading of the provisions from Sections 4 to 17 of the Act would indicate that when once it has been decided to constitute land within certain boundaries as

reserved forest and a declaration is made to that effect then, a proclamation has to be made by the Forest Settlement Officer. There is a bar to accrual of forest rights over the land comprised in the Notification, except by succession or under a grant of contract in writing made or entered into by or on behalf of the Government or some person in whom such right, or power to create such right was vested when the Notification was issued. Thereafter, the Forest Settlement Officer shall have to make an inquiry into all claims duly preferred. Where no claim is preferred under Section 5 of the Act and of the existence of which no knowledge has been acquired by inquiry under Section 7 of the Act, all claims shall be extinguished unless, before the final notification under Section 17 of the Act is published, the Forest Settlement Officer is satisfied that a person had sufficient cause for not preferring such a claim within the period fixed under Section 5 of the Act. In such case, the Forest Settlement Officer shall proceed to dispose of the claim as per law. Where a claim is admitted, the Forest Settlement Officer has to specify certain details and record the same in the final record. Subsequent to following of the procedure contemplated under Sections 5, 6, 11 to 14

of the Act, the State Government has to publish a Notification, specifying clearly and according to the boundary marks erected or otherwise, the limits of the forest which it intended to constitute as reserved forest and declaring the same to be a reserved forest from the date fixed by such notification, subject to the exercise of rights (if any) specified in such notification. From the date so fixed, such forest shall be deemed to be a reserved forest. A Notification issued under Section 17 of the Act shall be published in accordance with Section 18 of the Act.

27. In this regard, Section 21 of the Mysore General Clauses Act, 1899 [Mysore Act No.III of 1899] ('General Clauses Act', for short) in Karnataka which is almost *in pari materia* with Section 21 of the Central Act is relevant. Section 21 reads as under:

> **"21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.-** Where, by any enactment, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the

like sanction and conditions (if any), to add, to amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

28. In ***Shree Sidhbali Steels Limited and Others vs. State of Uttar Pradesh and Others [(2011) 3 SCC 193]***, it has been observed that by virtue of Sections 14 and 21 of the General Clauses Act, when a power is conferred on an authority to do a particular act, such power can be exercised from time to time and carries with it the power to withdraw, modify, amend or cancel the notifications earlier issued, to be exercised in the like manner and subject to like conditions, if any, attached with the exercise of the power.

29. Further, at Paragraph Nos.38, 39 and 40, it has been observed as under:

"38. Section 21 is based on the principle that power to create includes the power to destroy and also the power to alter what is created. Section 21, amongst other things, specifically deals with power to add to, amend, vary or rescind the notifications. The power to rescind a notification is inherent in the power to issue the notification without any limitations or conditions. Section 21 embodies a rule of construction. The

nature and extent of its application must be governed by the relevant statute which confers the power to issue the notification etc. However, there is no manner of doubt that the exercise of power to make subordinate legislation includes the power to rescind the same. This is made clear by Section 21. On that analogy an administrative decision is revocable while a judicial decision is not revocable except in special circumstances. Exercise of power of a subordinate legislation will be prospective and cannot be retrospective unless the statute authorises such an exercise expressly or by necessary implication.

39. The principle laid down in Section 21 is of general application. The power to rescind mentioned in Section 21 is without limitations or conditions. It is not a power so limited as to be exercised only once. The power can be exercised from time to time having regard to the exigency of time. When by a Central Act power is given to the State Government to give some relief by way of concession and/or rebate to newly-established industrial units by a notification, the same provision and such exercise of power cannot be faulted on the ground of promissory estoppel.

40. It would be profitable to remember that the purpose of the General Clauses Act is to place in

> one single statute different provisions as regards interpretations of words and legal principles which would otherwise have to be specified separately in many different Acts and Regulations. Whatever the General Clauses Act says whether as regards the meaning of words or as regards legal principles, has to be read into every statute to which it applies."

30. On a plain reading of Section 21, it is inferred that the power to issue a Notification under Section 4 of the Act in the instant case includes the power to exercise in a like manner and subject to a like sanction and conditions to add, amend, vary or rescind any Notification. If the aforesaid proposition is to be applied to the instant case, it would mean that if any land is intended to be constituted as a reserved forest under Section 4 of the Act by a Notification and the same has to be modified or amended, the power has to be exercised under Section 4 of the Act by issuance of another Notification.

31. Thus, if a Notification under Section 4 of the Act has been issued intending to constitute any land as reserved forest, the same can be excluded from the nomenclature of the reserved forest only by issuance of

another Notification. The same cannot be done in any other way or manner. But, in the instant case, Government Order dated 21.12.2015 passed by respondent No.2 in "Appeal No.2 of 2015" while considering the representations of the petitioner herein and other similarly situated persons, not only invalidated Corrigendum dated 04.09.2014 but also the very Notification issued under Section 4 of the Act dated 04.08.1994. In fact, the Corrigendum was issued having regard to the power vested under Section 4 of the Act so as to rectify an error in the earlier Notification dated 04.08.1994, so as to amend the same which had been issued in the manner contemplated under Section 21 of the General Clauses Act. Similarly, the land comprised in a Notification issued under Section 17 of the Act declaring the land to be reserved forest could be de-reserved only as per Section 28 of the Act, i.e., by issuance of another Notification after a resolution in that regard has been passed by both the Houses of Legislature. In other words, while considering the representations of the petitioner herein and other similarly situated persons, the Notification as well as the Corrigendum could not have been held to be

vitiated, illegal and therefore, declared as invalid. Such a declaration could have been made only by a Court of law or, by exercising power under Section 28 of the Act by de-reserving the lands from being constituted as reserved forest that is, after a Notification under Section 17 had been issued, but not by issuance of order dated 21.12.2015 by respondent No.2 on the representations made by petitioner and others. Therefore, order dated 21.12.2015 was not in accordance with law as it violated the mandate of Section 21 of the General Clauses Act. On this short ground alone, it has to be held that order dated 21.12.2015 is *per se* illegal, being without authority of law and *ultra vires* Section 4. In this regard, it is observed that there can be no amendment to a Notification issued under Section 4 of the Act except by following the procedure laid down under the provisions of the Act. Similarly, if a land has been declared as reserved forest as per Section 17 of the Act, it could be de-reserved only by virtue of another Notification being passed and as per Section 28 of the Act and Section 21 of the General Clauses Act. But, pending issuance of a Notification under Section 17 of the Act, there can be no invalidation of a

Notification issued under Section 4 of the Act by a Government Order. There could however be a Corrigendum issued to a Notification issued under Section 4 of the Act, as has happened in the instant case.

32. This can be explained by way of a legal maxim, *expressio unius est exclusio alterius,* which means - expression of one thing is an exclusion of another. Therefore, when one thing is expressly stated, then by implication what has not been stated is excluded from the scope of expression. Further, there is another legal principle, which is applicable in the present case. It is, where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden vide, ***Taylor vs. Taylor [(1875) 1 Ch D 426]***. Hence, when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all and that other methods of performance are necessarily forbidden, vide ***Nazir Ahmed vs. King Emperor [(1936) L.R. 63 I.A. 372]***. The Hon'ble Supreme Court too, has adopted this maxim [vide: ***Parbhani Transport Co-operative Society Ltd. vs.***

The Regional Transport Authority, Aurangabad & others [(1960) (3) S.C.R. 177: AIR 1960 SC 801]. This rule says, an expressly laid down mode of doing something necessarily implies a prohibition of doing it in any other way.

33. Reliance could also be placed on ***Union of India vs. Charanjit S.Gill [(2000) 5 SCC 742]*** *(Charanjit S.Gill),* wherein the Hon'ble Supreme Court while dealing with the Army Act, 1950 and Court Martial thereunder observed that "notes" had been issued by the authorities of the armed forces for the guidance of the officers connected with the implementation of the provisions of the Act and the Rules and not with the object of supplementing or superseding the statutory rules by administrative instructions. It was observed that issuance of an administrative order or a note pertaining to special type of weapon to bring it within the ambit of the Army Act, which was hitherto not being included therein could not be said to have been included in the manner as it was sought to have been so done. Section 27(3) of the Army Act prescribes a death penalty in the event the arm or weapon concerned stands out to be a prohibited arm, user

of which results in a death, a rather stringent provision. That the statute therein required a notification in the Official Gazette for including an arm or a weapon as a prohibited arm or weapon. Therefore, an administrative note in relation to importation of a prohibited arm be termed to be sufficient so as to come within the ambit of the statutory requirement of a notification in the Official Gazette was negatived. That administrative instructions, according to Hon'ble Supreme Court, could not possibly be a substitute for a notification which stands as a requirement of the statute. Further, the Hon'ble Supreme Court observed that the question of there being any notification even in the guise of an administrative order does not arise. According to the Hon'ble Supreme Court, the requirement of the statute is sacrosanct and since the issue had to be dealt with utmost care and caution, without the issuance of a notification, question of a conviction under Section 27(3) of the Army Act would not arise.

34. Reference could also be made to a decision of the Hon'ble Supreme Court in the case of ***Subhash Ramkumar Bind Alias Vakil and another vs. State of***

Maharashtra, [(2003)1 SCC 506] *(Subhash Ramkumar Bind),* wherein it has been observed that a notification in common English acceptation means and implies a formal announcement of a legally relevant fact and in the event of a statute speaking of a notification being published in the Official Gazette, the same cannot but mean a notification published by the authority of law in the Official Gazette. It is a formal declaration and publication of an order which shall have to be in accordance with the declared policies or requirement of the statute and in accordance therewith.

35. Thus, while considering the representations of the petitioner herein and other persons, respondent No.2 could not have invalidated Notification dated 04.08.1994 and Corrigendum dated 04.09.2014 by passing an order. Hence, order dated 21.12.2015 was passed without jurisdiction and the same is also contrary to Section 21 of General Clauses Act and hence, invalid and void *ab initio*.

36. Further, in the aforesaid context, we do not think that there can be any distinction with regard to a piece of land which has been decided to be constituted as reserved forest under Section 4(1) of the Act and land

being deemed to be reserved forest under Section 17 of the Act which is like a final notification. The reason being, once the land is constituted as reserved forest under Section 4(1) of the Act, it is by issuance of a Notification then the claims would have to be made and it is only on the consideration of the claims that an application for exclusion of the land constituted as reserved forest under Section 4(1) of the Act could be ordered. Merely because the procedure contemplated under the Act subsequent to the issuance of a Notification under Section 4 of the Act is not yet completed or no Notification has been issued under Section 17(1) of the Act, in our view, would not make any difference, as the object and purpose of reserving any land is to treat the said land as being constituted a reserved forest. If such a land or any portion thereof is excluded on adjudication of claims, it would not find a place in Notification issued under Section 17 of the Act. In such a case, it would no longer be constituted as reserved forest. But, till that procedure is not completed by the Forest Settlement Officer, it remains to be constituted as reserved forest.

37. The second aspect of the case is on the impact of the provisions of the F.C.Act (Central Enactment) on Chapter–II of the Act (State Act) when once a Notification is issued under Section 4 of the Act constituting any land as reserved forest. As already noted, once a Notification is issued under Section 4 of the Act, it is a declaration of a decision to constitute a reserved forest. Several steps have to be taken before a declaration and final notification is issued under Section 17 of the Act. But, in the interregnum, the aspect as to applicability of the F.C. Act to such land, which has been decided to be constituted as reserved forest under Section 4(1) of the Act has to be considered.

38. In this context, it is also necessary to consider Section 2 of the F.C. Act. F.C. Act is a Central Act, but it does not define the word '*Forest'*. Section 2 of the F.C. Act reads as under:

> **"2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose:-** Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make,

except with the prior approval of the Central Government, any order directing-

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-afforestation.

Explanation.—For the purpose of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for.—

> (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;
>
> (b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."
>
> *(Emphasis added)*

39. A bare reading of the said Section would make it apparent that it begins with a non-obstante clause and it overrides any other law for the time being in force in a State.

40. We have considered Section 2 of the F.C. Act in light of the provisions of the Act (Karnataka Forest Act, 1963). It is noted, Section 2(i) of the F.C. Act uses the expression *'reserved forest'* while Section 2(ii), 2(iii) and 2(iv) uses the expression *'forest land'.* There is no definition of the expression of '*forest land'* in F.C. Act. But, the expression '*reserved forest'* is with reference to the meaning and expression in any law for the time being in force in the State. Thus, while considering the expression

reserved forest under Section 2 of the F.C. Act, it has to be with reference to the provisions of the State Act (i.e., Karnataka Forest Act, 1963). Further, the definition of *forest land* as opposed to *reserved forest* not having been expressed under the F.C.Act has been interpreted by the Hon'ble Supreme Court in an expansive manner. Further, under Section 2 of the F.C.Act, when any reserved forest or any portion thereof has to be excluded or are ceased to be reserved forest, then prior approval of the Central Government is a mandatory requirement. Similarly, if any forest land or any portion thereof is to be used for any non-forest purpose or to be assigned by way of lease or otherwise or to be cleared off trees, then also the prior approval of the Central Government is required. In other words, if in any forest land, any non-forest activity is to be carried out, the prior approval of the Central Government is necessary. In the circumstances, we notice that Section 2 itself has made a distinction between the reserved forest and forest land. In other words, every reserved forest is forest land. But, every forest land need not be reserved forest. This is because, the expression *reserved forest* is defined under the State Act and once any land falls within

the meaning of the expression *reserved forest*, it is necessarily a forest land. Section 2 of the Act defines reserved forest as *any land settled and notified as such in accordance with the provisions of Chapter II of this Act*. Thus, with regard to any reserved forest if any action has to be initiated, the provisions of Section 2 of the F.C.Act would apply as it is necessarily forest land, just as in the case of forest land which is not a reserved forest.

41. No doubt, Section 4 of the Act empowers the State Government to declare its decision to constitute any land as a reserved forest by way of a notification, but would the declaration to constitute any land as a reserved forest *per se* be sufficient to extend the nomenclature of "*forest*" to such a land for the purpose of the Central Act, so as to require F.C. clearance, is the question.

42. We find that the expression "*forest"* is neither defined under the F.C. Act, 1980 nor under the State enactment. Having regard to the object of the Central Act, and the fact that it has an over-riding effect on all State laws, the Hon'ble Supreme Court has enunciated what the expression *"forest"* under that Act would mean, in ***T.N.Godavarman Thirumulpad vs. Union of India &***

others, [(AIR 1997 SC 1228 at 1230 : 1997 (2)SCC 221)] *(T.N.Godavarman)* in the following words:

> "**4.** The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect

has been made abundantly clear in the decisions of this Court in ***Ambica Quarry Works and others versus State of Gujarat and ors. [(1987) 1 SCC 213], Rural Litigation and Entitlement Kendra versus State of U.P. [1989 Suppl. (1) SCC 504],*** and recently in the order dated 29th November, 1996 in ***W.P.(C) No.749/95 (Supreme Court Monitoring Committee vs. Mussorie Dehradun Development Authority and ors.).*** The earlier decision of this Court in ***State of Bihar Vs. BanshiRam Modi and ors. [(1985) 3 SCC 643]*** has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

5. We further direct as under:

I. General:

1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or ply-wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is *prima facie* violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

x x x x"

43. In the aforesaid case, it has been held that the term *"forest"*, occurring in Section 2 of the Central Act would not only include *"forest"* as understood in the dictionary sense, but also any land on record as forest in the Government record irrespective of ownership. Thus, the expression *"forest"* would include; (a) all forests as understood in the dictionary sense (b) all statutorily recognized forest, whether designated as reserved, protected or otherwise; and (c) forest land recorded as forest in the Government records. The same could be elaborated as under:

a) As per Chambers English Dictionary, *"forest"* means, a large uncultivated tract of land covered by trees; woody ground and covered with upright objects and unfenced woodland.

b) As far as statutorily recognized forest is concerned, the Indian Forest Act, 1927 (`1927 Act' for short) was operating in British India and after Independence, extended to the whole of India, except the territories immediately before the 1st November, 1956 comprised in part B States. That said Act was enacted to

consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce. Chapter II of the 1927 Act pertains to Reserved Forests. It enables the State Government to constitute any forest-land, or waste-land, which is the property of the Government or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled as a reserved forest. Sections 3 to 22 of that Act are almost in *pari materia* with Sections 3 to 18 of the Karnataka Forest Act, 1963.

The Karnataka Forest Act of 1963 i.e., the Act was enacted pursuant to the integration of Karnataka State so as to consolidate and amend the law relating to forests and forest produce in the State. Under that Act, Section 2 defines the *"District Forest"* to include "all lands at the disposal of Government and not within the limits of any reserved or village forest nor assigned at the survey settlement as free grazing ground or for any other public or communal purposes." However, the State Government is competent to modify or set aside such assignment and constitute any such land as reserved, village or district

forest, or devote the same to any other purpose it may deem fit. Section 2(8) defines *"land at the disposal of the State Government"* to mean "land in respect of which no person has acquired: a) permanent, heritable and transferable right of use and occupancy under any law for the time being in force; or, b) any right created by grant or lease made or continued by or on behalf of Government."

Section 2(13) of the Act defines *"Protected Forest"* to mean any area at the disposal of Government which has been placed under special protection under clause (ii) of sub-section (2) of Section 33 or is declared to be a protected forest under Section 35.

Section 2(14) defines a *"Reserved Forest"* to mean any land settled and notified as such in accordance with the provisions of Chapter II (comprised of Sections 3 to 28) of the Act. Thus, the above are statutorily recognized forest.

It is also significant to note that the Hon'ble Supreme Court while considering the definition of *forest* in the context of a statue has expanded the same to include

not only the reserved forest or protected forest, but any other land which would otherwise be forest land. The expression "***otherwise***" is significant inasmuch as any land which does not come within the nomenclature of reserved forest, district forest, protected forest or village forest under the provisions of the State enactment can still otherwise be included within the nomenclature of '*forest*'. The same would precisely be when a Notification is issued under Section 4(1) of the Act under which a declaration of a decision taken to constitute certain land as reserved forest is made by issuance of a Notification. Even though a final notification under Section 17 of the Act is not issued declaring the land to be reserved forest nevertheless, once a notification is issued under Section 4(1) of the Act, encompassing certain land to be constituted as reserved forest, the same would come within the scope and ambit of the definition of *"forest"* inasmuch as after a declaration to constitute the said land as *reserved forest* and on complying with the procedure laid down under chapter II of the Act, ultimately, a final notification under Section 17 of the Act would be issued indicating the specific boundaries of the reserved forest. But, in the

interregnum, the Forest Settlement Officer is appointed to consider the claims and on consideration, to exclude any portion of the land constituted as reserved forest, from being declared as reserved forest under Section 17 of the Act, but in the absence of the Forest Settlement Officer excluding any land as reserved forest, it continues to remain as "*forest land*". Hence, in the absence of any land which is intended to be constituted as reserved forest and so long as such land is not settled and notified as such in accordance with Section 17 of Chapter II of the Act, it does not come within the ambit of the definition '*reserved forest*', however, it comes within the definition of "*forest land"*.

(c) Further, all forest lands recorded as forest in the Government records come within the nomenclature of forest as per the judgment in *T.N.Godavarman*.

Thus, the provisions of Central Act, would apply to all forest lands, as understood in its expanded meaning, as discussed above, irrespective of ownership or classification thereof.

44. Therefore, by virtue of Section 2 of the FC Act, prior approval of the Central Government is mandatory as well as a pre-condition for the grant of lease of forest land for non-forest purposes including a mining lease. The expression *"prior approval"* would mean that before a grant of lease is made, there should be a previous approval of the Central Government. It cannot be construed to mean that, after the grant of lease, the approval of the Central Government would be obtained prior to commencement of mining operations. The requirement of approval by the Central Government under Section 2 is thus a mandatory condition precedent to the grant as well as renewal of a mining lease in a forest area, as held in ***Rural Litigation and Entitlement Kendra vs. State of U.P., [(AIR 1989 SC 594)]*** *(Rural Litigation and Entitlement Kendra)* and ***Ambika Quarry Works vs. State of Gujarat, [(AIR 1987 SC 1073)]*** *(Ambika Quarry Works)*. Thus, Section 2 of the Central Act places a restriction on the State Government or other authority to grant any part of the forest land or any portion thereof for non-forest purpose except with the prior approval of the Central Government. In fact, when an application is made

for grant of lease of land for mining, it would be incumbent upon the State Government to first ascertain all relevant particulars including as to whether the grant of lease is legally permissible and viable or not. If the State Government decides that such a lease should be granted, then requirement of prior approval of the Central Government would arise if the mining lease happens to be in respect of land in a forest area.

45. Coming back to the facts of the present case, we note that the State Government had issued the Notification dated 04.08.1994 under Section 4 of the Act declaring its decision to constitute, *inter alia,* the land in question as reserved forest. We are of the view that mere publication of such a notification would constitute any land as "forest land" within the meaning of Section 2(ii), 2(iii) and 2(iv) of the F.C. Act. The provisions of the State Act only enable the citizens to claim rights in the land constituted as reserved forest and also empower the State to take various steps in respect of the land notified as a reserved forest. The Forest Settlement Officer appointed under Section 4(1)(c) of the Act can however exclude certain areas from the boundaries of the land notified

under Section 4(1) of the Act. It is only when the events contemplated under Sections 5, 9, 11 and 16 have occurred that the State Government shall publish a notification specifying clearly the boundary marks or limits of the forest, which is declared to be constituted a reserved forest to be declared as deemed reserved forest from the date fixed in such notification subject to the exercise of rights, if any, specified in such notification. Therefore, declaration, under Section 17 of the Act, of a reserved forest is by operation of law from a particular date *vis-à-vis* the extent of the reserved forest with boundary marks after exclusion of any land from the purview of what was intended to be constituted as reserved forest prior thereto by issuance of notification under Section 4(1) of the Act.

46. Hence, insofar as the land in question is concerned, we observe that mere issuance of a Notification under Section 4(1) of the Act is sufficient to constitute the land comprised in the said Notification as "*forest land*", in which any non-forest activity would require prior approval under Section 2 of the F.C. Act. Therefore, prior approval of the Government of India is essential before a mining

lease is granted in respect of any forest area. The Act would apply not only to the surface area, which is used in the mining but also to the entire underground mining area beneath the forest. The renewal of an existing mining lease in a forest area also requires prior approval of the Government of India as also continuation or renewal of mining operation on the expiry of a mining lease; without such approval, mining activity would amount to contravention of the Central Act i.e., the F.C. Act.

47. In the instant case, Notification under Section 4 of the Act was issued on 04.08.1994, which was followed by a Corrigendum dated 04.09.2014. There is no grievance with regard to the issuance of said Notifications, as there is also no challenge to the same in the writ petition. Further, by order dated 21.12.2015, the said Notifications were quashed by respondent No.2 in "Appeal No.2 of 2015", who was in fact to only consider the representations made by petitioner and other similarly situate persons pursuant to the directions issued by this Court. But, while considering the said representations, the Notification dated 04.08.1994 as well as Corrigendum dated 04.09.2014 have themselves been quashed. We

have already stated that once the Notification is issued under Section 4 of the Act, any amendment or variation to the said Notification could be in terms of Section 21 of the General Clauses Act i.e., by issuance of another Notification and not in any other manner such as by an order as in the instant case dated 21.12.2015. Thus, on that short ground alone, order dated 21.12.2015 issued by respondent No.2—declaring that Notification dated 04.09.2018 was vitiated and Notification dated 04.08.1994 was invalid—is erroneous and bad in law.

48. Further, as we have narrated above, Notification dated 04.08.1994 could have been modified or withdrawn by the State in accordance with law i.e., as per Section 21 of the General Clauses Act. In the instant case, there is no withdrawal of the Notification dated 04.08.1994 but a Corrigendum has been issued which is also permissible in law. But, by order made on the representations of the petitioner and other similarly situate persons, the Notification dated 04.08.1994 and the Corrigendum dated 04.09.2014 have been invalidated. Thus, there is non-compliance of Section 21 of the General Clauses Act in the instant case. To rectify the same, the

State sought permission from the Hon'ble Supreme Court and passed another order dated 29.06.2018 by holding that order dated 21.12.2015 itself was vitiated. Order dated 29.06.2018 was issued by the State Government in order to take away the effect of order dated 21.12.2015, which was, in any case, erroneous. The stamp of validity of order dated 21.12.2015 could have been erased by a Court of law by quashing it or the invalidity being removed by the Government Department itself. The latter course has been adopted in the instant case.

49. That apart, as already noted, while considering the validity or otherwise of Notification dated 04.09.2014, the effect of Notification dated 04.08.1994 and Corrigendum dated 04.09.2014 could not have been nullified or neutralised by respondent No.2 by order dated 21.12.2015. Hence, order dated 21.12.2015 was erroneous. The same was sought to be rectified by another order dated 29.06.2018. According to the learned counsel for the petitioner, order dated 21.12.2015 could not have been corrected by issuance of another order dated 29.06.2018 (impugned order) passed by respondent No.2. But, since order dated 21.12.2015 was not by way

of a Notification issued by the Government but by way of an Order passed by respondent No.2, therefore, order dated 29.06.2018 seeking to rectify order dated 21.12.2015 in the form of another Government Order, is permissible in law.

50. Further, order dated 29.06.2018 was issued not only at the instance of the Principal Conservator of Forest, who found that order dated 21.12.2015 was illegal, but also on the representation or request made by Central Government. Thus, we find that order dated 29.06.2018 is valid and does not call for any interference as the said order has rectified and set at naught the illegality of order dated 21.12.2015.

51. The above discussion would still leave the question, as to, whether, the land in question is forest land or revenue land in the context of 'C' and 'D' lands in the State of Karnataka. In this regard, learned senior counsel for the petitioner as well as the learned Additional Advocate General sought to bring on record certain documents. It is not in dispute that the land in question was categorized as 'C' and 'D' Class land i.e., revenue land

and Government Order in that regard was also issued. Further, the said Government Order also stated that the lands which were declared as 'C' and 'D' lands by a Government Order dated 20.07.1994 could not be declared to be reserved forest under the provisions of the Act. We find the same is unacceptable. When the lands were declared to be 'C' & 'D' lands by a Government Order, there could not have been any restriction placed in the said Government order/s from declaring it as reserved forest under the provisions of the Act. Such a restriction in the Government Order is contrary to Section 4 of the Act. A Government Order cannot restrict the exercise of power under or operation of a provision of law. Hence, Government Order dated 20.07.1994 is illegal.

52. The order dated 21.12.2015 records a submission that report dated 07.11.2006 has been made by the Forest Settlement Officer and Assistant Commissioner, Tiptur, stating that the lands notified had already been transferred to the Revenue Department as C & D class lands and therefore, cannot be notified as reserved forest and the said report had attained finality as there was no challenge to the same as per Section 16(1)

of the Act by the Department before the appellate Authority.

53. Even if there was such a report, since, there has not been exclusion of subject land from the Notification dated 04.08.1994, fructifying into a Final Notification under Section 17 of the Act, it continues to remain forest land. It is only when subsequent to the issuance of a Notification under Section 4 of the Act, claims being made are determined by the Forest Settlement Officer recommending exclusion of any portion of the land intended to be constituted as reserved forest by issuance of a Notification, could the said portion be excluded. In such a case, a Notification in the form of a Final Notification has to be issued under Section 17 of the Act. So long as no Notification is issued under Section 17 of the Act excluding any land from Section 4 Notification, on the determination of the claims made by the Forest Settlement Officer, it remains forest land.

54. Having regard to the definition of *forest* enunciated by the Hon'ble Supreme Court, it must be held that all statutorily recognized forest, whether designated as reserved forest, protected or ***otherwise***, must be held

to come within the scope of the expression '*Forest'*. In the instant case, the land in question was decided to be constituted as reserved forest under Section 4 of the Act. Merely because a final declaration under Section 17 of the Act has not been issued in the instant case, it cannot be held that subject land is not forest land. As already noted, when once the land is decided to be constituted as reserved forest under Section 4 of the Act, it continues to be forest land until the procedure contemplated for exclusion of any portion of the said land from being declared as reserved forest is completed by adjudication of the claims. If no claim is made in respect of the land constituted as reserved forest under Section 4 of the Act, it fructifies as reserved forest. The object of issuance of Notification under Section 17 of the Act is to restate the boundaries of the reserved forest after excluding the lands constituted as reserved forest on adjudication of the claims under the Act. Thus, if there are no claims which are adjudicated, then the land intended to be constituted as reserved forest is declared as reserved forest.

55. In the instant case, the aforesaid procedure not having been followed, in our view, the subject land is

constituted as forest land. When once such land attains the nomenclature of forest land, then the provision of Section 2 of the F.C. Act would have to be complied with for conducting any non-forest activities on the said land.

56. Moreover, as already noted, constitution of any land as forest land under Section 4 of the Act cannot be restricted by any other Government Order. In fact, a Government Order cannot take away the operation of a Section of an Act or denude it of its meaning or reduce its implication. Therefore, when the subject land was declared as 'C' and 'D' Class land and as revenue land by a Government Order, nothing came in the way of deciding to constitute the said land as reserved forest under Chapter II of the Act.

57. Article 48-A of the Constitution of India, which is a directive principle of State deals with protection and improvement of natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Bearing in mind the above, an expanded meaning to the expression 'forest' has been given by the Hon'ble Supreme Court. It is in light of the above

definition as well as bearing in mind Section 2 of the F.C. Act as well as Chapter II of the Act, the question raised by the Hon'ble Supreme Court in respect of the subject land is answered.

58. In the circumstances, we answer the query *whether the land in question is revenue or forest land*, by holding that **the said land is forest land *and not revenue land***.

59. Consequently, order dated 21.12.2015 being illegal and without jurisdiction has been rightly rectified by the impugned order dated 29.06.2018. We do not find any infirmity in the order dated 29.06.2018.

60. Moreover, there is no challenge to Notifications dated 04.08.1994 and 04.09.2014 in this writ petition.

Consequently, the Writ Petition is ***dismissed***.

Parties to bear their respective costs.

Sd/-
JUDGE

Sd/-
JUDGE

RK/-