

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL CHENNAI BENCH,

MA. No. 238 / 2017

IN

O.A. No. 97/2016.

IN THE MATTER OF:-

Mrs. Suma R Nayak

...PETITIONER

VERSUS.

The Ministry of Forest and Environment & ORS.

RESPONDENTS,

NEXT DATE:- 12/10/2020.

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THROUGH

Place New Delhi
Date 02/10/2020



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“TRANSLATED COPY”**KARNATAKA FOREST DEPARTMENT**

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Mangalore- 575001, Dakshina Kannada District, Karnataka.

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No:ACF/CR-05/D.Tree/2017-18

Mangalore, dated: 09-01-2018

OFFICIAL MEMORANDUM

- Subject: : Felling of Trees as per Tree Preservation Act of 1976 in Sy No:23/6A1B2, 23/4B, 23/12B, 23/6A2B, 23/6B and 23/3(P) of Alape Village of Mangaluru Taluk , for construction of District Offices complex - Reg.
- Ref: 1. Application dated:11-5-2015 of Deputy Commissioner, D K Mangalore.
2. Judgment of Honorable National Green Tribunal, South Zone, Chennai in O S No:97/2016 dated:20-12-2017.
3. Application dated: 26-12-2017 of Deputy Commissioner, D K Mangalore.
4. Letter No: Mng-608/2015-16 dated: 5-1-2018 of Regional Manager, Karnataka State Forest Industries Corporation Limited, Padil Mangalore.
5. 5. Notification No: B5/KPT/CR-60/2014-15 date: 3-10-2016 of Principal Chief Conservator of Forests (Head Of Forest Force), Banglaore .
6. 6. Order dated: 14-3-2017 of Honorable Green Tribunal, (NGT) New Delhi.

PREAMBLE:

Deputy Commissioner, Dakshina Kannada, Mangalore submitted an application for felling of trees in Sy No:23/6A1B2, 23/4B, 23/12B, 23/6A2B, 23/6B and 23/3(P) of Alape Village of Mangalore Taluk for construction of District Offices complex in Form No: -1 as per reference (1) under Tree Preservation Act, 1976.

On verification of the above application, it is found that an area of 10.09 Acres was acquired in above Sy. No's and granted to Divisional Forest Officer, Mangalore on 19-10-1963, by the Land

Acquisition Officer for establishing Wood Preservation Plant. Further as per Govt. Order No: AFD 202 FDP 73 dated:27-03-1975 this Wood Preservation Plant was transferred to Karnataka State Forest Industries corporation. Out of 10.09 Acres land which was transferred to KSFIC, 5.89 Acre land was transferred in the name of Deputy Commissioner, Dakshina Kannada, Mangalore, for construction of District Offices Complex as per Govt. Order No:FEE 104 FPC 2014 dated: 14-11-2014.

Mean while an application was filed in the Hon'ble National Green Tribunal, Southern zone, Chennai, not to cut the trees in the said land. In this connection Hon'ble National Green Tribunal ordered as " The Authorities are directed to consider the classification of the land whether it is Deemed Forest Land or not as put forth by the counsel for the applicant along with all other necessary relevant provisions and pass suitable orders there on as required by Law". As per the direction of Honorable National Green Tribunal, a Joint Inspection was carried out by Revenue, Forest and Survey Department and the report was submitted on 23-02-2016 to Deemed Forest committee, Dakshina Kannada District along with spot Mahazar, tree enumeration list and revenue sketch. Based on this report the Deputy Commissioner, D. K. Mangalore called for a District Deemed Forest Committee Meeting on 23-02-2016. In that Meeting it was decided that the above land is not falling in the per view of Deemed Forest Land as per following reasons and the same was reported to Regional Deemed Forest Committee for further necessary action.

- The land has not been included as deemed forest in the earlier Expert committee-1 report on Deemed Forests.
- The said land in not a Notified Forest.
- The land does not fall in the category of statutorily recognized forest as provided in the Govt. order dated 15-5-2014 i.e., Kane, Bane, Kumki and lands reserved under the Karnataka Land Revenue Act 1964/Karnataka Land Reforms Act 1961/Karnataka Forest Act 1963.

- The land does not fall in the category of “Forest as per government records” as provided in Govt order dated 15.5.2014 i.e., it is not recorded as ‘Forest’, ‘Kadu’, ‘Mara kadu’, ‘Jungle’ in government records namely, pre 1980 RTC, Forest Working Plan, Survey Settlement Records, District census Guide as forest, Tree forest, Jungle, or “ Forest Paramboku” in the Karnataka Revenue Survey Manual.
- The land in question is approximately square in shape having compound wall on three sides except the southern side. A public road exists along the north, east & western sides. Inside the compound wall, there exists an office building, residential quarters, Industrial shed, other small sheds and road connecting these buildings. The total extent of area covered by roads and buildings is 1.05 acres and out of which 0.60 acres is building area and 0.45 acres is road area. After deducting the road & building area, net area of the said land is 4.84 acres (1.90 Ha only). **Thus, the area is less than 2 ha and it does not fulfill the criteria required for categorising a land as deemed forest. (as per G.O. of 15.5.2014, for an area to be categorised as deemed forest, it should be at least 2 ha).**
- Out of total number of trees (existed in 2016) having more than 30 cm girth at breast height, 66 only are naturally grown, 320 are planted trees along with another 38 coconut trees. The area not only contains forest species, but also commercial crops such as Areca nut, coconut etc. Thus, it cannot be considered as block plantation. As per the government order “only block plantations on government lands can be considered as deemed forest”.
- The proposed land is owned by M/s. Karnataka Forest Industries Corporation Limited. The trees existing at present are either the ones existed in 1963 or planted by KSFIC. Thus, the plantation has to be considered as “institutional plantation”. As per the government order “*Institutional Plantations are to be excluded from categorization as Deemed Forest.*” Further, if plantations carried out by industries and institutions are categorized as deemed forests, it would have

negative influence on greening of such areas by institutions who may desist from taking up greening.

In the Meeting held on 29-03-2016, under the Chairmanship of Regional Commissioner, Mysore, it was decided that the said land may not be treated as deemed forest considering the above points and the report was submitted to state level Deemed Forest committee. Further, It was accepted by the State Level Deemed Forest committee meeting held on 18-5-2016, under the Chairmanship of Addnl. Chief Secretary, FEE, Bangalore. Meanwhile on the 26-4-2016 Hon'ble National Green Tribunal, Chennai in Suit No:97/2016(SZ) order as follows " We direct the Ministry of Environment, Forests and Climate Change (MOEF & CC), New Delhi to depute from its Regional Office at Bangalore, the Chief Conservator of Forests, Government of India, Government of India at Bangalore along with his team to enable them to inspect the entire are in Survey No: 23/6A1B2, 23/4B, 23/12B, 23/6A2B, 23/6B and 23/3(P) of Alape Village of Mangalore Taluk , wherein number of trees are situated and file a report about the nature of the trees, type, species girth etc and the total extent of land and whether the trees are artificial or of natural growth. We make it clear that during the time of inspection the counsel for the applicant shall be permitted to be present and the 4th respondent, the Deputy commissioner shall make all necessary arrangements to enable the officials of the MOEF & CC to make an inspection and the inspection report shall be filed before this Tribunal on the next date of hearing".

As per the above direction Chief conservator of Forests (Central) Regional Office, MOEF & CC Bangalore inspected the spot on 17-06-2016 and submitted a report to Hon'ble Court as, " 94 No's of natural trees and 408 No's of planted trees are situated in this said land. After that Suit No: 97/2016 was rejected by the Hon'ble National Green Tribunal, South Zone, Chennai on 20-12-2017 once again. Further the Deputy commissioner, D K Mangalore submitted a Revised Application to cut 502 trees and 164 saplings in the said land as per the application referred (3) above. The Deputy

commissioner, D K Mangalore reported that the ownership of the tree is with the KSFIC, Mangalore . As per the Rule (8) (1) (3) (VII) of Karnataka Tree Preservation Act, 1976 and if more than 50 trees are to be cut for Public purpose, Public hearing has to be conducted and hence, the date was fixed for Public Hearing on 4-1-2018 at 4.00 PM in the Office of the Deputy Conservator of Forests, Mangalore (Court Hall) and the Public Hearing notice was published in daily news papers on 31-12-2017 in Indian Express; Vartha Bharathi, Vijayavani and Karavali Ale and on 1-1-2018 in Udayavani News Papers. On 4-1-2018 Public hearing was conducted in presence of Deputy Conservator of Forests, Mangalore by the Asst. Conservator of Forests, and Tree Officer, Mangalore Sub Division, Mangalore and received mixed opinion from the public.

The felling permission was sought for 666 No's of trees in which 502 No's of trees (Naturally - grown - 94 No's are planted 408 No's) and 164 No's are saplings (10 to 29 Centi Meter girth). One group objected tree cutting for the betterment of animals & birds and for the environment. Another group opined that, it is necessary to have a different department Offices in One complex for the convenience of people. After considering these opinions it was decided to cut only 202 trees in the construction area and the order is passed here under.

ORDER:

After considering the matters explained in the preamble, and opinion obtained from Public Hearing out of total 666 No's of trees,(502 No's of trees and164 No's of saplings) only 202 trees are permitted to cut after excluding Horticulture trees and trees which are exempted (124 No's) under Tree Preservation Act, 1976 for construction of District Offices complex in Sy Nos: 23/6A1B2, 23/4B, 23/12B,23/6A2B, 23/6B and 23/3(P) of Alape Village of Mangalore Taluk as per the list enclosed, under the following conditions:

1. AS per Order of NGT dated: 14-3-2017, the expenditure for Raising and Maintenance of 10 trees for each tree to be cut to be paid by the User Agency, before cutting of trees. The Cost of Raising and Maintenance is Rs: 4,04,000/-.
2. The User Agency should be ready to pay the Demand Draft in the name of the Deputy Conservator of Forests, Mangalore Division, Mangalore.
3. The trees which are to be cut including exempted trees are to be transported to the nearest Forest Depot after obtaining due permit from Forest Department as per Karnataka Forest Act, 1963 and Rules 1969.
4. Unauthorized felling and transportation is not permitted.
5. Range Forest Officer, Mangalore should submit the accounts of trees cut and materials prepared and transported to Depot in the prescribed proforma laid in Karnataka Forest Account code in form No: 21,22 and 33 periodically.
6. Completion Report should be submitted by Range Forest Officer, Mangalore after completion of work in the prescribed format .

Sd/-

Tree Officer and Asst. Conservator of Forests
Mangalore Sub Division, Mangalore

TO: Range Forest Officer, Mangalore. is instructed to cut and remove the above trees departmentally as per the request of the Regional Manager, Karnataka Forest Industries Corporation, Padil, Mangalore.

Copy submitted to: 1. Additional Principal Chief Conservator of Forests (Forest Research Management) Bangalore.

2. Chief Conservator of Forests, Mangalore Circle, Mangalore.

Copy communicated to:

1. Deputy Commissioner, D K Mangalore with a request to pay the Receipts for afforestation amount of Rs: 4,04,000/- in the form of DD in the name of Deputy Conservator of Forests, Mangalore, payable at Mangalore purchased in Nationalized Bank.
2. Deputy Conservator of Forests, Mangalore Division, Mangalore
3. Deputy Conservator of Forests, Forest Mobile Squad, Mangalore
4. Regional Manager and Deputy Conservator of Forests, Karnataka State Forest Industrial Corporation Padil, Mangalore.
5. Asst. Conservator of Forests, Puttur Sub division, Puttur.
6. Range Forest Officer, Uppinangady Range, Uppinangady for necessary action.