

Siddeshwara International Vs. State of Karnataka Represented by Its Secretary, Department of Forest Ecology and Environment and ors.

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Court : Karnataka

Decided On : Aug-28-2008

Reported in : ILR2009KAR1356; 2009(3)KCCRSN99; 2009(4)AIRKarR367

Judge : N. Kumar, J.

Acts : Water (Prevention and Control of Pollution) Act; Air (Prevention and Control of Pollution) Act; Karnataka Land Reforms Act; [Karnataka Forest Act, 1963](#) - Sections 4, 33(2) and 35; Environment (Protection) Act, 1986; [Karnataka Preservation of Trees Act, 1976](#); Forest Conservation Act, 1980 - Sections 2; [Constitution of India](#) - Articles 48A, 51A and 226; [Constitution of India](#) (Amendment) Act, 1976; Environment (Protection) Rules, 1986

Appeal No. : Writ Petition No. 7635/2007

Appellant : Siddeshwara International

Respondent : State of Karnataka Represented by Its Secretary, Department of Forest Ecology and Environment and or

Advocate for Def. : M.B. Prabhakar, AGA for R1 and R2 and ;Ajoy Kumar Patil, Adv. for R3 and R4

Advocate for Pet/Ap. : Shashi Kiran Shetty, Adv. for ;Shetty and Hegde Associates

Judgement :

ORDER

N. Kumar, J.

1. The petitioner has preferred this writ petition seeking a writ of certiorari for quashing the order dated 2nd September, 2006 as per Annexure-A and the order dated 19th December 2006, as per Annexure-B and for a declaration that no permission is required either from the Central Government or the State Government for mining in an area less than 5 Hectares.

2. The petitioner is a partnership firm engaged in the business of mining. It was granted a mining lease dated 13th June, 2005 for a period of 20 years for an extent of 12.10 acres in Sy. No. 121 of Hogrehalli village, Kadur Taluk, Birur Hobli, Chikamagalur District vide ML No. 2491. Annexure-C is the copy of the mining lease. The petitioner is the owner of the property in respect of which the mining lease was granted. The Karnataka State Pollution Control Board by their letter dated 8th August, 2005 gave their consent for the establishment of mining industry. Annexure-D is the copy of the said letter. The Deputy Conservator of Forests, by his letter dated 18th April, 2005 as per Annexure-E addressed to the Deputy Commissioner, Chikmagalur stating that the leased property is not on the Western Ghats. Acting on the said report, the Deputy Commissioner as per Annexure-G dated 10th May, 2005 recommended for issue of mining lease. Thereafter, the petitioner applied for Environmental Clearance Certificate on 22nd September, 2005 as per Annexure-G. By a communication dated 12th December, 2005 as per Annexure-H Environmental Clearance Certificate was granted. However, even before the said communication was officially communicated to the petitioner, one Vrukshalaksha Andholona, Karnataka Seva Sagara Trust, Shimoga (for short hereinafter referred to as 'Trust') gave a representation to the Environment Clearance Department not to grant permission for mining in the leased property. On their representation, the permission dated 12th December 2005, which was not communicated to the petitioner came to be stayed by an order dated 19th December 2005, a copy of which is produced as Annexure-J. On coming to know the same, the petitioner made a representation dated 28th

December, 2005 requesting them to grant the certificate sought for as per Annexure-K. It is thereafter, the impugned order came to be passed rejecting the said request for grant of Environmental Clearance Certificate. Subsequently, several representations were made by the petitioner to revoke the said order. The same were not considered. The petitioner has also produced the consent letter obtained under Water (Prevention and Control of Pollution) Act as per Annexure-Q and Air (Prevention and Control of Pollution) Act as per Annexure-R. However, as the Environmental Clearance Certificate was not granted, the aforesaid consent letters were withdrawn by the aforesaid authorities as per Annexure-S. Again, the petitioner made representation requesting them not to withdraw those letters. Thereafter, the petitioner has preferred this writ petition challenging the aforesaid action of the respondents.

3. Though the petitioner asserts in the writ petition that the certificate which had been granted by the Environment Committee was withdrawn at the instance of the Trust, the petitioner chose not to make them party to the proceedings. On coming to know of the filing of this writ petition, the Trust filed an application for impleading, which was allowed by this Court and therefore, they are arrayed as respondents-3 and 4.

4. All the respondents have filed their respective counter statements, in substance, contending that the land in question falls within the Western Ghats and it is surrounded by thick evergreen forest. The authorities without properly applying their mind have made recommendations for grant of mining lease and Environment Clearance Certificate. When it was brought to the notice of the authorities the blunder they have committed, an expert committee was constituted to visit the place not once but more than once to find out the truth of the stand taken by respondents-3 and 4. Thereafter, they have withdrawn the clearance certificate which was decided to be given to the petitioner. The said finding is based on, unimpeachable legal evidence and therefore, their action is justified and cannot be found fault with.

5. Sri Shashikiran Shetty, learned Counsel appearing for the petitioner assailing the impugned orders contended that the impugned orders are passed in violation

of principles of natural justice, no notice was served, they were not heard in the matter and therefore, the impugned order is liable to be quashed on the short ground of violation of principles of natural justice. Secondly, he contended that the project site is situated 10 Kms. away from the Western Ghats. The finding recorded by the authorities that it forms part of Western Ghats and therefore, it is a forest land and hence, no permission could be granted is factually incorrect. Thirdly, he contended that in coming to the said conclusion several reports have been relied upon by the authorities, copies of these reports were not made available to the petitioner and if only he had been given a copy, he would have produced material to show that factually the said stand is incorrect and therefore, the impugned order is illegal. Lastly, he contended that all the authorities, the forest and the revenue authorities have made a recommendation for grant of mining lease on the ground that the land in question is situate in the revenue land belonging to the petitioner and that the mining operations would in no way affect the flora and fauna surrounding the land in question.

6. Per contra, the learned Additional Government Advocate supporting the impugned order contended that though the mining lease was granted on the basis of the recommendations made by the forest and revenue authorities, on a representation made by the trust, a Committee was constituted to go into the correctness of the allegations made by the 3rd respondent and the Committee after visiting the spot found that there is substance in what the 3rd respondent is contending and found that the recommendations made regarding site in question does not fall within the Western Ghats is incorrect. It is surrounded by thick forest. It is in a hilly area. It is close to Bababudanagiri and Kemmanagundi and is situated in Western Ghats and therefore, even though Kadur Taluk most part of which is a plain, a portion of Western Ghats lies within Kadur Taluk and the land in question lies therein. Therefore, the Expert Committee after taking note of every aspect of the matter, after affirming that they have committed a mistake have withdrawn the recommendations. After keeping the certificate in abeyance, when these proceedings were initiated, the petitioner made a written representation supporting his claim. He has appeared in person at the time of enquiry. He was called upon to produce the impact assessment report which, he has failed to produce. After hearing him, giving him a full opportunity and on consideration of

material on record, the impugned orders were made and therefore, there is no violation of principles of natural justice and therefore, he contends that no case for interference is made out.

7. The learned Counsel for the 3rd respondent has supported the stand of the Government.

8. After addressing the arguments for two days, the learned Counsel for the petitioner submitted that the petitioner wants to withdraw the petition.

9. The party who has approached the Court has a right to withdraw his petition and the Court cannot normally refuse such permission sought for. It is his prerogative and therefore, when the petitioner wants to withdraw the writ petition, it cannot be refused and accordingly it is granted.

10. But nonetheless, in the course of hearing the matter for two days, after considerable public time is spent in understanding the case of the parties, when the Court noticed that the officials of the Forest Department and the officials of the Revenue Department have colluded with the petitioner and made recommendations contrary to law, which was the cause for the Environmental Certificate being granted, it is felt necessary to place on record the observations of this Court in respect of the way these statutory authorities are functioning especially in the light of the law declared by the Supreme Court in T.N. Godavannan's case and subsequent cases which is the law of the land which unfortunately has not percolated down to the officials who are working at the grass-root level.

11. It is in this context it is relevant to notice the law on the point as laid down by the Supreme Court in the case of Mohammed Hanif v. The State of Assam : [1970]2SCR197 where dealing with the power of the High Court under Article 226 it is held as under:

That the jurisdiction of the High Court under Article 226 is a supervisory jurisdiction, a jurisdiction meant to supervise the work of the tribunals and public authorities and to see that they act within the limits of their respective jurisdiction.

In a proceeding under Article 226, the High Court is not concerned merely with the determination of the private rights of the parties; the only object to such a proceeding under Article 226 is to ensure that the law of the land is implicitly obeyed and that various authorities and tribunals act within the limits of their respective jurisdiction. All these writs under Article 226 are known in English Law as prerogative writs, the reason being that they are specially associated with the King's name. These writs were always granted for the protection of public interest and primarily by the court of the King's Bench. Our Constitution makers have borrowed the conception of prerogative writs from the English Law and the essential principles, relating to such prerogative writs are applicable in India. It is obvious that the remedy provided under Article 226 is a remedy against the violation of a citizen by the State or statutory authority. In other words, it is a remedy in public law.

12. It is therefore necessary to look into the provisions of various enactments, the way the authorities who are vested with the power to protect, preserve and develop forest, have failed in discharging their duties and violated the law laid down by the Supreme Court. In spite of an all-out effort by the Apex Court to protect the forest in the country for the future generation, there is concerted attempt on the part of these officials to permit illegal mining, illegal felling of trees and still no action is taken on them and they continue to hold office and perpetuate the illegal acts. Protection and improvement of the environment is a constitutional mandate, which this Court cannot ignore.

13. The material on record discloses that, the petitioner a partnership firm, purchased the land in Karnataka. The Karnataka Land Reforms Act, prohibits a non-agriculturist from purchasing the agricultural lands. Persons who are income-tax payees, deriving income from a source other than agriculture if the income is more than Rs. 2,00,000/- even to this day cannot purchase agricultural lands. When that being the case, the question of a partnership firm purchasing agricultural land is not permitted in the State of Karnataka. It is to overcome such prohibition, the partnership firm has purchased the land describing it as a coffee estate, which is permissible. After purchasing this coffee estate in 2004, the first thing they have done is to apply for a mining lease in 2005. The property was

purchased under a registered sale deed on 7th January 2004, the application for mining lease is filed on 23rd July 2004, mining lease was granted on 30th June, 2005 for a period of 20 years. It is the experience of this Court that whenever a mining lease is applied for, there are instances where, even after decades, the said applications are not disposed off. Even in cases where this Court has granted writ of mandamus, it takes years for consideration of such applications for mining leases. However in this case, in spite of the Parliament or State Legislature's passing enactment to protect the land, the people with money, power and who have the right contacts with the Government officials, are able to manipulate and obtain registered sale deeds and secure a mining lease in a land, which otherwise they are not entitled for. The aforesaid facts speak for themselves.

14. The petitioner has produced along with the application filed for mining lease, what is styled as 'Outline of Mining plan' giving particulars of the land. At clause 3.0 in Part-A under the heading Geology & Exploration, he has briefly described the topography and general policy and local/mine geology of the mineral deposit including drainage pattern which reads as under:

Physiography - The applied area lies towards eastern part of Bababudengiri range. It is surrounded by Yemmedoddi State Forest towards south and east and Udaava State Forest towards west and north. The applied area is a revenue patta land with open jungle with miscellaneous forest and residual coffee plantation. There are only bushes, grass, shrubs and palm trees in the applied area. Two nullahs one beyond the western boundary and the other in the eastern side of the lease flow from south to north. Both these nullahs are seasonal and join a perennial source of water situated at Hogarekhangiri beyond the applied area. The lease area slopes down from south/southwest to north east. A triangulation station point is located beyond the southern boundary of the lease area with an altitude of 1562 mtrs above MSL. The applied area has an elevation between 1055 mtrs to 1151 mtrs above MSL. There is no source of water in the applied area. The villagers utilise the perennial source of water at Hogarekhangiri for drinking and other domestic purposes. All the rain water flowing during rains through different nullahs join the tank at Hogarehalli and Yeradahankalu. The annual rainfall in the area is between 150 cms to 250 cms. The weather will be pleasant during the summer and cold

during winter.

Regional Geology: According to recent classification the lease area falls in Bababuddan group of Dharwar Super Group. The Bababuddan group represents a typical magmatic platform association with quartz-pebble conglomerate at the base followed by alternating bands of basalt and ortho quartzite ending with a strong development of banded iron formation. The Bababuddan group, the lower section of the Dharwar sequence consisting of basaltic flows and classic quartzite is considered as one of the oldest examples of rocks deposited in a stable craton environment.

Bababuddan Belt: This belt in the southern margin of the larger Shimoga Basin is an important schist belt exposing the rocks of this group in an exemplary manner.

The applied area belongs to the Mullamagiri formations, structurally the area forms part of the eastern limb of the synclinal structure.

'underlining by me'

15. At this juncture, it is relevant to point out that the Central Government undertaking by name Kudremukh Iron Ore Company Limited was quarrying in Kemmanagundi hills. After the expiry of the original period of lease, because of the intervention of the Supreme Court, entire quarrying operations are stopped, all the employees who were involved in the quarrying operations are now been rehabilitated and all types of quarrying as on today is prohibited by the judgment of the Apex Court. It is in that area the petitioner sought for mining of lease, which was granted.

16. The material on record discloses that on 22.9.2005 when the petitioner applied for Environmental Clearance for mining of iron ore in the schedule property for a capacity of 25,000 tonnes/annum in an area of 4.89 Hectares, he enclosed a letter dated 18.4.2005 of the Deputy Conservator of Forest, Chikmagalur, in which he has stated that the land in question is neither a part of a forest area nor of Western Ghats. The State Environment Clearance Committee in the meeting held on 22.11.2005 decided to issue Environmental Clearance for the project with

conditions. It is at that stage, the 3rd respondent requested the Department to stop illegal mining in the area on the following grounds:

- a) The area is 4000 ft. attitude, is a big hill, with high rainfall, if mining is done, shoal forests and river origins will be destroyed.
- b) The mining area is surrounded by Bhadra Wild Life Sanctuary and on the other side Kemmanagundi hill is situated and Bababuddangiri on yet another side. Yemmedoddi reserve forest is attached to this area.
- c) Mining will destroy topsoil, silting of nearby paddy fields and horticulture lands, natural water bodies and 15 ponds and 40,000 farmers will be badly affected.
- d) All tanks get water from this hill and fanning is dependent on these tanks.
- e) Company constructed 5 Km road in forest land.
- f) Bio-diversity is high with 92 species of medicinal plants, which will be destroyed if mining is done.

On the basis of the said representation, the Forest Department, Mines and Geology Department, Karnataka State Pollution Control Board and Deputy Commissioner, Chikmagalur were called upon to examine and report. One more letter was addressed to the Karnataka State Pollution Control Board to submit the distance of Ecologically sensitive areas from the proposed mining area by letter dated 19.12.2005. The petitioner was informed of the decision taken by the Environmental Clearance Committee keeping the certificate in abeyance. He was informed that though the clearance letter was ready and signed and was to be despatched on 13.12.2005, it was not despatched in view of the said objection. The petitioner was instructed not to take up any mining activity in the area until further orders as per letter dated 19.12.2005. The Karnataka State Pollution Control Board as per letter dated 19.12.2005 instructed the Regional Officer, Hassan that consent for operation should be issued after issue of Environmental Clearance Certificate. One more letter was written on 17.1.2006 by the Additional Director, Mines & Geology, informing the Senior Geologist, Chikmagalur to stop the mining activity until further orders. The Mines & Geology department as per

Government Order dated 3.3.2006 constituted a committee comprising of Senior Director (Technical Cell), Ecology and Environmental Zonal Officer, Central Pollution Control Board and Conservator of Forests, Chikmagalur Circle to inspect the spot with respect to the issue raised by 3rd respondent and submit report. The Deputy Commissioner, Chikmagalur by letter dated 2.2.2006 informed on the basis of the report from AEE, Minor Irrigation, Deputy Conservator of Forests, Chikmagalur and Environmental Officer, Karnataka State Pollution Control Board that according to their opinion if mining is allowed, in all 11 ponds/tanks and down below river and streams are likely to get polluted from the mines. Therefore, the Deputy Commissioner requested to cancel the mining lease issued on 13.6.2005 by the Mines and Geology Department. The Conservator of Forest, Chikmagalur, has submitted a separate inspection report dated 7.4.2006, of the team constituted by the Government. The team inspected the site on 13.3.2006 but did not study the flora and fauna of the area. Therefore, he once again visited the spot on 5.4.2006 and he has submitted a report, which reads as under:

- a) The site is very much part of Western Ghats.
- b) Altitude is 1383 mts. above MSL.
- c) The topography is very steep and it is catchment to many tanks in the plains. Further the water drains into Vedavati river.
- d) Average rainfall is 1000-1200 mm/year.
- e) Perennial streams are originating in the shoal forests of private holding including Sy. No. 121 of Hogarehalli i.e. the land in question.
- f) Southern end of the Sy. No. contains typical semi evergreen shoal forest. The surrounding revenue land has been proposed to be declared as Reserve forest as per Karnataka Forest Act 1963. He has also given the floristic composition of the area.
- g) Hogarekhangiri is adjacent to the Yemmedoddi Tiger reserve and the Bhandra Wild Life sanctuary. The Bhadra wild life division has proposed 10 km radius from the boundary of the sanctuary as Eco-sensitive zone and Hogrehalli village falls

within the Eco-sensitive zone and has submitted the Draft proposal. He has concluded that the other two members of the team have recommended some procedure, and if the procedure is feasible, he does not have any objection.

h) In the draft proposal, it is stated that the Central Government proposes to issue Notification in exercise of powers conferred under provisions of the Environment (Protection) Act, 1986 and Environment (Protection) Rules 1986 to notify the area in and around Bhadra Wild Life sanctuary as Eco-sensitive zone. Hogarehalli is also proposed to be a part of the Eco-sensitive zone. Quarrying and mining activity is proposed to be banned in the Eco-sensitive zone, except for limited quarrying of materials required for local residential housing and traditional road making and maintenance work in Bhadra Eco-Sensitive Zone based on the site evaluation. It is also proposed that no quarrying will be permitted on hill slopes with high degree of erosion.

The Expert Committee submitted its recommendation on 4.4.2006 which reads as under:

a) The team visited the site on 13.3.2006.

b) There exists a motorable kaccha road upto Hogarekhangiri village and also a temple and small pond exist there. The proposed mining is approximately 1 km. up hill from this village. Ajeepable road exists from village to the mining area.

c) The area is surrounded by Western Ghats. The Forest Department had wrongly stated that it is not a part of Western Ghats. It is on a steep hill and rainwater will flow down. Water as per top sheet will flow to Hogarehalli and ultimately to Mudagada Tank. Any loose over burdens are likely to be carried away at very high velocity from the site and potentially silt up the tanks. The proposed site is completely surrounded by forestland.

d) The Forest Department is considering the application of the proponent for alternative road to the site. The Forest Department has proposed for declaring the larger areas as Reserved Forest under the Karnataka Forest Act.

e) Under 'conclusion', the report states that under the existing Laws, Acts and Notifications, the mining in the proposed area cannot be permitted as it falls in Western Ghats and the tanks getting silted up is potentially higher, unless extraordinary measures are taken during mining.

f) The team suggested a small experimental pilot project in the land making use of Environmentally sound mining practices with conditions They have suggested 10 conditions.

The petitioner was present in the meeting held on 31.07.2006. He contended that said area is not part of Western Ghats. It is part of eastern plains and hence, the mining can be allowed. In response, his attention was drawn to the report of the Expert Committee and the report of the Conservator of Forests, Chikmagalur. In these reports, it is clearly stated that the area is very much a part of the Western Ghats and is nearer to Kemmana Gundi hills, the Bababudangiri Hills, the Bhadra Wildlife sanctuary and adjacent to the Yemmedoddi Tiger Reserve and the area has got shoal forest and is a source for natural springs. In fact, Udaya Channel TV had shown the video clippings of illegal mining activity going in the said area, which was also shown to the petitioner. In reply to the same the petitioner stated that they have not done any illegal mining and they have only transported the stacked iron ore stones which were collected much earlier, at the time of levelling the land and requested to send a team to verify the factual situation. A team of officers were deputed. The team submitted its report. It reads as under:

1. Out of the total 4.89 Ha of project area, about 2 He is cleared of tree growth and kept ready for mining with the rest of area comprising of fairly dense Moist Deciduous and Semi-evergreen type of forest interspersed with shrubs and grasslands All the surrounding area of the project site owned by Siddeshwara International, extending to about 280 acres consists of thick forest mostly on steep sloppy area. This area of 280 acres adjoins the Yemmedoddi Tiger preserve (Section-4 notified forest under Karnataka Forest Act 1963) on South -Western side and surrounded by Section-4 proposed area of about 2341 acres on east, north and western sides. The proposed area is at about 1360 mtrs above MSL and forms part of Western Ghat hill range. The entire 280 acres of patta land and the

adjoining notified and proposed forest areas have good natural forest cover and are very sensitive from environmental and Ecological conservation angle. There are abundant indications available on the site regarding the presence of wildlife in the area.

2. The project proponent has removed float Iron ore approximately to two to three thousand tonnes from the project area on the Hogerekangiri hill and stocked it on a patta land downhill near the tank of Hogerehalli village. On the site the project proponent has made shown trial pits and about 10 to 15 loads of hand picked dumps is seen in the area.

3. It is further observed that the proponent has made new roads of about three kilometers length of twenty feet width on steep slopes, at times on slope exceeding 45 degree duly clearing the thick forest growth on his patta land in violation of Karnataka Preservation of Trees Act 1976, Forest Conservation Act 1980, Environmental Protection Act 1986 and Rules there in. It was stated by Sri KS Sai Baba, Conservator of Forests, Chikmagalur Circle that this new road was opened up subsequent to his inspection of the area on 5/8/2006 and against the clear instructions to the mine in charge not to remove any trees and vegetation in the area in violation of various acts stated as above. These new roads are opened up covering the 280 acres of patta land with mine trial pits here and there on the roadside, indicating the intention of the proponent to extend the mining to the entire patta land of 280 acres, wherever ore is available. This road has opened up the area to intense soil erosion, more so as the soil heaps were dumped on the lower slopes.

4. Hogarekhangiri hillocks of the Western Ghats are situated in the tri junction of Chikmagalur, Kadur and Tarikere Talukas.

The petitioner was called for a meeting on 23.11.2006. They failed to submit the EIA report prepared by the Indian Institute of Science or SACON which they were asked to submit during previous ECC meeting.

It is thereafter, on consideration of the aforesaid material, they rejected the contention of the petitioner that the project site is not a part of Western Ghats for

the following reasons:

1. All the members of the two teams who have visited the proposed mining area in Sy. No. 121 of Hogarekhangiri, Hogarehalli Post Office, Kadur Taluk, Chikmagalur District have submitted report that the said area is undisputedly a part of Western Ghats. The first team referred to the report of the DCF, Chikmagalur of the Forest department and said that his statement that the said area is not a part of Western Ghats is not correct. The Conservator of Forests, Sri C K Shivanna in his report dated 7-4-2006 has clearly stated that site in question is very much a part of Western Ghats. The Mean Seas Level (MSL) of the hill on the side of which the proposed site is located is well over 1380 mts. From the village map of Hogarehalli, Kadur taluk it is clear that the Eastern sides of the ridge of the hill is part of Kadur Taluk where as the other sides of the ridge of the same hill range towards west falls is in Tarikere taluk and towards the South-the southwest - falls in Chikmagalur taluk. This hill is a part of the hill range which is connected to the Baba Budangiri hill Range as is evident from the 1,50,000 to sheet of the Survey of India. The MSL of the hill range is seen to rise up to 1870 mts at different places and also fall down below 1300 mts at different places. One of the branches of this hill range runs up to Churchugudda near Chikmagalur town. As per the Government Order No. FEE 247 FGL 2002, dt. 17-1-2004 Chikmagalur Taluk is a part of westerns ghats. As regards Kadur taluk almost entire Kadur taluk is comprising of plain area except this part of the hill range which forms a part of the Western ghats and the extent of this area compared to the entire taluk area is negligible. This is the reason why the entire Kadur Taluk is classified as Eastern plains in the said Government Notification. This Notification was issued as a general taluk level guidance for the purpose of calculation of Net Present Value for Forest areas. Had this Notification dealt with village wise for description of Eastern plains and Western Ghats it would have clearly categorized the instant Sy. Nos. of Hogarehalli Village as part of Western Ghats. Technically also ghats are hill ranges; and it cannot be said that the western side of the ridge of the same hill range is a part of Western Ghats and the Eastern side of the ridge of the hill range is Eastern Plain. Western ghats comprise a series of ranges running from Maharashtra to South of Kerala, and this range in question is undoubtedly apart of the Western Ghats. From the dictionary meaning of the word 'plains' it is clear that

plains cannot be part of ghats. Same is true with Kemmanagundi hills. These form a part of the Bababudangiri hills range and fall within the jurisdiction of Tarikere Taluk which is also classified as Eastern Plains in the said Government Notification. Since it is a part of the Bababudangiri hill range of the Western Ghats, Kemmanagundi can never be classified as Eastern plains by misinterpreting the said Government Notification

2. Physically the proposed site is at an altitude of 1383 mts MSL and is on steep hill slope on, the hill ranges and surrounded by thick semi evergreen shoal forest type vegetation at higher reaches and moist deciduous forest type vegetation at lower reaches. This type of vegetation is found in the entire proposed mining area and surrounding Private land owned by the proponents other than the coffee estate, and also the large extent of 2341. Acres of adjoining and surrounding Government land which is proposed under Section 4 of KFA 1963 by the Karnataka Forest Department for Notification as Reserved Forests. Therefore undoubtedly the area under consideration is steep, high attitude, high rainfall and highly Ecologically and Environmentally sensitive. These characters, i.e., Semi evergreen/evergreen forest types, Moistdeciduous forest types at lower reaches, steep hills, high attitude from MSL, high rainfall, the typical soils, the typical climate are typical characteristics of the Western Ghats.

3. The proposed site is very much a part of the Western Ghat ranges and the hill range is the last range towards the eastern edge of the Ghats, but undoubtedly a part of the Western Ghats.

Then they have set out the reasons which adversely affects, if such mining lease is granted.

17. The aforesaid material clearly establishes that there is no substance in the contention of the petitioner that the project site is not a part of Western Ghats. This also nullifies the claim of the petitioner that he was not heard in the matter and he had no opportunity to produce documents. Similarly, his contention that the reports are not shown to him has no substance.

18. Under the Indian Constitution the power to make laws in respect of forest was vested with the States because of entry 19, in List II. On the date of reorganization of States in the year 1956, there were different Forest laws in force, in the five integrating parts of the Mysore State. As it was administratively difficult and inconvenient to enforce different laws in different parts, the Karnataka Legislature passed the [Karnataka Forest Act, 1963](#) to bring uniformity of forest laws throughout the State. Provision has been made for control over forest and lands not being the property of the Government. The object is to prevent private owners from recklessly exploiting the tree growth and forest produce with the sole idea of making immediate and huge profits, without regard to ensuring yield for the benefit of the community in future. Provisions are also made to the effect that all sandalwood trees which may grow in any land after the date of commencement of this Act, will be the exclusive property of the Government and exploitation of all sandalwood trees, the rights over which is alienated, should be done by the Forest Department only, on behalf of the owner. These provisions are made to prevent smuggling of sandalwood. But in course of time it was realised that the Forest wealth of the Country has dwindled. The Parliament took the responsibility of conserving the forest. The subject forest which was originally in the State List at entry 19 in List II, by the Amendment to the Constitution (by the 42nd Amendment) Act, 1976, was omitted from the State List and it was included as Entry 17-A in List III i.e., the Concurrent List. This enabled the Parliament to make law, to protect, preserve and develop the forest wealth of this country. Therefore, to provide for conservation of forest and matters connected there with or ancillary and incidental thereto, the Forest (Conservation) Act, 1980 came to be passed. Section 2 of the said Act, prescribes restriction on the dereservation of forests or use of forest land for non-forest purpose. It declares that notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing that any reserved forest or any portion thereof shall cease to be the reserved forest. Any forest land or any portion thereof may be used for any non-forest purpose. That any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by

Government. Lastly, that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation. The explanation to the Section explains the phrase 'non-forest purpose' meaning, the breaking up or clearing of any forest land or portion thereof, for the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants and any purpose other than reafforestation. Exceptions are also set out in the said provision.

19. The Conservation of Forest Act, 1980 did not define what Forest is. Even the [Karnataka Forest Act, 1963](#) has not defined the word 'forest'. But it has defined 'District Forest' to include all land at the disposal of Government not included within the limits of any reserved or village forest nor assigned at the survey settlement as free grazing ground or for any other public or communal purposes. 'Reserved Forest' means any land settled and notified as such in accordance with the provisions of Chapter II of the Act. Similarly, 'Village Forest' means any land notified as such in accordance with the provisions of Chapter III of the Act. The 'Protected Forest' has been defined to mean any area at the disposal of Government which has been placed under special protection under Clause (ii) of Sub-section (2) of Section 33 or is declared to be a protected forest under Section 35. 'Forest Produce' is also defined.

20. In that context, the Supreme Court in the case of T.N. Godavaraman Thir Umuklpad v. Union of India and Ors. : AIR 1997 SC1228 for the first time dealt with the description of forest at paragraph-3 & 4 as under:

There is a misconception in certain quarters about the true scope of the Forest Conservation Act, 1980 and the meaning of the word 'forest' used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in Ecological imbalance; and 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 recognised 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 *Ambika Quarry works v. State of Gujarath*. Therefore, 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.

Then the Supreme Court issued the following directions:

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.

The felling of trees in all forests is to remain suspended except in accordance with the Working Plans of the State Governments, as approved by the Central Government. In the absence of any Working Plan in any particular State, such as

Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

Each State Government was directed to constitute a Expert Committee to identify the areas which are forests irrespective of whether they are so notified, recognised or classified under the law and irrespective of the ownership of the land of such forest, identify areas which were earlier forests but stand degraded, denuded or cleared; and identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

21. The Supreme Court in the case of *Samatha v. State of Andhra Pradesh and Ors.* : AIR 1997 SC3297 dealing with forest and forest land at paragraph 120 as held as under:

120. The words 'forest' or 'forest land' have not been defined in the A.P. Act or the Central Forest Act. In Collins English Dictionary (1979 Edn.) the word 'forest' has been defined at p.568 as 'a large wooded area having a thick growth of trees and plants, the trees of such an area, something resembling a large wooded area especially in density'. The Shorter Oxford English Dictionary defines 'forest as 'an extensive tract of land covered with trees and undergrowth, sometimes intermingled with pasture'. In Webster's Comprehensive Dictionary (International Edn.) at p.495, 'forest' has been defined as 'a large tract of land covered with a natural growth of trees and underbrush, in English law will land generally belonging to the Crown and kept for the protection of game; Of, pertaining to, or inhabiting woods or forest; To overspread or plant with trees, make a forest of. The 'forest cover' means 'the sum total of vegetation in a forest; more especially, herbs, shrubs and the litter of leaves, branches'. 'Forest reserve' for the different manners 'a tract of forest land set aside by Government order for protection and cultivation'. According to Stoud's Judicial Dictionary (5th Edn.) Vol.2 at p. 1014 'forest' means 'a place privileged by royal authority or by prescription for the peaceable abiding and nourishment of the beasts or birds of the forest, for resort of the King; a subject may hold a forest by grant from the Crown; by the grant of forest in a man's own ground, not only the privilege but the land itself passes; within the

bounds and within the regard'. Black's Law Dictionary (6th Edn.) defines 'forest' at p.649 as 'a tract of land covered with trees and one usually of considerable extent'. Chambers Twentieth Century Dictionary defines the expression 'forest' at p.415 as 'a large uncultivated tract of land covered with trees and underwood: woody ground and rude pasture.

After dealing with the Forest Act, Environment Protection Act and various provisions under the aforesaid Acts, the Supreme Court held that no distinction can be made between Government forest and Private forest in the matter of forest wealth of the nation and in the matter of environment and Ecology.

22. Therefore, the word 'Forest' must be understood according to its dictionary meaning. This description covers all statutory recognised forests, whether designated or reserved, protected or otherwise. The word, 'Forest' would include a large wooded area having a thick growth of trees and plants, an extensive tract of land covered with trees and undergrowth, sometimes intermingled with pasture and covers tract of forest land set aside by Government order for protection and cultivation and a tract of land covered with trees and one usually of considerable extent. Therefore, there cannot be any distinction between the Government Forest and Private Forest in the matter of Forest wealth of the Nation and in the matter of environment and ecology. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately resulted in Ecological imbalance and therefore, the provisions made therein for the conservation of forest and for matters connected therewith must apply to all forests irrespective of nature of ownership. It is in this context the Apex Court has declared in the case of Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh and Ors. : [1987]1SCR641 as under:

Preservation of the environment and keeping the Ecological balance unaffected is a task which not only Governments but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in Article 51A(g) of the Constitution.

In so far as State is concerned, Article 48-A of the Constitution casts the obligation to the effect that the State shall endeavour to protect and improve the environment

and to safeguard the forests and wild life of the Country. Where as a citizen is concerned it is his fundamental duty as enshrined in Article 51-A(g) of the Constitution to protect and improve the natural 'environment' including forests, lakes, rivers, and wild life. In so far as Courts are concerned, it is a constitutional mandate which they are under a duty to uphold. Apart from this it is because of the tireless effort of the Supreme Court and the judicial activism demonstrated by it, over the last decade, the Forest Wealth of the Country is preserved for the future generation to come. The law declared by the Apex Court in this regard is the law of the land and is binding on all the Courts in India. The Courts cannot adopt 'Hands off' attitude in the matter of preservation of the environment and keeping the Ecological balance unaffected.

23. The material on record discloses that the land in question lies towards eastern part of Bababudengiri range. It is surrounded by Yemmedoddi State Forest towards South and East and Udava State Forest towards the West and North. The area is surrounded by Bhadra wild life sanctuary. It is an open jungle with miscellaneous forest and residual coffee plantation. There are bushes, grass, shrubs and palm trees. Two nullahs one beyond the western boundary and the other in the eastern side flow from south to north. Both these nullahs are seasonal and join a perennial source of water situated at Hogarekangiri. The villagers utilise the perennial source of water at Hogarekhangiri for drinking and other domestic purposes. All the rain water flowing during rains through different nullahs join the tank at Hogarehalli and Yeradahankalu. The area is 4000 ft. altitude is a big hill, with high rainfall. If mining is done, shoal forests and river origins will be destroyed. All tanks which would get water from this hill and farming depended on these tanks would be affected.

24. Before a citizen of this Country is educated about the social obligations, it is the forest officials who are employed for the said purpose and are paid to protect the forest are to be educated about the clear meaning of 'forest'. It is because of the recommendations made earlier by the Forest department, holding that the land in question does not fall within forest area and does not form part of Western Ghats, the other authorities acting on such recommendations granted permission sought for. But for the timely intervention of a Non-government Organisation, like

the 3rd respondent, there was no scope for recalling the said recommendation. Fortunately, though, a decision was taken to grant the certificate, it was not actually communicated to the petitioner. Unless the petitioner receives the said recommendation in his hand, it cannot be said that any legal right has accrued to him by virtue of the said recommendations. Any authority which has the power to recommend to grant, has the power to withdraw the recommendation or grant. It is at that stage, the petitioner has to be duly notified. He has been heard, two Committees were constituted all the materials have been looked into and keeping in mind the judgment of the Apex Court, the technical experts have opined that the land in question falls within Western Ghats, it is surrounded by thick forest, it is at an altitude of 1360 MSL. Therefore, mining operation in that particular area is prohibited and cannot be granted.

25. It is unfortunate that in spite of clear enunciation of law by the Apex Court, still the authorities who are responsible for protecting and preserving these forests are yet to understand what forest means. They are making recommendations contrary to law as well as the law declared by the Supreme Court. However, it is heartening to note that when error is pointed out, the higher authorities without sticking on to formality or ego have retraced their steps and withdrawn the permission granted for good and justifiable reasons and ultimately, in public interest. Hence, I pass the following order:

(a) The Karnataka State Legal Services Authority is directed to chalk out a programme to educate all forest officials about the definition of 'forest' as interpreted by the Supreme Court and the obligations cast on them under various enactments as well as the orders passed by the Supreme Court from time to time for protection of the forest and the environment.

(b) The Principal Secretary to the Department of Forest Government of Karnataka, is directed to initiate appropriate proceedings against the Deputy Conservator of Forest for his actions as contained in the letter dated 18.4.2005, Annexure-E to the Writ Petition, where it is stated that the project site is not part of the Western Ghats and it is not situated in a dense forest, which is the root cause for all these problems.

(c) High Court registry is directed to send a copy of this order to the Karnataka State Legal Services Authority and to the Principal Secretary, Department of Forest, Government of Karnataka, for needful action.

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