

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JULY, 2024

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D HUDDAR

R.F.A. NO.1653 OF 2011

BETWEEN:

1. KARNATAKA STATE ROAD CORPORATION
BY ITS DIVISIONAL CONTROLLER
URBAN DIVISION, MYSORE.
2. THE STATE OF KARNATAKA
BY ITS PRINCIPAL SECRETARY
FORESTS, ENVIRONMENT AND
ECOLOGY DEPARTMENT
M.S.BUILDING
DR. AMBEDKAR VEEDHI
BANGALORE-560 001.
3. THE CONSERVATOR OF FORESTS
(CENTRAL) REGIONAL OFFICE
(SOUTHERN ZONE) KENDRIYA SADAN
4TH FLOOR, E AND F WINGS, 17TH MAIN
2ND BLOCK, KORAMANGALA
BANGALORE-560 034.
4. THE DEPUTY COMMISSIONER,
MYSORE DISTRICT,
MYSORE.
5. THE TAHSILDAR,
MYSORE TALUK,
MYSORE.

...APPELLANTS

(BY SRI.P.D.SURANA, ADVOCATE (PH)
SRI. SPOORTHI HEGDE, HCGP FOR A2 AND A5 (PH))



AND:

1. SRI. MALLAIAH
S/O. LATE MAYAGA
AGED ABOUT 84 YEARS
SINCE DESECD BY LR'S OF
RESPONDENT NO.2 AND 3
 2. SRI. M.MYLARASWAMY
S/O. MALLAIAH
AGED 56 YEARS.
 3. SRI. M.MANJUNATHASWAMY
S/O. LATE MALLAIAH
AGED ABOUT 54 YEARS.
 4. SRI. M. RAMESH
S/O. LATE MAYANNA
AGED ABOUT 43 YEARS.
 5. SRI. M. BHASKAAR
S/O. LATE MAYANNA
AGED ABOUT 41 YEARS
SINCE DECEASED BY LR'S OF 5(A) TO 5(C)
 - 5(A). SHOBHA.K
W/O. LATE M. BHASKAR
AGED ABOUT 42 YEARS,
 - 5(B). AJAYA KUMAR
S/O. LATE M. BHASKAR
AGED ABOUT 24 YEARS,
 - 5(C). ANUSHA
D/O LATE M. BHASKAR
AGED ABOUT 22 YEARS
- ALL ARE RESIDING NO. 48, 11TH CROSS
NAVILU ROAD, KUVEMPU NAGAR, MYSORE.
6. SRI. M.PREM KUMAR
S/O. LATE MAYANNA
AGED ABOUT 41 YEARS,

7. SRI.R.CHANDRASHEKAR
S/O. LATE M. REVANNA
AGED ABOUT 36 YEARS,
8. SRI.R.RAVI
S/O. LATE M. REVANNA
AGED ABOUT 34 YEARS
ALL RESIDING AT NO.76/94
KURUBARA BEEDI, CHAMUNDI HILLS
OPP: TO TEMPLE, MYSORE.
9. THE DEPUTY COMMISSIONER
MYSORE CISTRICIT
MYSORE.
10. THE TAHSILDAR
MYSORE TALUK
MYSORE.

...RESPONDENTS

(BY V/O/DATED 19/09/2014 R2 AND R3 ARE TREATED AS LRS
OF R1

SRI. PRAKASH T. HEBBAR, ADV FOR R2 TO R4 AND
R6 TO R8 (PH)

SRI. MAHESH B, ADVOCATE FOR R5
R5(A) R5(B) AND R5(C) ARE SERVED
AND UNREPRESENTED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION
96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED
29.08.2011 PASSED IN O.S.476/2010 ON THE FILE OF THE IV
ADDL. SENIOR CIVIL JUDGE, MYSORE, DECREERING THE SUIT
FOR DECLARATION AND PERMANENT INJUNCTION.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND
RESERVED FOR ORDER, THIS DAY, **KRISHNA S. DIXIT.J.**,
PRONOUNCED THE FOLLOWING:

JUDGMENT

This appeal by the Karnataka State Road Transport Corporation (for short 'KSRTC') & the State Government, seeks to call in question the judgment & decree dated 29.08.2011 entered by the learned II Addl. Sr. Civil Judge, Mysuru, whereby the respondent-plaintiffs' declaration suit in O.S.No.476/2010 has been decreed. The operative portion of the said judgment & decree reads as under:

"The suit of the plaintiffs is hereby decreed.

It is declared that the plaintiffs are the owner of the suit schedule properties.

It is further ordered that the defendants are restrained not to interfere with the peaceful possession of the plaintiffs over the suit schedule property in item No.1, 2 & 4.

It is further ordered that the revenue authorities are hereby directed to enter the name of the plaintiffs as owner of the suit schedule properties.

It is further ordered that the 4th defendant is hereby directed to hand over the possession of item No.3 of the suit schedule property to the plaintiffs."

2. FACTS IN BRIEF:

(a) The private respondents herein had filed the subject suit for declaration of title, for possession and for

injunction in respect of suit lands fully described in the schedule thereto. The appellant-KSRTC and State & its officials happened to be the defendants. Suit is founded principally on the ground that the subject lands are the ancestral properties; originally they belonged to one Sri.Mayaga S/o Kurubara Malla. 1st plaintiff Sri.Mallaiah claimed to be his son; plaintiff Nos.2, 3 & 4 are the sons of 1st plaintiff. Other plaintiffs also claim under Sri.Mayaga only.

(b) Plaintiffs averred that the cause of action for filing of the suit arose in a set of circumstances: all through, revenue records reflected the name of Sri.Mayaga as the owner/kabjedaar of lands in question; the jurisdictional revenue authorities unlawfully changed these entries in favour of the State Forest Department; plaintiffs' pursuit of remedies under the provisions of section 136 of the Karnataka Land Revenue Act, 1964 ultimately having proved futile, they had filed W.P.No.29959/2009 and a learned Single Judge of this court vide order dated 9.6.2010 disposed off the petition relegating the plaintiffs

to Civil Court *inter alia* on the ground that disputed facts were involved. Therefore, said suit was filed.

(c) The State & its officials filed their Written Statement resisting the suit; so did the Appellant-KSRTC as well. The gist of their case was that: way back in 1929, the then Mysore Government had issued the Notification for the formation of State Reserve Forest and the suit lands are comprised therein; the finality of this Notification has not been disturbed, no proceedings having been taken up for setting the same at naught; even otherwise, the said lands along with other have vested in the State by virtue of acquisition process that commenced with the Notifications of 1935/1940 issued under the provisions of the Land Acquisition Act, 1894; the change of entries in favour of the State Forest Department was rightly effected by the jurisdictional Revenue Officials; the plaintiffs are not related to the said Mr.Mayaga in any way and that they had fabricated records to vouch their title.

(d) The KSRTC in its Written Statement had contended that in part of the suit lands, the KSRTC Bus Stand has

been established; this land was diverted to the public purpose with the previous sanction of the Central Government granted under section 2 of the Forest (Conservation) Act, 1980. It is relevant to mention here itself a significant development in the matter: during the pendency of suit, the land occupied by the KSRTC was officially got surveyed and the survey report suggested that the KSRTC Bus Stand is structured in lands other than suit lands, although a small portion thereof is partly protruded in a part of one of the suit lands. The authenticity of this report is not in dispute by any of the parties.

(e) The Trial Court on the basis of pleadings of the parties and also the documents accompanying the same, framed the following issues:

"1) Whether the plaintiffs prove that they are owners of the suit schedule properties?"

2) Whether the plaintiffs prove that the defendants are try to interfere in the peaceful possession and enjoyment of the suit schedule properties as on the date of suit?"

3) Whether the 4th defendant proves that the Government has accorded the permission

diversion of the 27 gunta of land in Sy.No.34/2 of Chamundi Betta village, Mysore for construction of passenger and tourist amenity centre by this defendant?

4) Whether the 4th defendant proves that the suit is hopelessly barred by time?

5) Whether the 4th defendant proves that suit is not properly valued and court fee paid by the plaintiff is insufficient?

6) Whether the defendant No.5 proves that suit land belongs to Forest Department as per revenue records?

7) Whether the plaintiffs are entitle for relief of declaration and permanent injunction against the defendant?

8) What order or decree?"

(f) From the sides of plaintiffs, the 6th plaintiff Sri.M.PremKumar claiming to be great grandson of Sri.Mayaga, was examined as PW.1. Two 'independent witnesses' namely Smt.Kempamma and Sri.C.Devanna, were examined as PWs.2 & 3. From the sides of plaintiffs, as many as 81 documents were produced and got marked as documents P1 to P81. They *inter alia* comprised of genealogical tree, death extracts, revenue records, sketch, tax paid receipts, W.P. orders, Service Register, Deputy Commissioner orders, Government Orders, etc.

(g) Similarly, from the side of defendants, as many as four officials were examined as DWs.1 to 4; DW.1 Sri.B.Nagaraju is the Range Forest Officer, DW.2 was Sri.B.C.Kumara, who was an Asst. Executive Engineer in KSRTC; DW.3 is one Sri.M.D.Sriram, another retired engineer of KSRTC; DW.4 is one Sri.K.R.Gundappa, KSRTC-Transport Controller of Chamundibetta Bus Stand. From their side, as many as 88 documents came to be produced and got marked and marked as D1 to D88. These documents amongst others comprised of, Forest Notifications, Forest Map, Survey Map, Orders of Deputy Commissioner, Asst. Commissioner and Tahsildar, Telecom Bills, Electricity Bills, Revenue Records.

3. The learned Judge of the court below having perused pleadings of the parties and having weighed the evidentiary material both oral and documentary evidence placed on record has rendered the judgment & decree in favour of the plaintiffs. The same are put in challenge in this appeal now at our hands.

4. The appellant-State Government has produced certain documents which are essentially public documents and that the learned counsel appearing for the respondent-plaintiffs in appreciable grace, agreed to take the same as additional evidence in terms of Order XLI Rule 27 of CPC, 1908. The plaintiffs also have filed an application under the same provision seeking leave of the court to produce a few documents by way of additional evidence. Although this was opposed by the learned counsel appearing for the defendants, we are of a considered view that leave needs to be granted and these documents are to be taken on record, regardless of whatever worth they have. These documents produced by both the sides would be duly referred to in species in due course.

5. SUBMISSION ON BEHALF OF APPLT-DEFENDANTS:

(a) The genealogical tree has not been proved by any standard of proof, much less by preponderance of probability. There is absolutely no material to show the relationship between the plaintiffs and their so called ancestor Mayaga. The frugal evidentiary material could not have been taken by the court below to hold that the

plaintiffs have established their relationship with the said ancestor.

(b) A title suit cannot be founded on the entries in the revenue records. The suit itself was not maintainable, the Forest Notification issued u/s 17 of the Mysore Forest Act, 1900 having attained finality. Once a State Forest is constituted by the Government of Maharaja of Mysore in terms of said Notification, all & whatever grievances of the persons interested in the private lands now comprised in the reserve forest area ought to have been worked out under the provisions of 1900 Act only.

(c) Even otherwise, 1939 & 1935/1940 Notifications issued under the provisions of 1894 Act should be presumed to have culminated into the accomplishment of acquisition of the suit lands; at this length of time, some documents may not be available and therefore, court should presume that the due process of acquisition has resulted into these lands vesting in the State Government.

(d) Learned Panel Counsel appearing for the KSRTC submitted that the *lis* brought about by the plaintiffs at least *qua* the land on which KSRTC Bus Stand and allied units have been established, has withered away because of the Survey Report which states that the suits lands have nothing to do with this area and therefore, at least to that extent, appeal has to be allowed and suit has to be dismissed. Both the learned Sr. Panel Counsel appearing

for the KSRTC and learned HCGP appearing for the State & its officials made vociferous submissions and prayed for allowing of the appeal. They also banked upon certain Rulings in support of their submissions.

6. SUBMISSIONS ON BEHALF OF RESP-PLAINTIFFS:

(a) The Forest Notification of 1929 which constituted Chamundibetta State Reserve Forest, does not comprise of suit lands at all. Had it been otherwise, the question of issuing acquisition Notifications in respect of suit lands under the provisions of 1894 Act would not have arisen. Nothing has been produced on record to show that the suit lands belong to the Forest Department. Right to Property being constitutionally guaranteed u/a 300A, the suit lands cannot be snatched away by the State & its instrumentality namely KSRTC.

(b) There is abundant material supportive of relationship of plaintiffs to their ancestor Mayaga; the court below having duly considered the same, has entered the finding to that effect. The additional evidentiary material now produced with leave of the court also supports this finding. Through out, the lands stood in the name of Sri.Mayaga in the revenue records and these entries could not have been upset by the revenue authorities with no reason or rhyme.

(c) There were contemporaneous records to vouch plaintiffs' title to the suit land: for decades they were standing in the name of Sri.Mayaga only; proceedings

were undertaken under the erstwhile Urban Land Ceiling Act, 1976; some of the plaintiffs had fought the legal battles by way of writ petitions which specifically mentions these lands. Though State was a party to the same, not even a whisper is made casting doubt on the title of the plaintiffs to the suit lands.

(d) The impugned judgement & decree are well considered ones. Pleadings have been duly adverted to and evidentiary material has been rightly appreciated by the court below. Merely because another view is possible, that is no ground for appeal. It is not sufficient for the appellants to show that the impugned judgement & decree are wrong; for one to succeed in challenge, the same have to be shown to be unsustainable; that has not been shown despite vociferous arguments. Learned counsel appearing for the plaintiffs made passionate submissions in justification of the impugned judgement & decree and seeks dismissal of the appeal.

7. Having heard the learned counsel for the parties and having perused the Appeal Papers along with the original Trial Court Records as also additional evidentiary material placed on record with leave, we are inclined to grant indulgence in the matter for the following reasons:

(a) Rivers and forests have defined civilizations throughout the history of mankind. They were revered and worshiped in ancient India as organic entities. Kautilya's Arthashastra mentions about the importance of forest and forest departments. A lot of forest jurisprudence has developed by the Apex Court through a series of directions issued from time to time vide **T.N. Godavarman Thirumulkpad Vs. Union of India**. Judicial Institution is a stake holder along with other. The Apex Court in **Common Cause vs. Union of India**¹ has observed that natural resources such as air, water, forest, lakes, rivers & wildlife are public properties; they are entrusted to the Government for safe & proper use. The doctrine of public trust enjoins upon the Government to protect these resources. Hugo Grotius (1583-1645) centuries ago declared "That belongs to all belongs to none and that belongs to none belongs to all". India is a signatory to several International Conventions concerning Forests, Ecology and Environment. These covenants/conventions which have been ratified by India are binding to the extent

¹ (1999) 6 SCC 667

that they are not inconsistent with the provisions of the domestic law². In cases relating to rivers and forests, the constitutional courts are not mere arbiters but the stake holders too. Cases of that nature cannot be treated as a *lis inter parte*. All this should prelude our discussion in the matter.

(b) Plaintiffs title came to be clouded in view of orders made by the Tahasildar u/s 128, the orders made in appeal by the Asst. Commissioner u/s 136(2) and affirmation of these orders by the Deputy Commissioner u/s 136(3) of the 1964 Act. At that level, entries in the revenue records concerning the suit lands were mutated in favour of the State Forest Department on the ground that throughout the said entry stood that way since 1950 and that all of a sudden, Sri.Mayaga's name could not have been entered in the place of Forest Department, without any basis. Some of the plaintiffs had filed W.P.No.29959/2009 laying a challenge to these orders and a learned Single Judge of this court vide judgement dated 9.6.2010 disposed off the petition relegating the plaintiffs to Civil Court *inter alia* on

² Safai Karamchhari Andolan v. UOI (2014) 11 SCC 224 (Para 16)

the ground that disputed facts were involved. The plaintiffs have structured their suit on the basis of revenue entries and that they have not produced any other material to vouch the title of Sri.Mayaga to these lands. All other evidentiary material placed by them on record has nothing to do with the title to the lands in question. It has been a settled position of law that a suit for declaration cannot be founded on entries in the revenue records vide Apex Court decision in ***PRAHLAD PRADHAN vs. SONU KUMHAR***.³

(c) The Appellant-State Government has produced in this appeal the Mysore Government Notification dated 6.6.1929 issued u/s 17 of the 1900 Act whereby Chamundibetta State Reserve Forest has been constituted. Maharajas of Mysore Kingdom were known for their love for Mother Nature in general and forests in particular. They used to worship forests as *Vanadevata* (Godess of Forest). The Forest Map has also been produced by the learned HCGP with leave of the court. These are not only not disputed by the plaintiffs side but their learned counsel seeks to rely upon them also to show that the suit lands have not been

³ (2019) 10 SCC 259

comprised in the said forest. True it is that the survey numbers in which the suit lands are situate are not in so many words found in the subject Notification or the Forest Map. However, when a State Reserve Forest is sought to be constituted by Notifications of the kind, the land comprised therein is demarked by the boundary lines. If suit lands obviously fall within the said boundary lines, non-mentioning of the survey numbers pale into insignificance. After all, it has been a settled position since the days of Privy Council that as between numbers denoting the area and the boundaries, the latter shall prevail over the former, should there be discordance.

(d) A Coordinate Bench of this Court had an occasion to consider how State Reserve Forest were formed under the provisions of the very same statute namely 1900 Act in W.P.No.23928/2018 (GM-FOR) between **B.R.GANAPATHI SINGH vs. STATE AND OTHERS**⁴. What is observed in paragraphs 25 & 26 would fully support the case of appellants and therefore, the said paragraphs are reproduced:

⁴ 2020 SCC OnLine Kar 3074

"In the instant case, by virtue of Notification dated 04.08.1994 and as per the boundaries indicated therein, certain lands were declared to be constituted as reserved forest i.e., by specifying the constitution and limits of such land, by intelligible boundaries... A reading of the provisions from Sections 4 to 17 of the Act would indicate that when once it has been decided to constitute land within certain boundaries as reserved forest and a declaration is made to that effect then, a proclamation has to be made by the Forest Settlement Officer. There is a bar to accrual of forest rights over the land comprised in the Notification, except by succession or under a grant of contract in writing made or entered into by or on behalf of the Government or some person in whom such right, or power to create such right was vested when the Notification was issued. Thereafter, the Forest Settlement Officer shall have to make an inquiry into all claims duly preferred. Where no claim is preferred under Section 5 of the Act and of the existence of which no knowledge has been acquired by inquiry under Section 7 of the Act, all claims shall be extinguished unless, before the final notification under Section 17 of the Act is published, the Forest Settlement Officer is satisfied that a person had sufficient cause for not preferring such a claim within the period fixed under Section 5 of the Act. In such case, the Forest Settlement Officer shall proceed to dispose of the claim as per law. Where a claim is admitted, the Forest Settlement Officer has to specify certain details and record the same in the final record. Subsequent to following of the procedure contemplated under Sections 5, 6, 11 to 14 of the Act, the State Government has to publish a Notification, specifying clearly and according to the boundary marks erected or otherwise, the limits of the forest which it intended to constitute as reserved forest and declaring the same to be a

reserved forest from the date fixed by such notification, subject to the exercise of rights (if any) specified in such notification. From the date so fixed, such forest shall be deemed to be a reserved forest. A Notification issued under Section 17 of the Act shall be published in accordance with Section 18 of the Act.”

(e) There is force in the submission of learned counsel appearing for the appellants that in the absence of any challenge to the 1929 Notification, the constitution of Chamundibetta State Reserved Forest would remain intact by operation of law. ‘Once a forest, always a forest’ should operate as a Thumb Rule vide **NARINDER SINGH vs. DIVESH BHUTANI**⁵, in these days when forests are fast depleting with unprecedented acceleration because of dreadful population growth and allied factors. The Apex Court has specifically observed that unless the forest is denotified, the same would continue as forest ever. There is absolutely no material on record to indicate that any subsequent Notification was issued by the State Government denotifying the suit lands from being State Reserve Forest.

⁵ 2022 SCC OnLine SC 899

(f) Learned Panel Counsel and the learned HCGP are more than justified in pointing out that the Revenue Records since 1950 had reflected the suit lands as being '*State Forest Acquired*', for decades uninterruptedly. However, for the first time, name of Sri.Mayaga S/o Malla came to be entered only for the years 1970-71 to 1973-74. In some records, his name is continued for a bit longer period, is also true. On what basis, these entries came to be abruptly made in the name of a private party remains a secret within the mystery wrapped in enigma. Even in appeal, nothing has been stated by the respondent-plaintiffs, despite being repeatedly asked. The other significant thing is that even for these years, in the usage column of the RTC, the word '*Acq*' being the short form of acquisition continues. From the year 1980-81, the entry '*State Forest Acquired*' is restored to other columns without the name of Mayaga. There is a strong presumption in the given circumstances u/s 133 of the 1964 Act as to these long standing entries being genuine. Conversely, the entries made in the Revenue Records *sans*

any conveyance or the like does not enjoy presumptive value.

(g) Pursuant to 1929 Notification issued u/s 17 of the 1900 Act, as observed above, the Chamundibetta State Reserve Forest came to be formed and it obviously comprised of the suit lands. The Forest Map which is more than thirty year old and which has come from the proper custody namely the Forest Department enjoys presumptive value u/s 90 of the Indian Evidence Act, 1872, nothing of rebuttal having been shown. The arguable absence of entries in the Revenue Records would not rob away the legal effect of such a statutory Notification, making of entries being only incidental to the same. Whatever be that, there was 1935/1940 Notification issued under the 1894 Act, as well. However, appellants too have not placed on record any more material to show that the same resulted into accomplishment of acquisition of the subject lands. Of course, decades have rolled since the issuance of that Notification, is obvious. In the Clin of Time, things vanish and memory fades, needs no research to know.

(h) The long standing entries in favour of the Forest Department would also lend credence to the contention of Sri.P.D.Surana, learned Panel Counsel appearing for the KSRTC that acquisition having been duly accomplished, the said entries having been made continued unopposed and therefore, even if 1929 Forest Notification is held to have not comprised the suit lands, there is absolutely no case for the plaintiffs' side. The Apex Court in **STATE OF KARNATAKA VS. I.S. NIRAVANE GOWDA**⁶ at paragraphs 3 & 4 has observed as under:

“ ... The learned counsel contended that Ext.D-1, being the true copy of the Gazette Notification dated 26.6.1937, was rightly accepted by the trial Court as well as the first appellate Court and the High Court was not justified in not accepting the same particularly when it had become a part of the record and no objection had been taken by the respondents at the time of recoding the evidence. He also submitted that Ext. D-2, being the statement of lands taken for Indavara State Forest in Hukkund Village, should have been accepted. ... The trial Court as well as the first appellate Court, based on the evidence,

⁶ (2007) 15 SCC 744

recorded findings that the lands in question were the part of reserved forest. We do not find any good ground or a valid reason for rejection of Ext. D-1 by the High Court. When the lands were included in reserve forest, the entries in the revenue records were of non consequence and further, mere saguvali chits did not confer any title on the suit lands. This apart, the Revenue Authorities were not competent to deal with the property which was the part of the reserved forest. ...”

(i) Learned counsel appearing for the State & its officials is right in telling us that in view of the statutory scheme enacted in 1900 Act as interpreted by the Coordinate Bench in ***B.R.GANAPATHI SINGH*** *supra*, the suit itself was not maintainable. The grievance of private citizens in respect of land comprised in section 17 Notification has to be worked out as provided under the very same statute. In fact, at para 36, what has been observed being supportive of this view, is reproduced:

“Further, in the aforesaid context, we do not think that there can be any distinction with regard to a piece of land which has been decided to be constituted as reserved forest under Section 4(1) of the Act and land being deemed to be reserved forest under Section 17 of

the Act which is like a final notification. The reason being, once the land is constituted as reserved forest under Section 4(1) of the Act, it is by issuance of a Notification then the claims would have to be made and it is only on the consideration of the claims that an application for exclusion of the land constituted as reserved forest under Section 4(1) of the Act could be ordered. Merely because the procedure contemplated under the Act subsequent to the issuance of a Notification under Section 4 of the Act is not yet completed or no Notification has been issued under Section 17(1) of the Act, in our view, would not make any difference, as the object and purpose of reserving any land is to treat the said land as being constituted a reserved forest. If such a land or any portion thereof is excluded on adjudication of claims, it would not find a place in Notification issued under Section 17 of the Act. In such a case, it would no longer be constituted as reserved forest. But, till that procedure is not completed by the Forest Settlement Officer, it remains to be constituted as reserved forest."

(j) Had land owner Mayaga any grievance against the formation of Reserve Forest *inter alia* because of inclusion of the subject lands, he could have had recourse for redressal as provided under the provisions of 1900 Act itself. It is difficult to assume that Sri.Mayaga had any such grievance inasmuch as he had not instituted any proceedings either after the formation of State Reserve Forest or after the issuance of 1935/1940

acquisition Notification. It has been a settled position of law that once a special statute establishes separate machinery for working out the grievance, ordinarily, the jurisdiction of civil courts stands excluded vide a Five Bench decision in ***DHULABAI vs. STATE OF MADHYA PRADESH***⁷. The following observations therein are worth advertence:

"1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit... Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not."

Whether the contention as to maintainability of a suit was specifically taken in the pleadings or not, the same can be raised even in appeal, needs no mentioning. However,

⁷ AIR 1969 SC 78

such a contention is loosely taken in the Written Statements.

(k) The vehement contention of learned counsel appearing for the respondent-plaintiffs that if the 1929 Notification had comprised the suit lands for the formation of State Reserve Forest, the 1935/1940 Notification would not have been issued under the 1894 Act, appears attractive at the first blush. However, a deeper examination thereof shows its untenability: firstly, it is crystal clear that the 1929 Notification has formed the State Reserve Forest and the Forest Map appended to the same also shows demarcation of boundaries within which such a forest is declared. Therefore, non-mentioning of the survey numbers of suit lands would not advance the case of plaintiffs. Whether 1935/1940 acquisition Notification culminated into acquisition is also not forthcoming. It is possible to assume that this acquisition Notification resulted into such a culmination would not come to the rescue of respondents in view of the 1929 Forest Notification, more particularly because of the observations

made in GANAPATHI SINGH supra and in NARINDER SINGH too i.e., 'once the forest, always forest'. Much deliberation beyond this in this regard is not required.

(l) The last submission of learned counsel appearing for the respondent-plaintiffs that there is abundant material to sustain the finding as to the plaintiffs being the descendants of Sri.Mayaga, does not merit deeper consideration, in view of our specific finding that the suit lands are comprised in the State Reserve Forest under the 1929 statutory Notification, regardless of 1935/1940 acquisition Notification. It is also true that the impugned judgement & decree do not satisfactorily treat contentions of the parties in this regard, despite the battle lines being drawn up by virtue of their pleadings.

(m) There is yet another aspect that arises because of the Survey Report dated 23.07.2021 which specifically states that the KSRTC Bus Stand and its allied units do exist in the area not comprised in the suit lands, although a small portion thereof partly protrudes in one of the suit lands. We appreciate the fairness of learned counsel appearing

for the respondent-plaintiffs in submitting on instructions that his clients are fully in agreement with the Survey Report and that they have no objection whatsoever to the same. He has also added that his clients have absolutely no grievance whatsoever for the continued existence of the KSRTC Bus Stand and its allied units/activities.

In the above circumstances, this appeal succeeds; the impugned judgment & decree of the court below are set at naught; the suit of respondents in O.S.No.476/2010 is dismissed, however, costs having been made easy in peculiar circumstances.

A direction issues for the updation/correction of entries in all the official records concerning the subject lands and to show the same as being part of Chamundibetta State Reserve Forest. Compliance Report should be filed with the Registrar General of this Court within three months and delay in compliance would be viewed contemptuously.

This Court places on record its deep appreciation for the able research assistance rendered by its official Law Clerk, Mr. Raghunandan K.S.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Snb/cbc