

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 08TH DAY OF APRIL, 2021

PRESENT

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

AND

THE HON'BLE MS. JUSTICE J.M.KHAZI

WRIT PETITION No.12038/2020 (KLR-RES)

BETWEEN:

1. SRI K.A. RAVI CHENGAPPA
AGED ABOUT 56 YEARS,
S/O. K.N. AIYAMMA,
THE PRESIDENT OF CAUVERY SENE (R)
1ST FLOOR, SUMUKH COMPLEX,
CHICKPET, MADIKERI - 571 201
KODAGU DISTRICT.
2. SRI. C.C. DEVAIAH
AGED ABOUT 42 YEARS,
S/O. LATE C.U. CHENGAPPA,
R/O. BITTANGALA VILLAGE AND POST,
VIRAJPET TALUK - 571 218.
KODAGU DISTRICT. ... PETITIONERS

(BY SRI. K.S. BHEEMAIHAH, ADVOCATE)

AND:

1. THE PRINCIPAL SECRETARY TO
THE GOVERNMENT OF KARNATAKA,
DEPARTMENT OF REVENUE,
MULTISTORY BUILDING,
BENGALURU - 560 001.
2. THE DEPUTY COMMISSIONER
KODAGU DISTRICT,
MADIKERI - 571 201.
3. CHIEF SECRETARY
FOREST, ENVIRONMENT AND ECOLOGY,
GOVERNMENT OF KARNATAKA,

VIDHANA SOUDHA,
BANGALORE - 560 001.

4. PRL. CHIEF CONSERVATOR OF FOREST
ARANYA BHAWAN,
18TH CROSS, MALLESWARAM,
BANGALORE - 560 003.

5. DEPUTY CONSERVATOR OF FOREST
MADIKERI DIVISION,
MADIKERI, ARANYA BHAWAN,
KODAGU DISTRICT - 571 201.

6. THE CHIEF SECRETARY
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BANGALORE - 560 001.

... RESPONDENTS

(BY SMT.VANI H., ADDL. GOVERNMENT ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-1 AND 2 TO TRANSFER THE REVENUE ENTRIES IN THE NAME OF THE FOREST DEPARTMENT OF KODAGU DISTRICT IN RESPECT OF THE LAND TO THE EXTENT OF 11,722.29 HECTARES OF C AND D CATEGORY OF LAND IN KODAGU DISTRICT AS COMMUNICATION MADE BY THE R-2 TO THE RESPONDENT NO.1 LETTER DATED 26.06.2012 AT ANNEXURE-B.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, **NAGARATHNA J.**, MADE THE FOLLOWING:

ORDER

This writ petition is filed in Public Interest.

Petitioner No.1 is stated to be the President of a voluntary organization, Cauvery Sene (R), Kodagu District, which is engaged in the welfare of the people of Kodagu

District, while petitioner No.2 is a person who is engaged in fighting for good causes in the District of Kodagu and has joined hands with petitioner No.1 for a public cause.

2. It is the case of the petitioners that an extent of land measuring 11,722.29 Hectares of C and D category have not been physically handed over by the Revenue Department including respondent No.2 to the Forest Department by entering the name of the Forest Department in the revenue records pursuant to Government Order No.RD 106 LGP 88, dated 20.07.1994. Hence, a direction is sought in that regard.

3. According to the petitioners, the Harangi Dam/Reservoir built during 1970's, is located near Hudgur Village, Somwarpet Taluk, Kodagu District, which is about 9 kms. away from Kushalnagar Town. The Harangi Dam is situated in the Western Ghats of Kodagu District, which is a catchment area of Harangi River, which is about 717 kms. in length. The Harangi river ultimately emerges with Cauvery River in Kodagu District near Kudige in Somwarpet Taluk.

4. While constructing the Harangi Dam/Reservoir, the State Government had released 900 acres of land from

the Yadavanadu forest area and 3000 acres from the Atturu forest area, as per the Government Order No.AFD 71FGL 72 dated 12.05.1972, in order to rehabilitate the persons who had lost their lands on account of the construction of Harangi Dam/Reservoir Project. In exchange of the said land, the State Government ordered that, 18,000 acres of land of Revenue Department shall be handed over to the Forest Department by Proceedings of the Government of Mysore dated 12.05.1972 (Annexure-A).

5. The grievance of the petitioners ventilated in this Public Interest Litigation is, that the Order dated 12.05.1972 has not been given effect to even after a lapse of four decades, inasmuch as the second respondent the Deputy Commissioner, Kodagu District, has not handed over admittedly 11.722.29 Hectares C and D category lands of Kodagu District to the Forest Department. In that regard, Government Order No.RD 106 LGP 88, dated 20.07.1994, was also passed to hand over the said extent of land to the Forest Department as per Annexure-B but the same has not been complied with by the respondents herein.

6. It is the further case of the petitioners, that on official records the said extent of lands continues to be

shown under the jurisdiction of the Revenue Department and not in the name of the Forest Department. As the transfer of the said land has not taken place, therefore a direction is sought in that regard. It is further submitted that the whole object and purpose of passing the Order dated 12.05.1972, was to re-compensate the forest land, which had been released for the purpose of the Harangi Dam/Reservoir Project and therefore, the petitioners have sought a direction in that regard.

7. The petitioners have also referred to Annexure-C, being a communication of the Forest Department dated 15.10.2019, wherein there is a reference to the earlier orders of the State Government dated 12.05.1972 and 20.07.1994, in which the transfer of 11.722.29 Hectares of C and D lands in Kodagu District has been clearly indicated by the Revenue Department to the Forest Department but the Deputy Commissioner of Forest, Madikeri Division, Madikeri, has stated that the said transfer has not taken place, despite the said orders being made, and therefore, a request was made to comply with the aforesaid Government Orders. Annexure-C1 is an extract of the status of the C and D lands in Madikeri Division, Madikeri, which has been

issued by the Deputy Conservator of Forest, Madikeri Division, Madikeri.

8. In fact, on behalf of the petitioners a legal notice was issued to the respondents for compliance of the Government Order dated 12.05.1972 as well as subsequent order dated 20.07.1994. There has been no response to the said legal notice issued to the respondents herein. Hence, this petition has been filed in public interest seeking a direction to respondent Nos.1 and 2 to transfer the revenue entries in the name of the Forest Department of Kodagu District in respect of 11.722.29 Hectares of C and D lands in the said District, as sought for by communication dated 26.06.2012 (Annexure-B), in pursuance of the Government Orders dated 12.05.1972 and 20.07.1994.

9. We have heard the learned counsel for the petitioners Sri K.S.Bheemaiah and the learned Additional Government Advocate for the respondents and perused the material on record.

10. Learned counsel for the petitioners submitted that the averments made by the petitioners in the writ petition supported by the orders of the State Government

would clearly indicate that an extent of 11.722.29 Hectares of C and D lands have been transferred from the Revenue Department to the Forest Department. There is no dispute with regard to the said fact. All that the petitioners are seeking is, the said transfer be completed by entering the name of the Forest Department in the official records and by taking all incidental and ancillary steps for completely handing over the control of the said lands to the Forest Department by the Revenue Department. He submitted that even after lapse of over four decades and nearing half a century, the respondent-State and its Authorities have not given effect to their own orders.

11. He submitted that the Hon'ble Supreme Court in the case of ***T.N.Godavarman Thirumulkpad vs. Union of India and Others [(1997) 2 SCC 267]***, and several other decisions have emphasized the need to not only preserve but enhance the forest area in the Country. When the State Government has taken a categorical decision and passed orders dated 12.05.1972 as well as 20.07.1994 for the purpose of handing over 11.722.29 Hectares of C and D lands to the Forest Department in order to compensate the forest lands lost for construction of the Harangi

Dam/Reservoir Project, second respondent and all other Authorities ought to have complied with the said orders of the State Government. Therefore, a direction may be issued in that regard.

12. Learned Additional Government Advocate appearing for the respondents Authorities did not contradict the orders passed by the State Government on 12.05.1972 as well as on 20.07.1994. She however submitted that there has been no formal handing over of the lands to the Forest Department, inasmuch as name of the Forest Department has not been indicated in the official record, but the Forest Department is at liberty to take charge of the said extent of lands and in that regard appropriate directions may be issued.

13. We have considered the submissions of the learned counsel for the respective parties and we find that the object and purpose of issuance of the Government Orders dated 12.05.1972 and 20.07.1994 must be given effect to and fulfilled, inasmuch as in order to recompense the loss of the forest land due to the construction of the Harangi Dam/Reservoir Project, the State Government in its wisdom transferred totally 11.722.29 Hectares of C and D

revenue lands to the Forest Department. Ultimately, the loss of forest land for the purpose of construction of the project led to the State Government to compensate the same and the extent of 11.722.29 Hectares of C and D lands were transferred to the Forest Department, but unless and until the said lands are indicated as forest lands in the official records, the same would not acquire the status of forest lands. For immediate reference, the Government Order dated 12.05.1972 is extracted as under:

**"ORDER NO.AFD.71 FGL.72 DATED BANGALORE
THE 12TH MAY 72.**

Preamble:-

In the proceedings of the meeting held in the chambers of the Commissioner for Land Reforms and EX-officio Secretary to Government of Mysore. Revenue Department on 7th January, 1972 it has been decided that in area of 3,900 acres of Forest land (900 acres in Sulebavi area of Yedavanada Forests and 3,000 acres out of Athur Reserve Forests) may be released for the resettlement of the expropriated ryots of Harangi Reservoir Project.

ORDER

Government is accordingly pleased to release an area of 900 acres of Forest land in Sulebavi area of Yedavanad and 3,000 acres of forest land in Athur Reserve Forests and surrender it to the Revenue Department for being granted to the affected ryots

under the land grant Rules, 1969, subject to the condition that the Revenue Department has to hand-over 18,000 acres of land in Coorg District to Forest Department immediately in pursuance of government order No.RD 52 LAD 62 dated 1-8-1964.”

14. In this regard, it would be useful to refer to the -definition of Forest, which has been given by the Hon’ble Supreme Court in the case of ***T.N.Godavarman Thirumulkpad vs. Union of India and Others*** reported in ***[(1997) 2 SCC 267]*** under the provisions of the Forest Conservation Act, 1980, which is a Central Act. The Hon’ble Supreme Court has held that, the expression “forest” must have within its scope and ambit, not only forest as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. The provisions of 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. It would be relevant to extract paragraph No.4 of the said judgment, which reads as under:

“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 forest 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 recognized forest, 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 matter connected therewith must apply clearly to all forests to 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 Vs. State of Gujarat*, *Rural Litigation and Entitlement Kendra Vs. State of U.P.* and recently in the order dated 29.11.1996 (*Supreme Court Monitoring Committee Vs. Mussoorie Dehradun Development Authority*). The earlier decision of this Court in *State of Bihar Vs. Banshi Ram Modi* 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.”

In the said judgment several directions were issued in Paragraph No.5 applicable to all States, which could be extracted as under:-

“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 plywood 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.

2. In addition to the above, in the tropical wet evergreen forests of Tirap and Changlang in the State of Arunachal Pradesh, therefore would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills, veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 Kms from its border, in Assam, should also be closed immediately. The State Government of Arunachal Pradesh and Assam must ensure compliance of this direction.

3. The felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or waterways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purposes. This ban will also not affect felling in any private

plantation comprising of trees planted in any area which is not a forest.

5. Each State Government should constitute within one month an Expert Committee to:

(i) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

(ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and

(iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

6. Each State Government should within two months, file a report regarding:

(i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership.

(ii) the licensed and actual capacity of these mills for stock and sawing;

(iii) their proximity to the nearest forest;

(iv) their source of timber.

7. Each State Government should constitute within one month, an Expert Committee to assess:

(i) the sustainable capacity of the forests of the State qua saw mills and timber-based industry;

(ii) the number of existing saw mills which can safely be sustained in the State:

(iii) the optimum distance from the forest, qua that State, at which the saw mill should be located.

8. The Expert committee so constituted should be requested to give its report within one month of being constituted.

9. Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and another Senior Officer to oversee the compliance of this order and file status reports."

In the very same case, on 08/01/2001 while dealing with the aspects of felling of trees and regeneration of forests, it was observed as under:-

"Two questions immediately arise for consideration. One is with regard to the implementation of the Working Plans in so far as felling is concerned and the second is with regard to the regeneration of forests. It is quite obvious that the two activities must co-exist. There cannot be felling without regeneration because that will over a period of time only result in the forests' vanishing. There has been shortfall with regard to the regeneration and as a result thereof forest cover is depleting. That shortfall has to be made up and for the future such felling has to be done which will ensure that there is at least no further depletion of the forest cover, and that the targets for increase in forest cover, as contemplated in the Working Plans,

are met. In other words, regeneration should be commensurate with the felling, and to the extent stipulated in the Working Plans.”

Thereafter, on 26/09/2005, the Hon'ble Supreme Court, while dealing with conservation, preservation and protection of forest and ecology and the measures required to compensate for loss of forest land so as to mitigate the adverse effects on the ecology when forest land is used for non-forest purpose, observed as under:-

“Natural resources are the assets of entire nation. It is the obligation of all concerned including Union Government and State Governments to conserve and not waste these resources. Article 48A of the Constitution of India requires the State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. Under Article 51A, it is the duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wild-life and to have compassion for living creatures.

In the present case, the question is about conservation, preservation and protection of forests and the ecology. When forest land is used for non-forest purposes, what measures are required to be taken to compensate for loss of forest land and to compensate effect on the ecology, is the main question under consideration.

Forests are a vital component to sustain the life support system on the earth. Forests in India have been dwindling over the years for a number of reasons, one of it being the need to use forest area for development activities including economic development. Undoubtedly, in any nation development is also necessary but it has to be consistent with protection of environments and not at the cost of degradation of environments. Any programme, policy or vision for overall development has to evolve a systematic approach so as to balance economic development and environmental protection. Both have to go hand in hand. In ultimate analysis, economic development at the cost of degradation of environments and depletion of forest cover would not be long lasting. Such development would be counterproductive. Therefore, there is an absolute need to take all precautionary measures when forestlands are sought to be directed for non-forest use."

In the said order, directions were issued for constitution of a Compensatory Afforestation Fund Management and Planning Authority (CAMPA). The Hon'ble Supreme Court further observed as under:-

"Forest sustainability is an integral part of forest management and policy that also has a unique dominating feature and calls for forest owners and society to make a long-term (50 years or longer) commitment to manage the forest for future generation. One of the viewpoints for sustaining

forest is a naturally functioning forest ecosystem. This view point takes a man and nature relationship to the point of endorsing to, the extent possible, the notion of letting forest develop and process without significant human intervention. A strong adoption of the naturalistic value system that whatever nature does is better than what humans do, this is almost the "nature dominates man" perspective. Parks and natural reserve creations; non-intervention in insect, disease and fire process; and reduction of human activities are typical policy situation. This viewpoint has been endorsed by 1988 Forest Policy of Government of India. Yet another viewpoint recognises the pragmatic reality faced by the governments and the administrative, namely, trees don't vote while people do. Some of the criteria reflecting key elements of ecological, economic and social sustainability are:

1. Conservation of biological diversity.
2. Maintenance of productive capacity of forest ecosystems.
3. Maintenance of forest ecosystem health and vitality.
4. Conservation and maintenance of soil and water resources.
5. Maintenance of forest contribution to global carbon cycles.
6. Maintenance and enhancement of long-term multiple socioeconomic benefits to meet the needs of societies.
7. Legal, institutional and economic framework for forest conservation and sustainable management.

An expert dealing with principles and applications of forest valuation, on the aspect of value of inputs and outcomes and conditions, says :

"Decision making in forest management requires that we understand the relative values of inputs, outcomes, and conditions. Cost values for inputs such as labour, capital, interest, supplies, legal advice, trades, and other management activities as well as the market value of existing timber stands are relatively easy to obtain. Outcomes or resulting condition values are more difficult, but we need measures of the values of timberland, recreation, water, wild life, visual amenities, biodiversity, environmental services, and ecological process to help guide management decisions. By understanding market, social and other values of forests, we can better allocate our scarce and valuable resources to attain the desired mix of outcomes and conditions."

The emphasis is on ecosystem, management philosophy that has greater emphasis on integration, biological diversity and ecological processes.

In respect of working economic values of the outcome, it is said:

"In real world forest management situations, decision makers are faced with several alternatives and potentially large sets of criteria related to the ecological, economic and social impacts of these alternatives. It would be

very easy to generate a nearly incomprehensible table that documented every physical, biological, economic, and social outcome and condition resulting from each management alternative. Such information could include outcome levels for water yield, sediment production, and timber growth; population trends for important wild life species; and recreation use for backcountry and developed recreation sites. Similarly, information on the economic value of these outcomes can be estimated by means of the methods discussed in chapter 8 and added to our impact table. To this avalanche of information, we could add the impacts on the social well-being of local and regional communities. The forest management analyst can easily overwhelm the decision makers and stakeholders with information."

Dealing with fundamental of decision analyses to achieve ecological, economic and social goals, it is said that what is to be broadly kept in view is:

"Ecological and environmental goals are important to forest managers, landowners, and their stakeholders, we need information about how decision alternatives affect such goals.

These goals can be broadly stated as

1. Maintaining and enhancing forest productivity
2. Conservation of biological diversity

3. Protecting and enhancing environmental conditions."

15. In view of the above mandate of the Hon'ble Supreme Court, the second respondent is directed to transfer the revenue entries in respect of 11.722.29 Hectares of C and D lands in the name of the Forest Department of Kodagu District in terms of the Government Orders dated 12.05.1972 and 20.07.1994 and to take all incidental and ancillary steps in that regard.

The transfer in the official records in the name of the forest department Kodagu District, shall be made within a period of one month from the date of receipt of the certified copy of this order.

The Writ Petition is **allowed** in the aforesaid terms.

Parties to bear their respective costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

AP/*mvs*