

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF SEPTEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.36699 OF 2015 (GM-FOR)

BETWEEN:

SHRI RAMACHANDRAPURA MATHA,
REPRESENTED BY THE CHIEF EXECUTIVE
OFFICER AND G.P.A. HOLDER, SRI. K.G. BHAT
NO.2-A, J.P. ROAD, GIRINAGAR I STAGE,
BENGALURU - 560 085.

AND ALSO AT

HANIYA POST,
HOSASNAGARA TALUK,
SHIVAMOGGA DISTRICT - 57103.

...PETITIONER

(BY SRI. K.G.RAGHAVAN, SR. COUNSEL ALONG WITH
SRI. GOVINDARAJ K., ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
REPRESENTED BY ITS
SECRETARY TO GOVERNMENT,
DEPARTMENT OF FOREST,
ENVIRONMENT AND ECOLOGY
M.S. BUILDING, BANGALORE - 560 001.
- 2 . THE PRINCIPAL SECRETARY TO GOVERNMENT
DEPARTMENT OF REVENUE
SECRETARIAT OF GOVERNMENT OF KARNATAKA
MULTI-STOREYED BUILDING
BENGALURU - 560 001.
- 3 . THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS,
ARANYA BHAVANA, 18TH CROSS,
MALLESHWARAM,
BANGALORE - 560 003.

- 4 . DEPUTY CONSERVATOR OF FORESTS
SAGARA DIVISION, SAGARA,
SHIVAMOGGA DISTRICT - 577 201.
- 5 . ASSISTANT CONSERVATOR OF FORESTS
HOSANAGARA SUB DIVISION,
HOSANAGARA TALUK,
SHIVAMOGGA DISTRICT - 577 201.
- 6 . RANGE FOREST OFFICER
HOSANAGAR RANGE, TALUK HOSANAGAR
SHIVAMOGGA DISTRICT - 577 201.

...RESPONDENTS

(BY SRI. SRIDHAR HEGDE,HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD25.07.2015 PASSED BY THE R-5 VIDE ANNEXURE-A; DIRECT THE R-2 TO CONSIDER PETITIONERS APPLICATION FOR ALLOTMENT OF **GOMAL LAND** AND GRANT THE SAME IMMEDIATELY IN ACCORDANCE WITH LAW.

THIS WRIT PETITION COMING ON FOR **PRELIMINARY HEARING IN 'E' GROUP** THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Shorn of the bulkiness of the writ petition book, the essential grievance of the petitioner is as to the subject land being treated as the forest land and consequently the same being taken to the Forest Department, when allegedly it is a **gomal land** since time immemorial. After service of notice, the official respondents having entered appearance through the learned HCGP vehemently oppose the writ petition making submission in justification of the impugned order dated

25.07.2015 at Annexure- A made u/s 64A of the Karnataka Forest Act, 1963.

2. BRIEF FACTS OF THE CASE:

a) Petitioner happens to be a religious Mutt established by Shri Adi Shankaracharya of Advaita Siddhaanta, about 1300 years ago; originally, the Mutt was situate at Gokarna in Uttara Kannada District and later, the 12th Pontiff of the Shri Mutt shifted it to the bank of Sharavathi River, Ramachandrapura Village in Shivamogga District; the Mutt has made a representation to the respondents for allotment of subject land by way of gomal for the benefit of its *bovinae*.

b) The said land was sought to be acquired in exercise of power under Section 11 of the Karnataka Forest Act, 1963 and the same was objected to by the petitioner; this happened a little less than two decades ago; in fact, in terms of Section 11 proceedings, the Government vide Notification dated 28.03.2005 tacitly accepted the subject land being a **gomal land** and made the other adjoining lands to be the reserved forest land, in terms of Section 17; this was done with the participation of all the stake holders.

c) When the above was the position, the sixth respondent - Range Forest Officer had complained about the encroachment of the subject land by the petitioner - Mutt; accordingly, the proceedings under Section 64A(1) of the Act were held and the order dated 25.07.2015 came to be issued treating the subject land as belonging to Forest Department and thereby robbing off its character of being a **gomal land**; petitioner has also made a prayer for the grant of this land for being as gomal since it runs several *goshalaas* and the same remains to be considered at the hands of answering respondents; thus the petitioner is grieving before the Writ Court; the respondents have filed the Statement of Objections denying much of petition averments and seeking its dismissal.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter for the following reasons:

(a) Section 64A of the Act provides for eviction of an unauthorized occupant from the forest land after holding a summary enquiry with the participation of the stakeholders including the unauthorized occupants, if any; for the invocation of this provision, the land being a reserved forest or of the Forest Department is a *sine qua non*, as rightly argued

by learned Sr. Adv. Mr. K.G.Raghavan; unless this condition precedent is satisfied on the basis of evidentiary material on record, the initial jurisdiction vested under this section will not arise; there is no much dispute about this legal position; what needs to be ascertained is whether the subject land is a reserved forest or that it belongs to the Forest Department.

b) The question whether the subject land is a reserved forest or does it belong to the Forest Department, need not detain the Court for long; way back in the year 2002, Proclamation Proceedings were held by the Forest Settlement Officer under Chapter II of the Act with the participation of all the stakeholders and a statutory order came to be made on 11.03.2002 vide Annexure-C excluding the petition land from the proposal of constituting it as a reserved forest; the operative portion of the said Order reads as under:

"ತೀರ್ಮಾನ

ಶಿವಮೊಗ್ಗ ಜಿಲ್ಲೆ ಹೊಸನಗರ ತಾಲ್ಲೂಕು ರಾಮಚಂದ್ರಾಪುರ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.7 ರಲ್ಲಿ ಈ ಹಿಂದೆ ಹೊರತುಪಡಿಸಿದ ಪ್ರದೇಶ 19.00 ಎ.ಗು ಹಾಗೂ ಗ್ರಾಮದ ಗೋಮಾಳಕ್ಕಾಗಿ 25-00 ಎ.ಗು ಪ್ರದೇಶ ಹೀಗೆ ಒಟ್ಟು 44-00 ಎ.ಗು 60-00 ಎ.ಗು ಪ್ರದೇಶ ಹಾಗೂ ಸರ್ವೆ ನಂ.56 ರಲ್ಲಿ ಈ ಹಿಂದೆ ಹೊರತುಪಡಿಸಿದ ಪ್ರದೇಶ 16.00 ಎ.ಗು ಹೀಗೆ ಒಟ್ಟು 60-00 ಎ.ಗು ಪ್ರದೇಶ ಉದ್ದೇಶಿತ ಮೀಸಲು ಅರಣ್ಯ ಪ್ರದೇಶದಿಂದ ಹೊರತುಪಡಿಸಲು ತೀರ್ಮಾನಿಸಿದೆ.

ಉಳಿಕೆ ಸರ್ವೆ ನಂ.7 ರಲ್ಲಿ 76-00 ಎ.ಗು ಸರ್ವೆ ನಂ.56 ರಲ್ಲಿ 84-00 ಎ.ಗು ಹೀಗೆ ಒಟ್ಟು 160-00 ಎ.ಗು ಪ್ರದೇಶದಲ್ಲಿ ಮೀಸಲು ಅರಣ್ಯ ರಚಿಸಲು ಯೋಗ್ಯವಾಗಿದ್ದು ಈ ಬಗ್ಗೆ ಸರ್ಕಾರಕ್ಕೆ ಸೂಕ್ತ ಶಿಫಾರಸ್ಸು ಮಾಡಲು ತೀರ್ಮಾನಿಸಿದೆ.

ಈ ಹಿಂದಿನ ಆದೇಶದಲ್ಲಿ ತಿಳಿಸಿದ ದಾರಿಯ ಹಕ್ಕುಗಳು ಹಾಗೂ ಇತರೆ ಸವಲತ್ತುಗಳನ್ನು ಯಥಾ ರೀತಿಯಲ್ಲಿ ಮುಂದುವರಿಸುತ್ತಾ ಈ ತೀರ್ಮಾನವನ್ನು ದಿನಾಂಕ : 11-3-2002 ರಂದು ಈ ಕಛೇರಿಯಲ್ಲಿ ಘೋಷಿಸಲಾಯಿತು."

c) Pursuant to the above Proclamation Proceedings, the Government of Karnataka issued a Notification dated 28.03.2005 in exercise of power under Section 17 of the Act declaring the other lands in the village as and to be the reserved forest; it specified with material particulars which those lands are as well; however, the petition land does not figure anywhere in the said Notification; thus, it cannot be treated as a forest land or the land belonging to Forest Department; the relevant part of the said Notification reads as under:

"1963ನೇ ಕರ್ನಾಟಕ ಅರಣ್ಯ ಅಧಿನಿಯಮ (1964 ನೇ ಕರ್ನಾಟಕ ಕಾಯ್ದೆ 5 ರ ಕಲಂ) 17ರಲ್ಲಿ ಪ್ರದತ್ತವಾಗಿರುವ ಅಧಿಕಾರದನ್ವಯ ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಉದ್ಧಾರ ಭಾವನೆಯ ಮೇರೆಗೆ ಸರ್ಕಾರದ ಅಧಿಸೂಚನೆಯ ಸಂಖ್ಯೆ: ಎಫ್‌ಎಫ್ 80, ದಿನಾಂಕ:31-12-81 ರ ಪ್ರಕಾರ ಈ ಕೆಳಗೆ ಅನುಸೂಚಿಯಲ್ಲಿ ನಮೂದಿಸಿರುವ ಜಮೀನುಗಳನ್ನು 28-3-2005 ದಿನಾಂಕದಿಂದ ಅನುಸೂಚಿಯಲ್ಲಿ ನಮೂದಿಸಿರುವ ಹಕ್ಕುಗಳ ಉಪಯೋಗಕ್ಕೆ ಒಳಪಟ್ಟು "ಮೀಸಲು ಅರಣ್ಯ" ವೆಂದು ಕರ್ನಾಟಕ ಸರ್ಕಾರವು ಈ ಮೂಲಕ ಘೋಷಿಸಲಾಗಿದೆ."

d) There is force in the vehement submission of Mr. Raghavan that the above Proclamation Order and the Government Notification that accords with the same having not been challenged, have attained finality and therefore, the

subject land cannot be treated as a reserved forest or as the land belonging to the Forest Department; thus, the said land is miles away from the precincts of Section 64A of the Act and consequently the impugned order is liable to be voided.

(e) The submission of Mr. Raghavan that when the statutory orders have attained finality, regardless of arguable infirmities therein, their legal effect cannot be circumvented or silenced, is supported by the decision in **STATE OF PUNJAB AND OTHERS Vs. GURUDEV SINGH & ASHOK KUMAR, 1991 AIR SC 2219**; the Apex Court after referring to Prof. Wade has observed as under:

"7. Apropos to this principle, Prof. Wade states: 'the principle must be equally true even where the 'brand' of invalidity' is plainly visible; for their also the order can effectively be resisted in law only by obtaining the decision of the Court (See: Administrative Law 6th Ed. p. 352). Prof. Wade sums up these principles:

"The truth of the matter is that the court will invalidate an order only if 'the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid..."

f) Above apart, the Taluka Tahsildar vide Letter dated 31.12.2012 accompanied by the Spot Inspection Report & the Map at Annexure- F Series, has specifically informed the Deputy Commissioner of the District that the subject land is a **gomal land** and that it is not in the occupation of the Forest Department; the said Letter reads as under:

“ವಿಷಯ: ಹೊಸನಗರ ತಾಲ್ಲೂಕು ರಾಮಚಂದ್ರಪುರ ಗ್ರಾಮದ ಸ.ನಂ.7 ರಲ್ಲಿ 25.00 ಎಕರೆ ಜಮೀನನ್ನು ಧರ್ಮ ಚಕ್ರ ಟ್ರಸ್ಟ್ (ರಿ) ಇವರಿಗೆ ಮಂಜೂರು ಮಾಡುವ ಬಗ್ಗೆ.

ಹೊಸನಗರ ತಾಲ್ಲೂಕು ರಾಮಚಂದ್ರಪುರ ಗ್ರಾಮದ ಸ.ನಂ.7 ರಲ್ಲಿ 25.00 ಎಕರೆ ಜಮೀನನ್ನು ಧರ್ಮ ಚಕ್ರ ಟ್ರಸ್ಟ್ (ರಿ) ಇವರಿಗೆ ಮಂಜೂರು ಮಾಡುವ ಕುರಿತು ಉಲ್ಲೇಖದ ತಮ್ಮ ಪತ್ರದಲ್ಲಿ ಸೂಚಿಸಿರುವಂತೆ ಪ್ರಸ್ತಾಪಿತ ಜಮೀನಿನ ಪರಿಷ್ಕೃತ ನಕ್ಷೆಯನ್ನು ತಯಾರಿಸಿದ್ದು, ಸನರಿ ಜಮೀನು ಗೋಮಾಳ ಜಮೀನಾಗಿದ್ದು, ಅರಣ್ಯ ಇಲಾಖೆಯ ವ್ಯಾಪ್ತಿಯಲ್ಲಿರುವುದಿಲ್ಲ. ಸರ್ವೆ ನಕ್ಷೆ ಚಕ್ರಂದಿಯೊಂದಿಗೆ ಮುಂದಿನ ಅಗತ್ಯಕೃಮಕ್ಕಾಗಿ ತಮ್ಮ ಅವಗಾಹನೆಗೆ ಸಲ್ಲಿಸಿದೆ.”

In turn, the Deputy Commissioner of the Shivamogga District vide Letter dated 21.11.2012 at Annexure- F has informed the Government that the subject land is a **gomal land**; that being the position, the impugned order which is structured on the wrong premise of the subject land being a reserved forest, cannot be sustained.

g) The Statement of Objections filed by the then Government Advocate on 20.05.2016 does not come to rescue of the respondents; para 4 of the Objections speaks of Section 16(1) of the Act and proceeds on a wrong assumption that the

petitioners in this petition is laying a challenge to the order dated 30.10.1991 which is not the case; secondly, a Notification dated 30.12.1987 a copy whereof is at Annexure-R1 does not advance the case of respondents since it ultimately resulted into the Proclamation Order dated 11.03.2002, on which petitioner heavily banks upon in support of his case that this land is not a reserved forest.

h) The last contention of learned HCGP appearing for the respondents that the impugned order being appealable, writ petition is not maintainable, cannot be countenanced because, more than six years have lapsed after the filing of the writ petition and the petitioner had the benefit of interim order all through; this apart, ordinarily, in Certiorari Proceedings, the doctrine of alternate remedy cannot be applied as a Thumb Rule regardless of justice of the case; added, the petitioner has raised the jurisdictional issue in terms of Section 64A of the Act that goes to root of the matter which involves constitutional right to property under Article 300A; the Apex Court in *NIRANJANLALL AGARWALLA vs. UNION OF INDIA*, **AIR 1969 SC 23** has observed as under:

“It does not behove the State to contest a good claim on the off-chance of success on some unsubstantiated technical plea”.

In the above circumstances, this writ petition succeeds; a Writ of Certiorari issues quashing the impugned order; the subject land shall be retained as the **gomal land** for the benefit of the cattle of the petitioner - Mutt and other agriculturists/farmers; if entries in the Revenue Records are changed pursuant to impugned order, the same shall be restored as they were before, within an outer limit of two months from the date a copy of this judgment is handed to the jurisdictional Tahsildar.

The 2nd respondent shall consider or cause to be considered petitioner's subject application for the allotment of the land in accordance with law and inform the result of such consideration within six months; all contentions in this regard are kept open; the answering respondents may solicit any information or records as are necessary for due consideration of petitioner's application; however, in the guise of such solicitation delay shall not be brooked.

No costs.

**Sd/-
JUDGE**