

Annexure R 12**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 12TH DAY OF JUNE, 2019****PRESENT****THE HON'BLE MR. ABHAY S. OKA, CHIEF JUSTICE****AND****THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD****WRIT PETITION NO.54476 OF 2016 (GM-MM-S)****C/W****WRIT PETITION NO.51135 OF 2016****IN WP.No.54476/2016:****BETWEEN**

Dhananjay
Son of B.Basavaraj,
Aged about 36 years
13TH Ward, Near Sollamma Temple
Kudlagi-583135
Ballari District.

... Petitioner

(By Sri.R.G.Kolle, Advocate)

AND

1. State of Karnataka
Rep. by its Chief Secretary
Vidhana Soudha, Bengaluru
Bengaluru-560 001.
2. The Principal Secretary to Govt.
Dept. of Commerce & Industries

Vikas Soudha, Bengaluru
Bengaluru-560 001.

3. The Director
Dept. of Mines & Geology
Khanija Bhavan, Race Course Road
Bengaluru-560 001.
4. Deputy Director & Competent Authority
Dept. of Mines & Geology
Parwaza Plaza, 3rd Floor
College Road, Hospete-583 201.
5. The Deputy Commissioner
And Chairman, District
Taskforce Committee (Mines)
Bellary-583 101.
6. The Deputy Conservator of Forests
Office of the DCF, Bellary Division
Bellary-583 101.
7. The Principai Chief Conservator of Forests
Govt. of Karnataka Dept. of Forests
Ecology and Environment
Aranya Bhavan, Malleshwaram
Bengaluru-560 003. ... Respondents

(By Sri.Vikram Huilgol, HCGP)

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash or set-aside the order dated:18.12.2015 passed by Respondent No.4 Deputy Director rejecting the renewal application filed by this petitioner dated: 02.03.2015 in respect of quarrying lease No.464/2010-11 over an area of 04-00-00(A-G-A) in Govt. Land bearing Sy. No.554 of Chikkakereyaginahalli Village in Sandur Taluka, Bellary District which is classified as Ralu Gudda (under the possession of Revenue Department and not Forest Department) produced at

Annexure-A and to direct R4 to renew the quarrying lease at QL No.464/2010-11 to extract ordinary building stones over an area of 04-00-00 (A-G-A) in Government land bearing Sy.No.554 of Chikkakereyaginahalli village, Sandur Taluka, Bellary District over a period of 20 years from the date of grant of quarrying lease excluding the un-operated period/unspent period in terms of newly amended Rule 8(A)(4) of KMCC Rules by virtue of deemed extension.

IN WP.No.51135/2016:

BETWEEN

M/s. Shilpi Granite Exports
No.550, 16th Cross Road
CMH Road, Indiranagar
Bengaluru-560 038
Represented by its
Managing Partner
Sri.B.Chandran.

... Petitioner

(By Sri.Dyan Chinnappa, Senior Counsel
a/w. Sri. S.B.Mathpati, Advocate)

AND

1. State of Karnataka
Represented by its Secretary
Department of Industries and Commerce
(SSI Textiles and Mines)
M.S.Building
Bengaluru-560 001.
2. State of Karnataka
Represented by its Secretary
Dept. of Forest and Ecology
Govt. of Karnataka
Vikasa Soudha
Bengaluru-560 001.

3. Director of Mines and Geology
Khanija Bhawan, R.C. Road
Bengaluru-560 009.
 4. Principal Conservator of Forests
Aranya Bhavan, Malleshwaram
Bengaluru-560 009.
 5. Deputy Conservator of Forests
6th Cross, Subhash Nagar
Mandya-571401.
 6. Deputy Commissioner
Mandya District
Mandya-571401.
 7. District Task Force Committee
Constituted under Sub-Rule 6 of
Rule 8 of Karnataka Minor Mineral
Concession Rules
Office of the Deputy Commissioner
Mandya Town
Mandya-571401.
- ... Respondents

(By Sri.Vikram Huilgol, HCGP)

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the letter dated:02.09.2016 passed by respondent No.6 vide Annexure-A and declare that the schedule property is a Government land and is not a deemed forest or a forest as is being wrongly claimed by the Deputy Commissioner, Mandya in the impugned order and direct the respondent No.1 to consider and approve the application dated:14.07.1994 vide Annexure-B filed by the petitioner seeking the grant of quarry lease in respect of the schedule property.

These writ petitions, coming on for preliminary hearing in 'B' group, this day, *Chief Justice* made the following:

ORDER

We have heard the submissions of the learned counsel yesterday and today. There was sufficient indication given to the parties that the petitions will be disposed of finally.

2. In W.P.No.51135/2016, what is impugned is the endorsement dated 2nd September 2016. By the impugned endorsement made by the District Commissioner of Mandya District, it was observed that quarrying lease cannot be granted to the petitioner in the light of the requirement of Section 2 of the Forest (Conservation) Act, 1980 (for short 'the Forest Act'). The first prayer in the petition is for quashing the said endorsement. The other prayer is for a declaration that the property subject matter of the petition is not a deemed forest or a forest as wrongly held by the Deputy Commissioner. We must note here that in the year 1998, an application made by the petitioner for grant of quarrying lease was rejected. That decision led to a litigation as mentioned in the petition. In the earlier round, this Court directed reconsideration of the application made by the petitioner. The endorsement impugned is on the basis of the said order. In the objections filed by the respondents, it is specifically contended

that the land subject matter of the petition is a deemed forest land in terms of the Notification dated 4th March 1982 which is a notification issued by the Special Deputy Commissioner of Mandya District. It records that a list of lands appended to the notification have been transferred to the Forest Department.

3. In W.P.No.54476/2016, the petitioner has taken an exception to the order dated 18th December 2015 passed by the Deputy Director rejecting the application for renewal of quarrying lease on the ground that the land in respect of which renewal of building/stone quarrying lease was sought has been included in the list of deemed forests and that there is a proposal to notify it as a Forest under Section 4 of the Karnataka Forest Act, 1963 ('for short 'Karnataka Forest Act'). The prayer in this petition is for quashing the said order and for a direction to renew the quarrying lease for a period of twenty years.

4. In support of W.P.No.54476/2016, learned counsel appearing for the petitioner submitted that the observations made in the impugned order are uncalled for as in the year 2010, quarrying lease was granted to the petitioner which was effective

for a period of five years. He secondly submitted that the final notification under section 17 of the Karnataka Forest Act has not been issued and only because there was a proposal to notify the land under Section 4 of the Karnataka Forest Act, the prayer for renewal of quarrying lease cannot be refused. He placed reliance on a Government Order issued dated 20th July 1994 which directs that even if 'C' and 'D' category lands are transferred to the forest department, no notification should be issued under the Karnataka Forest Act declaring it as a reserved forest. He submitted that there is absolutely no material on record to show that the subject land is covered by Section 2 of the Forest Act. Learned counsel also relied upon Rule 8(a) (4) of the Karnataka Minor Mineral (Concession) Rules, 1994 (for short, 'the said Rules) as amended with effect from 12th August 2016. He would, therefore, submit that as per the said provision, the lease shall be deemed to have been granted for a period of twenty years.

5. In W.P.No.51135/2016, apart from relying upon the said Rules as amended, the learned counsel appearing for the petitioner submitted that there is no basis for treating the subject

land as a forest land as mining lease was earlier granted in respect of the same. He pointed out that there is a material on record to show that the subject land cannot be a forest and in fact as pointed out in the petition, a lease was granted to one SNG Exporters. He submits that there is no basis for the contention that the land is a deemed forest.

6. Learned HCGP was called upon to explain the concept of 'deemed forest', on which reliance is placed by the respondents in both the petitions. To explain the concept, he has taken us through the various decisions of the Apex Court including the decision in the case of ***T.N.GODAVARMAN THIRUMULKPAD vs. UNION OF INDIA AND OTHERS***¹. He pointed out the wide definition of 'forest' accepted by the Apex Court in the context of applicability of Section 2 of the Forest Act. He invited our attention to the directions issued by the Apex Court. He also relied upon the observations made by the Central Empowered Committee (CEC) of the Supreme Court which contemplates categorization of 'deemed forests'. He invited our attention to the State Government Order dated 15th May 2014. He submitted that

¹ (1997) 2 SCC 267

the directions issued in the case of **GODAVARMAN (supra)** have not been diluted or watered down. He places reliance on some other judgments of the Apex Court. He made this submission in the context of reliance made by the learned counsel appearing for the petitioner in W.P.No.51135/2016 on the decision of the Apex Court in the case of **RE:CONSTRUCTION OF PARK AT NOIDA NEAR OKHILA BIRD SANCTUARY, ANAND ARYA AND ANOTHER vs. UNION OF INDIA AND OTHERS.**²

7. We have carefully considered the submissions. There is some justification in the submission that the concept of 'deemed forests' is foreign to all the legislations concerning the forests.

3. Firstly, we may make a reference to the judgment dated 12th December 1996 in the case of **GODAVARMAN (supra)**. What is material in the said judgment are the observations made in fourth paragraph and the directions contained in the first part of fifth paragraph, which reads thus:

"4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and

² (2011) 1 SCC 744

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 recognized 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 vs State of Gujarat, Rural Litigation and Entitlement Kendra vs 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.

5. We further direct as under:

I. General

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.....”

(Emphasis added)

9. Hence, the meaning of the word “forest” covers all statutorily recognized forests for the purpose of Section 2 of the Forest Act. What is held in the fourth paragraph is very important. The Apex Court laid down that the Forest Act must apply to all forests irrespective of the nature of ownership or classification thereof. The Apex Court observed that for understanding the definition of “forest” or “forest lands” it is not necessary that the land should be a recognized forest, whether designated as reserved, protected or otherwise. The Apex court observed that the terms “forest” or “forest lands” in the Forest Act must apply to all forests irrespective of the ownership or classification thereof. In fact, the Apex Court went to the extent of directing that in the light of Section 2 of the Forest Act, for conducting any non-forest activity in a forest in any State, prior approval of the Central Government must be obtained. An attempt was made by the

learned counsel appearing for the petitioner in W.P.51135/2016 to contend that the observations made by the Apex Court in the aforesaid judgment and order dated 12th September 1996 have been considerably watered down. For that purpose, he relied upon the decision of the Apex Court in the case of ***RE:CONSTRUCTION OF PARK AT NOIDA (supra)***. We have carefully perused the said decision. In paragraph 35, the Apex Court has observed that almost all orders and judgment of the Apex Court dealing with 'forest' and 'forest land' for the purpose of Forest Act were rendered in the context of mining. The Apex Court observed, on facts, that the case before it was different. Thus, the observations made by the Apex Court are in the context of the peculiar fact situation in the case before it. On the contrary, if the observations made in first part of paragraph 35 are perused, it is very clear that the observations made by the Apex Court as regards the concept of the "forest" and "forest land" in the earlier judgment was in the context of mining activities. In these cases we are dealing with mining activities. We find that the directions issued by the Apex Court in the order dated 12th December 1996 have been nowhere watered down by any subsequent judgments.

11. The learned HCGP pointed out the subsequent orders passed by the Apex Court in ***LAFARGE UMIAM MINING PRIVATE LIMITED, T.N.GODAVARMAN THIRUMULPAD vs. UNION OF INDIA AND OTHERS***³.

12. Now coming back to the directions issued by the Apex Court on 12th December 1996, it was directed that the State Governments shall constitute Expert Committees to identify the areas which are forests and the State Governments were directed to file the reports. It appears from the copy of the interim application of 2019 filed by the Government of Karnataka before the Apex Court, a copy of which is placed on record, that the Government of Karnataka undertook exercise in terms of the said directions. It appears from the said application that the lands were classified by the Government Order dated 15th May 2014. We find that this is the order which is the basis of the concept of deemed forests. The affidavit shows that exercise of identification of the areas which are 'forests' in terms of the directions of the Apex Court was undertaken. The prayer in the interim application filed before the Apex Court is to permit the State Government to

³ (2011) 7 SCC 828

exclude an area of 5, 18,422.29 hectares of land from the purview of the Forest Act. It is pointed out by the learned HCGP that so far, the Apex Court has not passed any order on the said application. Since there is a reference to the order of the State Government dated 15th May 2014, we have perused the said order. The order notes the concept of 'forest' under the Karnataka Forest Act as well as the concept of 'private forest' in Karnataka under the same Statute. In fact, there are certain directions issued in the light of the order dated 12th September 1996. In paragraph 7 of the preamble of the said Government Order, there is a reference to observations made by the Central Empowered Committee of the Apex Court with regard to concept of 'deemed forests' and that the deemed forest may be a part of private forest.

13. It cannot be disputed that if a land is a forest or a forest land as defined in the judgment and order dated 12th December 1996, quarrying activity could not be carried out and in fact as per Section 2 of the Forest Act, prior permission of the Central Government would be necessary.

14. In view of the mandate of law, While considering the applications made for grant of quarrying licence or for renewal thereof, application of mind on the part of the licensing authority is necessary to ascertain whether the land in respect of which lease is sought is a forest or forest land within the meaning of the aforesaid decision of the Apex Court. Application of mind is required by the licensing authority to decide whether the land or any part thereof forms a part of the forest or forest land as defined and held in the aforesaid decision of the Apex Court dated 12th December 1996. The reason is that the grant of quarrying lease or renewal of lease cannot be made in respect of a forest and a forest land within the meaning of the aforesaid decision of the Apex Court unless the consent of Central Government is obtained. From what we gather from the records and submissions, the concept of 'deemed forests' is used, though such a concept is not recognized by law. Perhaps the officers of the State Government were under an impression that as the State Government had undertaken exercise to identify the areas which are forest in terms of the directions issued under the order dated 12th December 1996, what is identified will be a deemed forest.

15. Thus, while issuing the endorsements impugned in both the petitions, the concerned officers have denied the relief claimed by the petitioners on the ground that the said lands are deemed forests. Whenever applications for grant of quarrying lease or renewal of quarrying lease are made, it is the duty of the licensing authority to ascertain whether the land is covered by the concept of "forest" or "forest land" evolved by the Apex court by the order dated 12th December 1996. The enquiry by the licensing authority into this aspect is necessary in as much as if the land is a part of "forest" or "forest land" as contemplated by the Apex Court, quarrying lease or permission for quarrying cannot be granted unless the consent of the Government of India is obtained as per Section 2 of the Forest Act. No such inquiry has been made by the concerned authority. Therefore, for the aforesaid reasons, the impugned orders are liable to be set aside by directing reconsideration of the applications made by the petitioners in the light of what is held in this Judgment and Order.

16. In the present case, if the lands are covered by wide definition of "forest" or "forest land", quarrying can be permitted only after obtaining the permission of the Central Government.

Therefore, the question whether the deeming fiction under the said Rules will apply or not will depend on the outcome of the enquiry whether the land subject matter of the petitions are “forest” or “forest lands”. If the same are “forests” or “forest lands” within the meaning of the order of the Apex Court dated 12th December 1996, obviously, the applications made by the petitioners cannot be considered unless consent as aforesaid is obtained.

17. The reliance placed by the learned counsel for the petitioners in W.P.No.54476/2016 on the State Government order dated 20th July 1994 is completely misplaced. The directions which are issued prior to 12th December 1996 cannot be applied for deciding whether the land is a “forest” or “forest land” within the meaning of the aforesaid decision of the Apex court.

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 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.

**SD/-
CHIEF JUSTICE**

**SD/-
JUDGE**

Cm/-