

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12<sup>TH</sup> DAY OF MARCH, 2020

PRESENT

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

AND

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

WRIT PETITION NO. 16625/2014

CONNECTED WITH

WRIT PETITION NO. 49361/2015 (GM-FOR)

W.P. No. 16625/2014

BETWEEN:

COORG WILD LIFE SOCIETY  
P.B. NO. 111  
NEAR DFO QUARTERS  
CHAINGATE  
MADIKERI – 571 204  
KODAGU  
REP. BY ITS PRESIDENT  
COL. C.P. MUTHANNA  
S/O. LATE C. POONACHA  
AGED 62 YEARS.

.... PETITIONER

(BY SRI. N. RAVINDRANATH KAMATH, ADV.)

AND :

1. THE STATE OF KARNATAKA  
DEPARTMENT OF FOREST  
ECOLOGY AND ENVIRONMENT  
M.S. BUILDING

BANGALORE – 560 001  
BY ITS PRINCIPAL SECRETARY.

2. THE PRINCIPAL CHIEF CONSERVATOR  
OF FORESTS, (HEAD OF FOREST FORCE)  
ARANYA BHAVAN  
MALLESHWARAM  
BANGALORE – 560 003.

3. CENTRAL EMPOWERED COMMITTEE  
CONSTITUTED BY HON'BLE  
SUPREME COURT OF INDIA  
2<sup>ND</sup> FLOOR, CHANAKYA BHAVAN  
CHANAKYAPURI  
NEW DELHI – 110 021  
BY ITS SECRETARY.

... RESPONDENTS

(BY SRI. VIJAYAKUMAR A. PATIL, AGA, FOR R-1 & R-2  
R-3 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND  
227 OF THE CONSTITUTION OF INDIA WITH A PRAYER TO  
DECLARE ANNEXURE - A NOTIFICATION IN OFFICIAL GAZETTE  
OF THE STATE GOVERNMENT DATED 20.05.2013 AS  
UNCONSTITUTIONAL AND ILLEGAL AND TO STRUCK DOWN THE  
SAME.

**W.P. NO. 49361/2015**

**BETWEEN :**

SRI. M. SATISH GORE  
S/O. LATE M.N. GORE  
AGE 45 YEARS  
R/O. DURGA GORE NIVAS  
KARKALA TALUK  
UDUPI DISTRICT – 576 101.

... PETITIONER

(BY SRI. SACHIN B.S., ADV.)

AND :

1. THE STATE OF KARNATAKA  
DEPARTMENT OF FOREST  
ECOLOGY & ENVIRONMENT  
M.S. BUILDING  
BANGALORE – 560 001  
BY ITS PRINCIPAL SECRETARY.
2. THE PRINCIPAL CHIEF  
CONSERVATOR OF FORESTS  
HEAD OF FOREST FORCE  
ARANYA BHAVAN  
MALLESHWARAM  
BANGALORE – 560 003.
3. CENTRAL EMPOWERED COMMITTEE  
CONSTITUTED BY HON'BLE  
SUPREME COURT OF INDIA  
2<sup>ND</sup> FLOOR, CHANAKYA BHAVAN  
CHANAKYAPURI  
NEW DELHI – 110 021  
BY ITS SECRETARY. ... RESPONDENTS

(BY SRI. VIJAYAKUMAR A. PATIL, AGA, FOR R-1 & R-2  
R-3 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA WITH A PRAYER TO DECLARE ANNEXURE – A NOTIFICATION IN THE OFFICIAL GAZETTE OF THE STATE GOVERNMENT DATED 20.05.2013 AS UNCONSTITUTIONAL AND ILLEGAL AND TO STRUCK DOWN THE SAME.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING THIS DAY, *CHIEF JUSTICE* PASSED THE FOLLOWING;

## **ORDER**

In both the petitions, the petitioners have challenged the validity of sub-rule (2A) of Rule 163 of the Karnataka Forest Rules, 1969 (for short 'the said Rules') which was substituted by the Karnataka Forest (Amendment) Rules, 2013 (for short 'the Amendment Rules') which came into force on 20<sup>th</sup> May, 2013. The substituted sub-rule (2A) reads thus:

*"2A. No person shall establish a saw-mill or any other sawing contrivance, other than those specified in Rule 2(b)(6-c) and 163 sub-rule (1) for cutting or converting timber, anywhere in the State, without obtaining a license from the concerned license issuing authority.*

*Provided that no new saw-mills or any other sawing contrivances shall be established within the limits of or within an aerial distance (crow-fly distance) of ten kilometers from the limits of any reserved forest, protected forest or district forest.*

*Provided further that the above restriction of the first proviso (aerial distance of ten kilometers) shall not be applicable for establishing and running of a new saw mill within notified limits of municipal area and industrial areas.*

*Provided also that no new saw-mill shall be installed or operated within 250 meters from an educational institution or a hospital."*

2. The first objection by the petitioners is that the said Amendment Rules of 2013 were not laid before both the

houses of the State Legislature in accordance with Section 103 of the Karnataka Forest Act, 1963 (for short 'the said Act of 1963'). It is pointed out that in fact in the statement of objections there is nothing placed on record in support of the fact that the amendment Rules were laid before both the houses of the Legislature as contemplated by Section 103 of the said Act of 1963. In fact, it is pointed out that earlier, these petitions were allowed and after the Government moved the concerned Bench for 'Being spoken to', the order was recalled.

3. The second contention is that the substituted sub-rule (2A) runs completely contrary to the directions contained the judgment and order dated 12<sup>th</sup> December 1996 in the case of ***T.N. Godavarman Thirumalpad Vs. Union of India and others, W.P. (Civil) No.202/1995***. Our attention is invited to the general directions incorporated in the said judgment and order. The submission of the learned counsel appearing for the petitioners is that by virtue of second proviso to substituted sub-rule (2A), it is possible to set up a saw mill within a forest

area. Therefore, it is submitted that the impugned amendment will have to be struck down inasmuch as it runs contrary to the general directions issued in the aforesaid judgment of the Apex Court and the amendment does not take away the basis of the decision of the Apex Court.

4. The learned Additional Government Advocate has placed on record memo dated 12<sup>th</sup> March, 2020 enclosing therewith documents to show that the Amendment Rules were placed before both the Houses of Legislature on 09<sup>th</sup> December, 2014.

5. We have considered the submissions. The documents produced along with memo dated 12<sup>th</sup> March 2020 clearly show that the Amendment Rules were placed before both the Houses of State Legislature on 9<sup>th</sup> December 2014. Hence, the first contention has no merit. No doubt, first part of the substituted sub-rule (2A) permits establishment of a saw mill or any other sawing contrivance for cutting or converting timber, anywhere in the State after obtaining a license.

However, first proviso makes it very clear that no new saw mills or any other sawing contrivances shall be established within the limits of any reserved forest, protected forest or district forest. It further provides that new saw mills or any other sawing contrivance shall not be established within the limits of or within an aerial distance (as the crow-flies) of ten kilometers from the limits of any reserved forest, protected forest or district forest. The second proviso relaxes the restriction which is put on the area covered within ten kilometers from the limits of reserved forest, protected forest or district forest. The second proviso is an exception only to second part of the first proviso. The second proviso does not permit establishment of a saw mill or any other sawing contrivance within the limits of municipal and industrial area which falls within the area of reserved forest, protected forest or district forest. Second proviso means that if any part of the ten kilometers area from the limits of any reserved forest, protected forest or district forest is within the limits of municipal area or industrial area, a license can be granted for



establishing and running a new saw mill. However, second proviso does not permit establishing a saw mill or any other sawing contrivance within the limits of any reserved forest, protected forest or district forest. Even the third proviso does not relax the complete ban on establishing any new saw mills or any sawing contrivances within the limits of reserved forest, protected forest or district forest.

6. Our attention is invited to the aforesaid decision in the case of **T.N. Godavarman**. First general direction categorically lays down that running of saw mills of any kind including veneer or ply-wood mills within the area of any forest is not permissible without prior approval of the Central Government. The restriction imposed by sub-rule (2A) of Rule 163 of the Rules relates to reserved forests, protected forests and district forests. Therefore, we must clarify that as the basis of the decision in the case of **T.N. Godavarman** is not taken away by the amendment Rules, running of saw mills of any kind including veneer or ply-wood mills is not permissible within the expanded definition of "forest" as laid down in the



said decision of the Apex Court dated 12<sup>th</sup> December, 1996 without prior approval of the Central Government as required by Section 2 of the Forest Conservation Act, 1980. We make it clear that notwithstanding substituted sub-rule (2A) of Rule 163 of the Rules, the restriction as provided in the aforesaid decision of the Apex Court in relation to the area covered by expanded meaning of forest given under the said judgment stands. Therefore, we find that sub-rule (2A) of Rule 163 is not inconsistent or contrary to the said decision of the Apex Court.

7. With the above clarification we find that there is no need to interfere with the impugned amendment. Subject to what is clarified above and what is directed above, the petitions are rejected.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

LRS.