

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JUNE, 2022

PRESENT

THE HON'BLE MR. RITU RAJ AWASTHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE ASHOK S.KINAGI

WRIT PETITION NO.10502 OF 2022 (GM-MM-S)

BETWEEN:

SRI D.M. DEVE GOWDA
S/O SRI MANJE GOWDA
AGED ABOUT 55 YEARS
R/O. ARENURU VILLAGE
KANATHI POST
CHIKKAMAGALURU -577 101.

... PETITIONER

(BY SRI VINOD GOWDA, ADVOCATE)

AND:

- 1 . THE PRINCIPAL CHIEF CONSERVATOR
OF FORESTS
4TH FLOOR
ARANYA BHAVAN
18TH CROSS
MALLESHWARAM
BENGALURU - 560 003.
- 2 . THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF
FOREST MINES AND GEOLOGY
M.S. BUILDING
BENGALURU - 560 001.
- 3 . THE DEPUTY CONSERVATOR OF FORESTS
CHIKKAMAGALURU DIVISION
CHIKMAGALURU - 577 101.

4 . THE SENIOR GEOLOGIST (MINES)
DEPARTMENT OF MINES AND GEOLOGY
KHANIJA DIVISION
CHIKKAMAGALURU.

... RESPONDENTS

(BY SRI S.S. MAHENDRA, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT OR ORDER QUASHING THE REPORT BEARING NO.B4/KaGaGu/CR-109/2018-19, DATED 30/07/2021 AND ENDORSEMENT DATED 08/02/2022 ISSUED BY RESPONDENT NO.3 AS PER ANNEXURES-L AND N & ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

Heard.

2. This writ petition has been filed seeking the following reliefs:-

"i) Issue Writ of Certiorari or any other appropriate writ or order quashing the report bearing No.B4/KaGaGu/CR-109/2018-19, dated 30/07/2021 and endorsement dated 08/02/2022 issued by Respondent no.3 as per ANNEXURE-L AND N.

ii) Issue writ of mandamus directing the Respondent No.3 to permit the petitioner to do stone quarrying in his land.

iii) Issue Writ of Certiorari or any other appropriate writ or order directing the Respondent No.4 to issue quarrying license to the Petitioner.

iv) Issue any other appropriate writ order or direction to meet the ends of justice."

3. The short question involved in the writ petition is whether the respondents can treat any land as "deemed forest".

4. This Court, vide judgment and order dated 12.06.2019 passed in W.P.No.54476/2016 (GM-MM-S) C/w W.P.No.51135/2016 (***Dhananjay vs. State of Karnataka and others***), has categorically held that there is no concept of "deemed forest". The Court was of the view that the land can either be a "forest" or a "forest land", but there cannot be any "deemed forest" in absence of any provision under the Act.

5. There is consensus between learned counsel for the petitioner and learned Additional Government Advocate appearing for the respondents that the judgment passed by this Court in the case of ***Dhananjay (supra)*** squarely covers the controversy involved in the present writ petition.

6. In this view of the matter, we deem it appropriate to allow this writ petition without calling for any statement of objections from the respondents as the

judgment passed by this Court in the case of **Dhananjay** (*supra*) holds good. Paragraphs 18 and 19 are relevant which, on reproduction, reads as under:-

"18. For the reasons which we have recorded above, the applications made by the petitioners will have to be reconsidered. Whether the applications can be reconsidered or not in the light of the amendment to the said Rules is an issue to be decided by the concerned authority while deciding the applications. As no inquiry is made by the concerned authorities on the question whether the lands are covered by the wide concept of "forest" or "forest land" adopted by the Apex court by the order dated 12th December 1996, we cannot grant a declaration that the properties subject matter of the petitions are not forest. We, however, make it clear that as the concept of 'deemed forests' appears to be a foreign to the law, the applications cannot be rejected only on the ground that the lands subject matter are 'deemed forests'.

19. Accordingly, we dispose of the petitions by passing the following order:

(i) The impugned order in both the petitions are hereby quashed and set aside and the applications made by the petitioners for grant of the quarrying licence/lease or the renewal thereof, as the case may be, shall be decided afresh by the concerned competent authority in the light of what is held in the judgment and order. Appropriate decision shall be taken within a period of two months from the date on which a copy of this order is provided to the concerned authority. We make it clear that while considering the applications afresh, the concerned authority will have to consider whether the subject lands are "forest" or "forest

land" as laid down in the decision of the Apex Court in GODAVARMAN (supra).

(ii) Needless to add that the if the authority concerned finds that the land is a "forest" or a "forest land", lease or extension of lease cannot be granted unless the consent of the Central Government is obtained as per section 2 of the Forest Act.

(iii) We also make it clear that we have made no adjudication about the applicability of the said Rules as amended with effect from 12th August 2016 and all the issues are left out to be decided by the concerned authority.

(iv) The petitions are allowed in the above terms with no order as to costs."

7. In view of the above, the writ petition is allowed. The order impugned bearing No.B4/KaGaGu/CR-109/2018-19 dated 30.07.2021 and the endorsement dated 08.02.2022 issued by respondent No.3, the copies of which are annexed at Annexures-L and N respectively are quashed with a direction to the concerning Competent Authority to consider the application made by the petitioner for grant of quarrying lease afresh in the light of the judgment of this Court in the case of **Dhananjay** (supra) and take appropriate decision within a period of two months from the date a copy of the order is produced before him. We make it clear that while considering the application

afresh, the concerned Authority will have to consider whether the subject land is "Forest" or "Forest Land" as laid down in the decision of the Apex Court in the case of ***T.N.Godavarman Thirumulkpad vs. Union of India and others***¹.

8. It is needless to observe that if the concerned Authority finds that the land is a "forest" or a "forest land", lease or extension of lease cannot be granted unless the consent of the Central Government is obtained as per Section 2 of the Forest (Conservation) Act, 1980. The decision so taken shall be communicated to the petitioner.

9. It is made clear that we have not adjudicated the right of the petitioner for grant of lease and the concerned Authority has to consider the same after making an enquiry as to whether the land in question is a "forest" or a "forest land".

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

KPS

¹ (1997) 2 SCC 267