

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH, 2021

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE S VISHWAJITH SHETTY

WRIT PETITION NO.43037 OF 2019(GM-FOR-PIL)

BETWEEN:

GIREESH ACHAR
S/O LATE CHANDRA ACHAR,
AGED ABOUT 39 YEARS
PUNAJI VILLAGE
BRAMMEVESHWARA
HOSANAGAR POST
HOSANAGAR TALUK
SHIMOGGA DISTRICT-577 418

...PETITIONER

(BY SRI.VEERENDRA R PATIL, ADVOCATE)

AND:

1. GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT & FOREST
REGIONAL OFFICE (SOUTHERN ZONE)
KENDRIYA SADAN, IV FLOOR,
E & F WINGS, 17TH MAIN ROAD,
2ND BLOCK, KORAMANGALA,
BANGALORE-560 034.
2. ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
FOREST ECOLOGY AND ENVIRONMENT
ROOM NO.448, GATE NO.2
M.S.BUILDING,
BANGALORE-560 001.

3. UNDER SECRETARY TO GOVERNMENT
FOREST ECOLOGY AND ENVIRONMENT
GATE NO.2, M.S.BUILDING,
BANGALORE-560 001.
4. DEPUTY COMMISSIONER
OF SHIMOGGA DISTRICT
SHIMOGGA-577 201.
5. DEPUTY CONSERVATOR OF FOREST
WILD LIFE DIVISION,
SHIMOGGA
SHIMOGGA-577201
6. DEPUTY CONSERVATOR OF FOREST
SAGAR DIVISION
SAGAR TALUK
SHIMOGGA DISTRICT-577 401

...RESPONDENTS

(BY SRI.SHIVAKUMAR S, CGC FOR R1;
SRI.B.V.KRISHNA, AGA FOR R2 TO R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 &
227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH
THE IMPUGNED ORDER DATED 23.02.2017 PASSED BY THE R3
WHICH IS PRODUCED AS ANNEX-N AND DECLARE THE
SECTION 28 OF KARNATAKA FOREST ACT 1963 AS ULTRA
VIRES & UNCONSTITUTIONAL WITH SECTION 2 OF THE
CENTRAL FOREST CONSERVATION ACT 1980 AND ETC.

THIS PETITION COMING ON FOR FURTHER HEARING
THROUGH VIDEO CONFERENCING THIS DAY, **CHIEF JUSTICE**
MADE THE FOLLOWING:

ORDER

OVERVIEW

Seventeen years after the Forest (Conservation) Act, 1980 (for short 'the said Act of 1980') came into force, the Government of Karnataka has passed an order in purported exercise of the powers under Section 28 of the Karnataka Forest Act, 1963 and has permitted use of a reserved forest for non-forest purpose without obtaining prior approval of the Central Government in accordance with Section 2 of the said Act of 1980. The State Government has not followed the direction of the Apex Court in paragraph 5 of its decision in the case of ***T.N. Godavarman Thirumulkpad vs Union Of India & Others***¹.

FACTS

2. With a view to appreciate the factual aspects, a brief reference to the averments made in the petition will be necessary.

3. Reliance is placed on a notification issued on 24th June 1920 in exercise of the powers under the Mysuru Forest Regulation, 1900 (for short 'the said Regulation') by which a State Forest was declared in respect of the land subject matter

¹ 1997(2) SCC 267

of this writ petition. The said notification dated 24th June 1920 declared that the area of 6742 acres and 33 guntas more particularly described therein known as Kudi block shall be deemed to be a 'State Forest' within the meaning of the said Regulation. By a notification dated 30th April 1926, an area of 3016 acres and 16 guntas was declared as a State Forest under the said Regulation. It is pointed out that the case of the State Government is that on 2nd May 1961, an area of 19 acres and 20 guntas covered by the aforesaid notification was purportedly released for rehabilitation purposes. The said Act of 1963 came into force on 1st June 1969 and the said Act of 1980 came into force on 25th October 1980. Reliance is placed in the petition on the letter dated 10th March 2004 issued by the Assistant Inspector General of Forests of the Government of India to all the Secretaries of the Forest Departments of the States and Union Territories. The said letter refers to the order of the Apex Court dated 14th December 2000 in W.P.No.202/1995 (***K.M.Chinnappa vs Union of India and others***) restraining all States from removing of certain trees from National Parks, sanctuaries and Forests. It also refers to the order dated 13th November 2000 passed by the Apex Court in W.P.No.337/1995 by which it was directed that pending

further orders, no de-reservation of forest/National Park/Sanctuaries shall be effected.

4. Now, we come to the impugned Annexure-N which is a notification dated 23rd February 2017. Annexure-N is purportedly issued in exercise of the powers under Section 28 of the said Act of 1963. It records that between the years 1959 to 1969, several orders were issued by the State Government for de-notification of forests, but the process was not completed. Therefore, the said order purports to release certain forest lands mentioned therein from reserved forest. Though the said notification dated 23rd February 2017 (Annexure-N) refers to Section 2 of the said Act of 1980, it ignores the mandatory requirement of obtaining prior approval of the Central Government.

5. The first prayer in the petition is for challenging Annexure-N dated 23rd February 2017. The second prayer is for declaring Section 28 of the said Act of 1963 as ultra vires and unconstitutional in view of its repugnancy with Section 2 of the said Act of 1980. There is also a prayer for initiating proceedings under Section 3A and 3B of the said Act of 1980 against those who are responsible for violation of Section 2 of the said Act of 1980.

STAND OF THE RESPONDENTS

6. There is a statement of objections filed by the first respondent (the Government of India). In paragraph 19, it is specifically contended that Section 28 of the said Act of 1963 has ceased to be effective after the enactment of the said Act of 1980 and in view of the interim order of the Apex Court dated 12th December 1996 in Writ Petition No.202 of 1995.

7. A statement of objection has been filed by the State Government. It records that there were two notifications issued under the said Regulation on 24th June 1920 and 30th April 1926 declaring certain lands as a State Forest. The Notification dated 24th June 1960 is in respect of an area of 6742 acres 33 guntas and the Notification dated 30th April 1926 is in respect of an area of 3016 acres and 16 guntas. It is pleaded that in the year 1958-59, a decision was taken to rehabilitate the project affected families in the forest lands and accordingly, total extent of 260 acres out of the State Forest, declared as aforesaid, was released to the Revenue Department. In Paragraph 4, it is stated that the order of release was not published in the official gazette. A specific contention has been raised in Paragraph 5 relying upon the said Act of 1980 that prior approval was not required as orders of diversion were issued by the State Government prior to the

date on which the said Act of 1980 came into force. It is further claimed that the power was exercised under Section 30 of the said Regulation in the years 1962 and 1964 for declaring that a portion of the lands declared as State Forest shall cease to be so. Therefore, the State Government prayed for dismissal of the petition.

SUBMISSIONS

8. The learned counsel appearing for the petitioner submitted that even assuming that Section 28 of the said Act of 1963 is valid, the power of de-reservation of a reserved forest within the meaning of the said Act of 1963 can be exercised only in accordance with Section 2 of the said Act of 1980 and in this case, the power under Section 28 of the said Act of 1963 has been exercised admittedly without seeking a prior approval of the Central Government as required by Section 2 of the said Act of 1980. He submitted that the State Government cannot rely upon the earlier notifications issued in 1960s as Section 30 of the said Regulation conferred a power on the Government to release a part of the State Forest only by publishing a notification in official gazette. Admittedly, the said earlier notifications were not published in the official gazette. He places reliance on the decision of the Apex Court in **T.N. Godavarman** (*supra*). He also relied upon the decision of the

Apex Court in the case of ***Nature Lovers Movement vs State of Kerala and others***² and in particular the directions issued in clause (2) of paragraph 52 of the said decision.

9. The learned Additional Government Advocate representing the State Government supported the impugned notification by pointing out that the power was already exercised under the said Regulation right from the year 1959 for de-reserving certain areas of the reserved forest. He stated that at the relevant point of time, the said Act of 1980 was not on the Statute book and therefore, there was no question of obtaining prior approval under Section 2 thereof. He submitted that Section 28 of the said Act of 1963 continues to be valid. We have also heard learned CGC for the first respondent.

CONSIDERATION OF SUBMISSIONS - LEGAL POSITION

10. We have given careful consideration to the submissions. Section 28 of the said Act of 1963 reads thus:

"28. Power to declare forests no longer reserved forests.- (1) The State of 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 served 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:

² (2009)5 SCC 373

Provided further that no such resolution shall be necessary where the proposal relates to regularization of unauthorized 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.

(2) 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.

(underlines supplied)

11. We may also reproduce Section 2 of the said Act of 1980 which reads thus:

"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 organisation 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."

(underlines supplied)

As is apparent, the said Act of 1963 is a State Legislation and the said Act of 1980 is a subsequent Central Legislation. In fact, Section 2 of the said Act of 1980 starts with a non-obstante clause and it overrides the state laws. It lays down that no State Government is empowered to make an order directing that any reserved forest or a portion thereof shall cease to be reserved without seeking prior approval of the Central Government. We must note here that Section 28 of the said Act of 1963 has conferred a power on the State Government of declaring that a reserved forest or a part thereof shall cease to be a reserved forest. In view of clause (i) of Section 2 of the said Act of 1980, the power under Section 28 of the said Act of 1963 cannot be exercised without prior approval of the Central Government.

CONSIDERATION OF FACTUAL ASPECTS

12. We must note here that the terms 'forest' or 'reserved forest' are not defined in the said Act of 1980. It is, therefore, necessary to make a reference to the decision of the Apex Court in the case of **T.N. Godavarman** (*supra*).

Paragraph 4 thereof reads thus:

"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 v. State of Gujarat*, *Rural Litigation and Entitlement Kendra v. State of U.P.* and recently in the order dated 29-11-1996 (Supreme Court) *Monitoring Committee v. Mussoorie Dehradun Development Authority*). The earlier decision of this court in *State of Bihar v. 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."*

(underline supplied)

13. Hence, the Apex Court gave a very wide meaning to the concept of forest in the said Act of 1980 by referring to its dictionary meaning and by holding that it covers all statutorily recognised

forests, whether designated as a reserved, a protected forest or otherwise. As stated earlier, the land subject matter of this petition was declared as a State Forest within the meaning of the said Regulation. Therefore, the land subject matter of this petition will be governed by the definition of Forest as laid down by the Apex Court and hence, Section 2 of the said Act of 1980 is squarely applicable. Moreover, in view of sub-section (1) of Section 23 of the said Act of 1963, any forest notified as a "State Forest" under the said Regulation shall be a reserved forest under the said Act of 1963.

14. The said decision of the Apex Court in the case of **T.N.Godavarman** (*supra*) has been rendered on 12th December 1996. Clause (i) of paragraph 5 of the said decision contains the following direction:

"5. (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."

Notwithstanding the said decision, which is binding on the State Government, without even applying for prior approval under Section 2 of the said Act of 1980, it undertook the exercise of issuing the impugned notification dated 23rd February 2017 of de-reservation of reserved forest in purported exercise of the powers under Section 28 of the said Act of 1963. Though the notification refers to Section 2 of the said Act of 1980, it ignores that prior approval of the Central Government was required as a condition precedent for exercise of the power under Section 28 of the said Act of 1963. The stand of the State Government is that the lands included in the impugned notification were earlier released but specific notifications were not published in official gazette. However, under Section 30 of the said Regulation, the power to release a State Forest could be exercised only by a notification in official gazette. Admittedly, that was not done. Hence, the status of the forest subject matter of the impugned notification as a reserved forest being a State Forest continued till the date of the impugned notification.

15. On a conjoint reading of Section 28 of the said Act of 1963 and Section 2 of the said Act of 1980, it is crystal clear that the power under Section 28 of the said Act of 1963 can be exercised only with the prior approval of the Central

Government granted in accordance with Section 2 of the said Act of 1980. Thus, unless there is a prior approval of the Central Government to an order made under Section 28 of the said Act of 1963, the order under Section 28 of the said Act of 1963 cannot be lawful at all. In fact, any such order made in exercise of the power under Section 28 of the said Act of 1963 without seeking prior approval of the Central Government will not only be illegal but will also attract penal consequences under Section 3A and/or under Section 3B of the said Act of 1980, as the case may be. While issuing the impugned notification, not only that the State Government has completely glossed over the requirement of Section 2 of the said Act of 1980, but the State Government has violated the directions contained in the case of **T.N. Godavarman** (*supra*) and the decision of the Apex Court in the case of **Nature Lovers Movement** (*supra*) rendered on 20th March, 2009. Paragraph 52 of the decision in the case of **Nature Lovers Movement** (*supra*) reads thus:

"52. In the result, the appeal is disposed of in the following terms;

(1) The policy decision taken by the Government of Kerala to assign 28,588.159 ha of forest land to unauthorised occupants/encroachers after seeking approval from the Central Government does not suffer from any legal infirmity and the High court rightly declined to interfere with the said decision.

(2) After the enforcement of the 1980 Act, neither the State Government nor any other authority can make an order or issue direction for dereservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or assign any forest land or any portion thereof by way of lease or otherwise to any private person or to any authority, corporation, agency or organisation not owned, managed or controlled by the Government except after obtaining prior approval of the Central Government.

(3) Conclusion D recoded by the High Court in para 103 of the impugned judgment is legally unsustainable and is set aside.

(4) As and when the State Government decides to assign 10,000 ha of forest land to unauthorised occupants/encroachers, it shall do so only after obtaining prior approval of the Central Government and the latter shall take appropriate decision keeping in view the object of the 1980 Act and the guidelines framed for regularisation of encroachments on forest land."

(underline supplied)

Hence, the impugned notification at Annexure-N has been issued completely in violation of the direction of the Apex Court in clause (2) of paragraph 52 of the said decision.

16. The power of the State Government under Section 28 of the said Act of 1963 has been circumscribed by Section 2 of the said Act of 1980. The power under Section 28 of the said Act of 1963 cannot be exercised without prior approval of the Central Government in view of express language used in clause (i) of Section 2 of the said Act of 1980. In fact, in view

of clause (i) of Section 2 of the said Act of 1980, obtaining prior approval of the Central Government is a condition precedent for the exercise of the power under Section 28 of the said Act of 1963. It thus follows that the notification at Annexure-N which purports to make de-reservation of certain lands forming a part of a reserve forest is completely contrary to the mandate of the aforesaid decisions of the Supreme Court and Section 2 of the said Act of 1980. In view of the clear legal position that no order under Section 28 of the said Act of 1963 can be passed without making a compliance with Section 2 of the said Act of 1980, the issue of repugnancy will not arise between the State enactment and the Central enactment as what will prevail is the provision of Section 2 of the said Act of 1980 as well the direction issued by the Apex Court in the aforesaid cases. Hence, the impugned notification deserves to be set aside.

17. At this stage, it is necessary to remind the State Government of Article 48A of the Constitution of India which is a part of the Directive Principles of State Policy which enjoins the State to protect and improve the environment and to safeguard the forests and wild life. Under clause (g) of Article 51A of the Constitution, it is the fundamental duty of every citizen of India to protect and improve the forests. The officials of the State Government who did the exercise of initiating and

completing the process under Section 28 of the said Act of 1963 were also duty bound to protect the forest. The minimum which was expected of them was that they will not indulge in de-reservation of forest in complete violation of Section 2 of the said Act of 1980.

18. Apart from all this, there is a doctrine of Public Trust. The Apex Court has repeatedly held that the doctrine of Public Trust is applicable to India. The doctrine of Public Trust requires the State to ensure that forests are protected.

19. Hence, the petition must succeed and we pass the following order:

ORDER

(i) The impugned order/notification dated 23rd February 2017 at Annexure-N is hereby quashed and set aside;

(ii) We hold that the power under Section 28 of the said Act of 1963 cannot be exercised without obtaining the prior approval of the Central Government in accordance with Section 2 of the said Act of 1963;

(iii) We also hold that even if the State Government purports to issue a notification under Section 28 of the said Act of 1963 without obtaining the prior approval of the Central

Government in accordance with Section 2 of the said Act of 1980, such a notification shall be *per se* illegal;

(iv) If any of the officers are responsible for allowing non-forest activities on the lands subject matter of Annexure-IV, needless to add that criminal law shall be set in motion by the State Government against the concerned officers by taking recourse to Section 3 (A) read with Section 3(B) of the said Act of 1980;

(v) The petition is allowed on the above terms with no order as to costs.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

alb /-vgh.