

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF OCTOBER, 2022

PRESENT

THE HON'BLE MR. ALOK ARADHE
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

W.P.No.11546/2017(GM-RES-PIL)

BETWEEN:

1. SRI UJJAPPA NINGAPPA KAMDOD
S/O SRI NINGAPPA MALLAPPA
KAMADOD, AGED 50 YEARS
PRESENTLY RESIDING AT MAGOD
POST MAGOD, RANEBENNUR TALUK
HAVERI DISTRICT, KARNATAKA - 581 115.
2. SRI CHANABASANGUD SHIVAPPA
MUDIGOUDRA, S/O SRI SHIVAPPA
AGED 43 YEARS
PRESENTLY RESIDING AT MAGOD
RANEBENNUR TALUK, HAVERI DISTRICT
KARNATAKA - 581 115.
3. SRI AJJAPPA CHANNAPPA HALABHAVI
S/O SRI CHANNAPPA
AGED 54 YEARS
PRESENTLY RESIDING AT MAGOD
RANEBENNUR TALUK, HAVERI
DISTRICT, KARNATAKA - 581 115.
4. SRI NINGANAGOUDA HARIHARAPPA
MUDIGOUDRA
S/O SRI HARIHARAPPA MUDIGOUDRA
AGED 55 YEARS, PRESENTLY RESIDING
NEAR MARUTHI TEMPLE MAGOD
RANEBENNUR TALUK
HAVERI DISTRICT, KARNATAKA - 581 115.

5. SRI RAMAPPA NINGAPPA MUDAKANAGOUDE
S/O SRI NINGAPPA HANUMAPPA
MUDAKANAGOUDE
AGED 38 YEARS
PRESENTLY RESIDING MAGOD
RANEBENNUR TALUK, HAVERI DISTRICT
KARNATAKA - 581 115.
6. SRI RAMANAGOUDE DODDAHANUMANTAPPA
MUDIGOUDE
S/O SRI DODDAHANUMANTAPPA
AGED 65 YEARS
PRESENTLY RESIDING AT MAGOD
RANEBENNUR TALUK, HAVERI DISTRICT
KARNATAKA - 581 115.
7. SRI REVANAPPA HANUMANTAPPA
KAREGOUDE
S/O SRI HANUMANTAPPA
AGED 53 YEARS
PRESENTLY RESIDING MAGOD
RANEBENNUR TALUK
HAVERI DISTRICT
KARNATAKA - 581 115.
8. SRI HANAMANTAPPA HALAPPA KARJAGI
S/O SRI HALAPPA
AGED 62 YEARS
PRESENTLY RESIDING MAGOD
RANEBENNUR TALUK, HAVERI DISTRICT
KARNATAKA - 581 115. ...PETITIONERS

(BY SRI S.V. BHAT, ADV.)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF INDUSTRIES &
COMMERCE, VIDHANA SOUDHA
BANGALORE - 560 001
REPRESENTED BY ITS SECRETARY.
2. THE STATE OF KARNATAKA
DEPARTMENT OF REVENUE
VIDHANA SOUDHA
BANGALORE - 560 001

REPRESENTED BY ITS
SECRETARY.

3. STATE OF KARNATAKA
DEPARTMENT OF LAW
VIDHANA SOUDHA
BANGALORE - 560 001
REPRESENTED BY ITS
SECRETARY.
4. THE DEPUTY COMMISSIONER
HAVERI DISTRICT
HAVERI - 581 110.
5. THE TAHSILDAR
RANEBENNUR TALUK
HAVERI DISTRICT.
6. KARNATAKA INDUSTRIAL AREA
DEVELOPMENT BOARD
14/3, 2ND FLOOR, RASHTROTHANA
PARISHAT BUILDING
NRUPATUNGA ROAD
BANGALORE - 560 001
REPRESENTED BY ITS
CHAIRMAN.
7. THE SPECIAL LAND ACQUISITION
OFFICER, KARNATAKA INDUSTRIAL
AREA DEVELOPMENT BOARD
KHANIJA BHAVAN, 4TH & 5TH FLOOR
EAST WING, NO.49, RACE COURSE
ROAD, BENGALURU - 560 001.
8. THE REGIONAL COMMISSIONER
BELGAUM DIVISION
BELGAUM - 590 001.
9. THE DISTRICT JUDGE
HAVERI DISTRICT
HAVERI - 581 110.
10. THE PUBLIC WORKS DEPARTMENT
HAVERI DIVISION
HAVERI - 581 110. ...RESPONDENTS

(BY SMT. PRATHIMA HONNAPURA, AGA FOR R-1 TO R-5, R-8 & R-10; SRI GURUMATH GANGADHAR RUDRAMUNI SHARMA, SR. COUNSEL FOR SRI P.V. CHANDRASHEKAR, ADV., FOR R-6 & R-7; SRI MAHESH R UPPIN, ADV., FOR APPLICANT IN IA 1/2020; SRI UDAYA HOLLA, SR. COUNSEL FOR SRI VIVEK HOLLA, ADV., FOR R-9)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD.10.8.1993 PASSED BY THE R-4 VIDE ANNEX-F.

THIS PETITION HAVING BEEN HEARD AND RESEVED, COMING ON FOR PRONOUNCEMENT THIS DAY, **VISHWAJITH SHETTY J.**, MADE THE FOLLOWING:

ORDER

The petitioners who are the permanent residents of Magodu village, Ranebennur Taluk, Haveri District, have preferred this public interest litigation with a prayer to quash the order dated 10.08.1993 issued by respondent no.4, order dated 08.12.2006 issued by respondent no.5, order dated 12.08.2014 issued by respondent no.1, which are produced at Annexures-F, L, & M, respectively, and have sought for quashing the notifications dated 13.01.2010 issued under Sections 3(1), 1(3) & 28(1) of the Karnataka Industrial Area Development Act, 1966 (for short, 'the Act of 1966'), and also the notification

dated 15.06.2013 issued under Section 28(4) of the Act, which are produced at Annexures-N, P, Q & R, respectively, and further sought to quash the order dated 31.12.2015 passed by respondent no.1 vide Annexure-S. The petitioners have also sought for the consequential reliefs of issuing necessary direction to take back the possession of the lands which are the subject matter of the above referred orders and to restore the mutation entry in respect of the said land as Gomal land.

2. Heard the learned Counsel for the parties and also perused the material on record.

3. Brief facts of the case as revealed from the records are, that the land bearing Sy. No.11A measuring 198 acres 11 guntas and Sy. No.13 measuring 62 acres 38 guntas situated at Magodu village, Ranebennur Taluk, are Gomal lands which are reserved for the purpose of grazing the cattle in Magodu village. It is the case of the petitioners that there are about 1200 cattle in the village and the aforesaid Gomal lands are required for the purpose of grazing of these cattle. The respondent-authorities contrary to the provisions of the Karnataka

Land Revenue Act, 1964 (for short, 'the Act of 1964') have passed various orders de-reserving portions of the aforesaid Gomal lands and this act of theirs continued right from the year 1993 upto 2015, inspite of there being objection from the villagers of Magodu village. The portion of de-reserved lands have also been allotted to Karnataka Industrial Area Development Board (for short, 'the Board'), who inturn wants to develop the said land for industrial purpose and in the said event, the ecology of the locality is likely to be affected. The Gomal land which is now available in the village is hardly sufficient for the purpose of grazing the cattle in the village and since the objections raised by the villagers in this regard were completely ignored or not considered by the concerned authorities, the petitioners have approached this Court seeking for the aforesaid prayers.

4. The contesting respondents have filed their objections and opposed the prayers made in the petition.

5. Learned Counsel for the petitioners submits that vide the order dated 10.08.1993 at Annexure-F, an extent of 30 acres was de-reserved in Sy. No.11A of

Magodu village and vide order dated 08.12.2006 as per Annexure-L, the entire extent in the land bearing Sy. Nos.11A & 13 have been mutated in the name of land bank by the Tahsildar and further, under order dated 12.08.2014 vide Annexure-M, prior permission has been granted by respondent no.1 for de-reservation of 10 acres of land in Sy. Nos.11A & 13 for the purpose of constructing court buildings and under order dated 31.12.2015 vide Annexure-S, an extent of 100 acres of land in Sy. No.11A and an extent of 62.38 acres in Sy. No.13 has been de-reserved. He submits that an order has been passed on 12.02.2016 by respondent no.5 for transfer of 100 acres in Sy. No.11A and the entire extent of 62 acres 38 guntas in Sy. No.13 for the purpose of establishing industries and pursuant to the said order, on 27.06.2016, the Tahsildar has handed over the aforesaid lands to the Special Land Acquisition Officer of the Board, who inturn has handed over the said lands to the Board on 08.07.2016 for the purpose of development. He submits that the competent authority while passing the order under Section 71 of the Act of 1964, is required to assign reasons for de-reserving of Gomal lands and the

availability of sufficient land for the purpose of pasturage of the cattle is also required to be taken care of by him. He submits that Rule 97 of the Karnataka Land Revenue Rules, 1966 (for short, 'the Rules of 1966') mandates the State to provide for free pasturage at the rate of 12 hectares for every 100 heads of cattle, and therefore, the Gomal land available in Magodu village is required for the purpose of pasturage of the existing cattle in the village. He submits that the distance between Magodu village and Hunasikatte village is about 6 Kms. and availability of any Gomal land or green pasturage at Hunasikatte cannot be a reason for de-reservation of the Gomal land of Magodu village and the cattle of Magodu village cannot be expected to go to Hunasikatte village on daily basis for grazing purpose. He also submits that the petitioners or any other villagers were not heard by the competent authorities before passing the order of de-reservation of the Gomal lands. In support of his contentions, he has relied upon the following decisions:

i) K.P.MANJUNATHA VS STATE¹;

¹ ILR 1976 KAR 946

ii) B.UMESH SHENOY VS SPL. DEPUTY COMMISSIONER²;

iii) GRAM PANCHAYAT, UGRAGOL VS STATE³;

iv) JAGPAL SINGH VS STATE OF PUNJAB⁴.

6. Per contra, learned Additional Government Advocate submits the impugned notifications have been issued over a period of time from 1993 to 2015 and the present writ petition has been filed belatedly in the year 2017. She submits that the land which are the subject matter of these notifications/orders have been developed, and therefore, no interference is called for at this stage. She refers to paragraph 6 of the status report dated 06.08.2022 filed by her and submits that Magodu village is situated adjacent to Kamadod village and Hunaikatti village and there is an extent of about 1245 acres 14 guntas of Government land available in the aforesaid two villages for the purpose of grazing the existing cattle of Magodu village as well as other two villages, and therefore, the de-reservation of the land bearing Sy. Nos.11A & 13 of Magodu village will not

² ILR 2001 KAR 3115

³ 2000(1) KLJ 120

⁴ (2011)11 SCC 396

affect the grazing requirement of the existing cattle in Magodu village.

7. Learned Counsel for the Board submits that the petitioners have not challenged the de-reservation of the Gomal lands which are subsequently allotted for the purpose of construction of a depot in favour of Divisional Controller, of Karnataka State Road Transport Corporation (KSRTC), Hubballi, and they have also not challenged the de-reservation of 15 acres of land in Sy. No.11A for the purpose of allotting sites to the landless people under the Ashraya scheme. He further submits that in the year 2006, the entire extent of land bearing Sy. Nos.11A & 13 are directed to be transferred in the name of land bank and thereafter, the entries in the revenue records of the lands were also changed in the name of the land bank, but the petitioners have not questioned the same in this writ petition. He submits that the very same lands have been thereafter allotted to the Board, and therefore, the prayers made in the writ petition to the extent it relates to challenging the notifications under the Act of 1966 cannot be granted.

8. Learned Senior Counsel appearing for respondent no.9 submits that the petitioners have not contended in the writ petition that they were not heard in the matter by the competent authorities before issuing the de-reservation orders. He refers to the cattle strength of Magodu village that existed earlier and the present existing cattle strength and submits that the figures show that there is a raise of cattle strength in the village, and therefore, it has to be presumed that there is sufficient land available in the village for grazing the cattle. He also submits that the doctrine of sustainable development is required to be taken into consideration and since de-reserved lands have been already put into use, they have lost the characteristics of Gomal land. He further submits that the petition is required to be dismissed on the ground of delay and laches alone, since the petitioners have not approached this Court in time.

9. The petitioners have challenged various orders/notifications that have been issued de-reserving Sy. Nos.11A & 13 of Magodu village on different dates from the year 1993 to 2015. The material on record

would go to show that major portions of the lands that were de-reserved have been allotted to the Board and the Board in turn has already taken steps for development of the said land. It has called for tender for the purpose of developing the land and also has awarded the tender to one Suresh S.Kanaji who has filed an application for impleading in IA-1/2020. The petitioners who have challenged various orders passed regarding de-reservation of the Gomal lands from the year 1993 onwards till 2015, for the reasons best known to them have not challenged the order dated 17.04.1996 and 31.03.1998 under which 3 acres and 15 acres of land in Sy. No.11A was de-reserved for the purpose of KSRTC and Ashraya scheme, respectively. Undisputedly, the said lands have been completely utilised for the purpose of which they were de-reserved.

10. In K.P.Manjunath's case supra, it has been held that before passing the de-reservation order or any other order in respect of a Gomal land, the villagers are required to be heard. Similar is the view taken by this Court in Gram Panchayat, Uragol's case. In the present

case, though a contention has been urged by the learned Counsel for the petitioners that the petitioners and other villagers were not heard in the matter, he has not specifically raised such a contention in the writ petition.

11. In Umesh Shenoy's case *supra*, this Court having noticed that Gomal lands were de-reserved and developed for various purposes without taking into consideration the requirement of Gomal land for the purpose of grazing the cattle, has observed that if it is found that the lands reserved for such public purpose have been de-reserved and developed beyond the permitted limit, steps shall be taken to ensure that the shortfall is made good by reserving other Government lands for such purpose and by creating green belt areas in the said lands.

12. The learned Additional Government Advocate has pointed out from the status report that Magodu village is adjacent to Kamadod village and Hunalikatti village and nearly about 1245 acres 14 guntas of Government land is available in these villages for the purpose of grazing the cattle of these three villages.

Further, the material on record would also go to show that the cattle strength in the village has now increased, and therefore, as rightly contended by the learned Senior Counsel appearing for respondent no.9, it has to be presumed that there is sufficient Gomal land and green pasturage for the purpose of grazing the cattle of the village. It is trite law that principle of delay and laches apply to public interest litigation as well. The petitioners have approached this Court belatedly in the year 2017. It is the petitioners to note that over a period of time from 1993 onwards, the lands which have been de-reserved under various orders which are impugned in this writ petition, have been either utilised or are under the process of development and at this stage, it would not be proper for this Court to interfere in the matter by quashing the said de-reservation orders which have been passed on various dates between the period from 1993 to 2015. However, this Court cannot lose sight of the fact that the Government is under an obligation to provide sufficient pasturage for the purpose of grazing the cattle in the village and such an obligation is provided under Rule 97 of the Rules of 1966.

13. Therefore, respondent nos.1 to 5 herein are required to consider as to whether all the lands which have been de-reserved under the orders challenged in this writ petition have been utilised for the purpose for which it was de-reserved or whether they have undergone any development process. In the event, if it is found that the de-reserved lands have not been utilised for any purpose or no developmental activities have been taken in the said lands, respondent nos.1 to 5 are required to take necessary action for restoring the said lands as Gomal lands and thereafter necessary action is also required to be taken by them for making necessary entries in the revenue records of the said lands. This exercise is required to be done by them taking into consideration the existing cattle strength of Magodu village and the available land for grazing of cattle. In the event, if the authorities find that the existing Gomal land or green pasturage available in the village is not sufficient for the purpose of grazing the cattle of the village, they are required to reserve other Government

land for the said purpose and suitable action in this regard is required to be taken by them.

14. Learned Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in Jagpal Singh's case supra in support of his contention that long duration of occupation or huge expenditure in making constructions by illegal occupants cannot be a ground for refusing to take action against such illegal encroachers. The said judgment would not be applicable to the facts of this case having regard to the reason that in the present case, there is no illegal encroachment of the Gomal land and it is a case where the Gomal lands have been de-reserved for public purpose.

15. Under the circumstances, the writ petition is disposed of with the following directions:

i) Respondent nos.1 to 5 are directed to ascertain as to whether the lands which have been de-reserved under the various orders which have been challenged in this writ petition have been utilised or allotted for the purpose for which they were de-reserved or

whether any developmental activities have taken place in the said land and if it is found that the lands are not utilised or allotted for the purpose for which they were de-reserved, necessary action is required to be taken by respondent nos.1 to 5 to restore the said lands as Gomal lands and thereafter take necessary steps to change the revenue entries of the said lands accordingly.

ii) Respondent nos.1 to 5 shall also take stock of the existing cattle strength of the village and ascertain whether sufficient Gomal land and green pasturage as required under Rule 97 of the Rules of 1966 is available for the purpose of grazing the cattle of the village.

iii) In the event, if it is found that there is no sufficient extent of Gomal land or green pasturage available in the village for grazing the existing cattle strength of the village, necessary steps shall be taken by respondent nos.1 to 5 to ensure that the shortfall is made good by reserving other available Government land for such purpose and by creating green pasturage areas in such land.

iv) Respondent nos.1 to 3 are directed that in future, before de-reserving or deviating the Gomal lands for any other purpose, the compliance of Rule 97 of the Rules of 1966 is required to be done and only thereafter any action to de-reserve or deviate the Gomal land can be taken.

**Sd/-
ACTING CHIEF JUSTICE**

**Sd/-
JUDGE**

KK