

**(2013) 10 KAR CK 0029**

**In the Karnataka High Court**

**Case No :** Writ Petition No"s. 14039 to 14047 of 2013 and 10319 of 2013 (GM-MM-S)

Girish H.E. and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

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**Date of Decision :** 25-10-2013

**Acts Referred:**

**Citation :** (2014) 1 KarLJ 198

**Hon'ble Judges :** D.H. Waghela, C.J;B.V. Nagarathna, J

**Bench :** Division Bench

**Advocate :** Uday Holla, for Sri K. Chandranath Ariga, for the Appellant; R.G. Kolle, Additional Government Advocate, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

B.V. Nagarathna, J.—The petitioners have assailed notices at Annexures-J to J12 issued by the Range Forest Officer, Harappanahalli Range, Harappanahalli, as well as the Government Notification dated 22-6-1991 issued by respondent 1 (Annexure-K). They have also assailed the communications issued by respondent 4 dated 7-2-2013 and 3-12-2012 (Annexures-L, M and N). The petitioners have sought a direction for issuance of licences to quarry building stone and to renew the licence as far as petitioner 1 is concerned. It is the case of the petitioners that they are holders of quarrying lease and engaged in quarrying building stone in the land bearing Sy. No. 399/E measuring approximately 1,073.31 acres of Uchangi Durga Village of Harappanahalli Taluk, Davangere District. That an extent of 1,059.14 acres of that land was transferred by the Tahsildar, Harappanahalli to the Forest Department on 16-8-1978. But on 28-2-1991, the office of the Tahsildar, Harappanahalli, directed the Village Accountant and the Revenue Inspector to change the mutation in respect of the aforesaid extent in the name of Government-Revenue Department Subsequently, the Range Forest Officer, Harappanahalli, by his letter dated 19-3-1991 certified the land as belonging to Revenue Department. The State then issued notification dated

22-6-1991 u/s 4 of Karnataka Forest Act, 1963 (hereinafter referred to as "the Act") notifying Sy. No. 399/E measuring 422.32 hectares and Sy. No. 501/B3 measuring 4 hectares at Uchangidurga Village, Arasikere Hobli, Harappanahalli Taluk, Davangere District, to be Reserved Forest (hereinafter referred to as "lands in question" for the sake of convenience). It is the case of the petitioners that subsequently, no steps have been taken under the said Act, but the Revenue Department has granted several extents of land notified u/s 4 as Reserved Forest and has also recommended regularization of unauthorized occupation in the very same survey number. When the matter stood thus, the Range Forest Officer-respondent 3 issued notices at Annexures-J to J12 directing cessation of quarrying operations immediately on the premise that the land has been declared as reserved forest. Petitioner 1 requested respondent 3 for a copy of the final notification but a reply was issued as an endorsement dated 16-1-2013, stating that the final notification has not yet been issued. When petitioner 1 sought renewal of the licence, the Deputy Conservator of Forest-respondent 4 herein informed by his communication dated 7-2-2013 that renewal of a mining lease cannot be granted in a reserved forest area. An application for grant of fresh lease of land made by petitioner 1 to an extent of 1.50 acres in Sy. No. 399/E1 of Uchangidurga Village has also been rejected vide Annexure-M as also the application with regard to an extent of one acre of land in the same survey number is rejected by Annexure-N. Contending that the petitioners are prevented from carrying on their business of quarrying building stone and being aggrieved by the notices issued by the Forest Range Officer, they have preferred these writ petitions.

2. The respondents have filed statement of objections admitting that notification dated 28-2-1991 had been issued as per Annexure-B transferring C and D class of lands in favour of Forest Department for the purpose of raising plantation and afforestation. It is also admitted that on 22-6-1991, notification at Annexure-E has been issued by the State Government to declare the land in question as a reserved forest u/s 4 of the Act. That in view of Section 6 of the Act, it is impermissible to lease out any land included in the notification without the express sanction of the State Government. That a final declaration/notification u/s 17 of the Act has not been published by the State due to various "unexplainable reasons". But the delay in issuance of such a notification would not permit the petitioners to carry on quarrying activity in the lands in question. Also there is no period of limitation within which time the final notification needs to be issued. Reliance placed by the petitioners on the order dated 11-12-2012 passed by this Court in the case of V. Sampangi Ramaiah v. The Director/Commissioner, Department of Mines and Geology, Bangalore and Others 2014 (1) Kar. L.J. 181 (DB) has not been accepted by the State as SLP No. 11466 of 2013 has been filed against the said order and the same is pending consideration before the Hon"ble Supreme Court. It is also admitted that though several quarrying leases have been granted in the lands in question, the same is without obtaining an explicit sanction from the Government as required u/s 6 of the Act.

Though there is an explicit stipulation that "no objection" should be obtained from the Forest Department, the same has not been obtained in certain cases prior to granting of quarrying lease. As a notification u/s 4 of the Act has been issued in respect of the lands in question, it was incumbent upon the petitioners to obtain the clearance from the Ministry of Environment and Forest (MOEF), Government of India, under the provisions of the Forest (Conservation) Act, 1980 (hereinafter referred to as "the Central Act" for the sake of convenience) as the lands in question have been notified as reserved forest. Therefore, the State has sought dismissal of the writ petitions.

3. Learned Senior Counsel, Sri Udaya Holla, appearing for the petitioners, submitted that the transfer of the lands in question as C and D class lands by the Revenue Department to the Forest Department and subsequently, re-transfer to the Revenue Department would clearly indicate that the lands in question are revenue lands. Though notification dated 22-6-1991 has been issued by the Forest Department u/s 4 of the Act proposing to notify 422.32 hectares of land including the lands in question as reserved forest, no further notification has been issued or action has been taken. Pursuant to Section 5, there has been no proclamation issued and the proceedings contemplated under Sections 7 to 17 of the Act have not taken place. But since 1991, there have been grants made to various persons for cultivation as well as for house sites. That on following the legal procedure, quarrying leases for extraction of building stone were granted to the petitioners in the year 2010. But after a lapse of two years, the Range Forest Officer, Harappanahalli Range, issued the impugned notices to stop extracting building stones on the premise that the quarry lands have been declared to be reserved forest u/s 4 of the Act. That in the case of V. Sampangi Ramaiah, the Division Bench of this Court has held that once a notification has been issued u/s 4 of the Act, proposing to constitute any land into a reserved forest then a declaration u/s 17 of that Act shall be made within a reasonable time. If the same is not done, notification u/s 4 is liable to be quashed. Though a SLP has been filed against the said order, the Hon'ble Supreme Court has granted an order of status quo as on the date of the order, but there has been no stay of the order. Learned Senior Counsel further contended that the provisions of the Central Act would not apply as a prior permission under that Act is required only when forest land is sought to be utilised for non-forest purpose. But in the instant case, since no steps have been taken to declare the lands in question as a reserved forest by issuance of a notification u/s 17 of the Act for over two decades; the land does not become a reserved forest and much less is it a forest; in fact, the lands in question continue to be revenue lands as per the revenue records.

4. It was also contended that the impugned notices only state that the lands in question is constituted to be a reserved forest u/s 4 of the Act and therefore, quarrying operations cannot be continued. The notices do not refer to any permission to be obtained under the Central Act or that any prior permission of the Central Government was required u/s 2 of the said Act before granting of the

quarrying lease. Therefore, such a contention cannot be raised by the respondents in the writ petition for the first time.

5. Countering the said argument, learned Additional Government Advocate appearing for the State as well as the other respondents, defended the impugned notices by stating that when the notification has been issued u/s 4 of the Act, constituting any land into a reserved forest, there is a bar for accrual of forest rights except with the previous sanction of the State Government. That there is no time limit fixed for issuance of a declaration u/s 17 of the Act and even in the absence of any steps pursuant to the notification issued u/s 4 being taken by the State Government, no non-forest activity can take place in the lands so constituted as a reserved forest u/s 4 of the Act. That position would be squarely applicable to the lands in question. In the instant case, the State could not have granted leases subsequent to the issuance of Section 4 notification in favour of the petitioners without obtaining the sanction of the State Government. Therefore, the third respondent was right in issuing the said notices to the petitioners. Placing reliance on the Handbook of Forest (Conservation) Act, 1980 issued by the Ministry of Environment and Forests, Government of India, he contended that the lands in question are constituted as reserved forest and therefore, fell within the nomenclature of "forest" and hence, no non-forest activity can take place in a forest land without obtaining clearance under Forest (Conservation) Act ("FC clearance" for short). He, therefore, sought dismissal of the writ petitions.

6. Rebutting the arguments made on behalf of the State, learned Senior Counsel contended that reasons not assigned in the impugned notices cannot be canvassed for the first time by the respondents to justify the impugned notices. That the State Government, despite issuance of the impugned notification u/s 4 of the Act, has granted the leases to petitioners. Reiterating that in the absence of any declaration u/s 17 of the Act, the lands in question do not become reserved forest, it was contended that relief as granted to the petitioners in V. Sampangi Ramaiah's case be granted in favour of these petitioners also by quashing the impugned notification dated 22-6-1991 as well as the impugned notices.

7. Having regard to the pleadings and the respective contentions, the point that arises for our consideration is as to whether the Range Forest Officer was justified in issuing the impugned notices to the petitioners. In order to answer this point, the question as to whether the grant of quarrying lease to the petitioners was in accordance with law would also have to be gone into, having regard to the provisions of the enactments referred to above and the factual matrix of the case.

8. Any action taken by the authorities prior to the issuance of the impugned notification is irrelevant for the purpose of the case. The notification dated 22-6-1991 states that an extent of 422.32 hectares in Uchangi Durga Village, Davangere District, is notified as reserved forest. The said notification has

appointed the Range Forest Officer as the Forest Settlement Officer. Once any land is notified to constitute as a reserved forest, various steps are contemplated under the Act before a declaration can be issued u/s 17 of the Act declaring that the land is reserved forest. The relevant provisions of the Act in this regard are extracted below for felicity of reference:

2. Definitions.--In this Act, unless the context otherwise requires.--

(14) "Reserved Forest" means any land settled and notified as such in accordance with the provisions of Chapter II of this Act;

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3. Powers to constitute reserved forests.--The State Government may constitute any land which is the property of the Government or over which the Government has proprietary rights, or to the whole, or any part of the forest produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

4. Notification by Government.--(1) Whenever it has been decided to constitute any land a reserved forest the State Government shall issue a notification.--

(a) declaring that it has been decided to constitute such land a reserved forest;

(b) specifying, as nearly as possible, the situation and limits of such land; and

(c) appointing an officer (hereinafter called the "Forest Settlement Officer") to inquire into and determine the existence, nature and extent of any rights claimed by or alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest produce, and to deal with the same as provided in this Chapter.

Explanation.--For the purpose of clause (b) it shall be sufficient to describe the limits of the forest by roads, rivers, bridges, or other well-known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of sub-section (1) shall, be a person not holding any forest office except that of Forest Settlement Officer; but a Forest Officer may be appointed by the State Government to represent it in the inquiry under this Chapter by the Forest Settlement Officer.

5. Proclamation by Forest Settlement Officer.--When a notification has been issued u/s 4, the Forest Settlement Officer shall publish in Kannada and in any other regional language of the area, at the Headquarters of each taluk in which any portion of the land comprised in such notification is situate and in every town and village in the neighbourhood of such land a proclamation.--

(a) specifying, as nearly as possible, the situation and limits of the proposed forest;

(b) setting forth the substance of the provisions of Section 6;

(c) explaining the consequences which, as hereinafter provided, will ensue on such forest being constituted a reserved forest; and

(d) fixing a period of not less than three months from the date of publishing such proclamation, and requiring every person claiming any right or making any claim referred to or mentioned in Section 4, either to present to such officer within such period a written notice specifying or to appear before him within such period and state the nature of such right or claim (if any) and in either case to produce all documents in support thereof.

The Forest Settlement Officer shall also serve a notice to the same effect on every known or reputed owner or occupier of any land included in or adjoining the land proposed to be constituted a reserved forest or on his recognised agent or manager. Such notice may be sent by registered post to persons residing beyond the limits of the district in which such land is situate.

6. Bar of accrual of forest rights.--(1) After the issue of a notification u/s 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or 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; and on such land no new house shall be built or plantation formed, no fresh clearings for cultivation or for any other purpose shall be made and no trees shall be cut for the purpose of trade or manufacture except as hereinafter provided. No patta or right of occupancy shall without the previous sanction of the State Government be granted, in respect of such land, and every patta or right of occupancy granted without such sanction shall be null and void.

(2) Nothing in this section shall be deemed to prohibit any act done under the written permission of the Forest Settlement Officer.

(3) No Civil Court shall, between the dates of publication of the notification u/s 4 and of the final notification to be issued u/s 17 entertain any suit to establish any right in or over any land or to the forest produce of any land included in the notification u/s 4.

7. Inquiry by Forest Settlement Officer.--The Forest Settlement Officer shall take down in writing all statements made under clause (d) of Section 5 and shall, at some convenient place, inquire into all claims duly preferred under that section and into the existence and extent of any rights mentioned in Section 4 and not claimed u/s 5 so far as the same may be ascertainable from the records of the Government and the evidence of any person likely to be acquainted with the same.

The Forest Settlement Officer shall at the same time, consider and record any objection which the Forest Officer, if any, appointed under sub-section (2) of Section 4 may make to any such claim or any information which he may afford with regard to the existence and extent of any such right.

8. Powers of Forest Settlement Officer.--For the purpose of such inquiry, the Forest Settlement Officer may exercise the following powers, that is to say.--

(i) power to enter, by himself or any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and

(ii) the powers of a Civil Court in the trial of suits.

9. Extinction of rights--Rights in respect of which no claim has been preferred u/s 5, and of the existence of which no knowledge has been acquired by inquiry u/s 7, shall be extinguished unless, before the final notification u/s 17 is published, the person claiming them satisfies the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed u/s 5 in which case the Forest Settlement Officer shall proceed to dispose of the claim as hereinafter provided.

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17. Notification declaring forest a reserved forest.--(1) When the following events have occurred, namely.--

(a) the period fixed u/s 5 for preferring claims has elapsed, and all claims, if any, made under that section or Section 9 have been disposed of by the Forest Settlement Officer;

(b) if any such claims have been made, the period limited by Section 16 for appealing from the orders passed on such claims has elapsed and all appeals (if any) presented within such period have been disposed of; and

(c) all proceedings prescribed by Sections 11 and 14 have been taken and all lands and buildings (if any) to be included in the proposed reserved forest, which the Forest Settlement Officer has u/s 11 elected to acquire under the Land Acquisition Act, 1894, have become vested in the Government u/s 16 of that Act,

the State Government shall publish a notification specifying clearly according to the boundary marks erected or otherwise, the limits of the forest which is intended to constitute a 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.

(2) From the date so fixed, such forest shall be deemed to be a reserved forest.

9. The object of the Act is to consolidate the law relating to forests and forest produce in the State of Karnataka. Sub-section (14) of Section 2 defines "Reserved Forest" to mean any land settled and notified as such, in accordance with the provisions of Chapter II of the Act. Section 3 empowers the State Government to constitute any land which is the property of the Government or over which the Government has proprietary rights, as a reserved forest. For that purpose, a notification has to be issued u/s 4 of the Act declaring that it has been decided to constitute such land as a reserved forest specifying as nearly as

possible, the situation and the limits of such land. An Officer called Forest Settlement Officer has to be appointed to enquire into and determine the existence, nature and extent of any rights claimed by or alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest produce. Such an Officer shall not be a Forest Officer.

10. The notification issued u/s 4 of the Act may be termed as a Preliminary Notification. The same has to be published by the Forest Settlement Officer u/s 5 as a proclamation and also a copy of the notice has to be served on every known owner or occupier of any land included in or adjoining the land proposed to be constituted a reserved forest or on his recognized agent or manager. On the issuance of a notification u/s 4, no right can be acquired in or over the land comprised in the notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government. Also no Civil Court can entertain any suit for the establishment of any right on any land included in the notification issued u/s 4.

11. Under clause (d) of Section 5 of the Act, under which a proclamation is made by the Forest Settlement Officer a period of three months from the date of publishing the proclamation is given to any person claiming any right or making any claim referred to u/s 4 by producing all documents in support thereof. If such a claim is made, the Forest Settlement Officer has to enquire into the claim by looking into the records of the Government and the evidence of any person acquainted with the same and also hear the concerned Forest Officer as regards any objections u/s 7.

12. Section 8 grants certain powers to the Forest Settlement Officer for the purpose of conducting an enquiry. If no claim is made within the period fixed u/s 5 before the Forest Officer, any rights in that regard shall be extinguished unless before the final notification u/s 17 is published, the person claiming them satisfies the Forest Settlement Officer that he had sufficient cause for not preferring such a claim within the period fixed u/s 5 in which case the Forest Settlement Officer would have to proceed to dispose of the claim.

13. Section 10 deals with the manner in which claims relating to shifting cultivation would have to be dealt with. Section 11 enables the Forest Settlement Officer to acquire land over which a right is claimed in case such land is not excluded from the limits of the reserved forest or no agreement with the owner for the surrender of his rights is arrived at. In the event of an acquisition, the provisions of the Land Acquisition Act, 1894 would apply and the Forest Settlement Officer would act as a Deputy Commissioner. With regard to the right of way to pasturage or other forest produce or water, the Forest Settlement Officer has to consider any such claims and pass an order u/s 12 read with Sections 13 and 14. If no settlement u/s 14 is arrived at, then compensation has to be determined on the basis of the value of the right claimed on the date of the preliminary notification in accordance with the provisions of the Act, insofar as such provisions are applicable u/s 15 of the Act.

14. Section 16 provides for an appeal against an order passed u/s 11, 12, 14 or 15. The statutory period for filing of an appeal is three months from the date of the order made by the Forest Settlement Officer. Section 17 states that when the period fixed u/s 5 for preferring a claim has lapsed and all claims have been disposed of u/s 9 and the period of limitation for filing an appeal u/s 16 has lapsed and appeals if any filed have been disposed of and all proceedings under Sections 11 and 14 have been taken, the State Government shall publish a final notification specifying clearly the boundary marks of the reserved forest and declare the same to be a reserved forest from the date fixed by a notification subject to the exercise of rights if any specified in such a notification. From the date so fixed, such forest shall be deemed to be a reserved forest. Before the date fixed in the notification u/s 18, the same shall be published in the Official Gazette and at the Taluk Headquarters in which the forest is situated and in the neighbourhood as a proclamation is published u/s 5.

15. On a reading of the aforesaid provisions, it becomes clear that though no specific date has been fixed for the issuance of a declaration u/s 17 of the Act, nevertheless, after the issuance of the preliminary notification, a period of three months is granted to every person to make a claim. Also, the provisions of the Land Acquisition Act, 1894 would have to be read into Section 11 of the Act in case, a necessity to acquire the land arises.

16. It is observed that in many provisions of the Land Acquisition Act, 1894, specified time-frames have been mandated-from the date of publication of the preliminary and final notification as well as for passing of an award. No doubt, an elaborate procedure has been contemplated between the issuance of a preliminary notification and the issuance of a declaration or final notification under the Act under consideration encompassing the making of claims with regard to the notified areas proposed to be declared to be reserved forest and also settlement of the said claims, but the provisions of the Land Acquisition Act, 1894, are also contemplated and orders passed under Sections 11, 12, 14 and 15 are also subject to appeal. However, there is no specified period mentioned under the Act within which, the notification declaring the reserved forest has to be issued u/s 17 of the Act, once the preliminary notification has been issued.

17. Before answering the contention raised by the petitioners that in the absence of any declaration u/s 17 of the Act, the lands notified u/s 4 of the Act cannot become forest lands and therefore, FC clearance is not required, it would be necessary to first set at rest, the rival contentions raised on the basis of the decision of the Division Bench of this Court in V. Sampangi Ramaiah's case to which one of us (Mrs. B.V. Nagarathna, J.) was a member. Briefly stated, the facts of that case were that the petitioner therein was granted quarrying lease in respect of 12.30 acres of land in Sy. No. 601/A1 in Kollegal Taluk. Notice dated 8-7-2005 was issued to the petitioner therein calling upon him to stop all quarrying operations. The same was assailed in W.P. No. 17941 of 2005, which was allowed by this Court by order dated 16-8-2007 and the impugned notice

was quashed. As preliminary notification dated 3-6-1991 had been issued u/s 4(1) of the Act, and the Assistant Commissioner of Kollegal Station was appointed as Forest Settlement Officer by the State Government to enquire into the existence of any rights or claims of persons under the Act pursuant to Section 4 notification, a communication dated 18-1-2007 was issued to the petitioner therein. In the meeting held on 20-1-2007 under the Chairmanship of the Forest Settlement Officer-cum-Assistant Commissioner, it was decided to exclude 366.63 acres of land and the balance 617.71 acres was to be constituted as reserved forest out of a total extent of 984.34 acres in Sy. No. 601/A1. When the matter stood thus, another notice dated 17-10-2008 was issued to the petitioner therein asking him to stop all quarrying operations and not to transport the quarried material till further orders. That notice was assailed in W.P. No. 13708 of 2008 and by order dated 25-6-2009, the writ petition was allowed and the notice was quashed reserving liberty to the Joint Director, Department of Mines and Geology, Mysore Zone to hold a detailed enquiry with regard to the nature of the land and to pass orders in accordance with law. During the pendency of that writ petition, the lease period had come to an end and an application for renewal had been filed by the petitioner therein seeking renewal of 10 acres of land out of 12.30 acres of land granted originally. By an endorsement dated 8-1-2010, the petitioner therein was informed by an endorsement that the land sought by him for renewal of the lease was notified as a reserved forest. Assailing that endorsement a revision petition was filed, which was dismissed and thereafter, the writ petition was filed. In the order passed in the writ petition, paragraphs 19 to 23 are extracted for immediate reference:

19. When specific period has been fixed, for making a claim and also by filing an appeal by any persons, a corresponding time-frame for the adjudication of the claims and for issuance of a declaration ought to have been made. The absence of any specific time frame for the issuance of a declaration u/s 17 would imply that such a declaration must be made within a reasonable time. What is the reasonable time in the absence of any specific time frame mentioned in a statutory provision would vary from Act to Act and depending upon the object and scope of the Act. In the instant case, having regard to the object and scope of the Act in question, we are of the view that a period of three years would be the reasonable period within which, a declaration u/s 17 of the Act ought to be made, excluding the period when steps are taken under the Land Acquisition Act, 1894, as well as appellate proceedings, if any. This period obviously would exclude any stay orders granted by any Court of Law. But in the instant case, the State is unable to point out any steps initiated after the order passed by the Forest Settlement Officer, excluding 366.63 acres, which according to the petitioner also includes the area of the subject quarry. This aspect is communicated to the petitioner in the year 2007, whereas in 2004 itself the quarry lease was granted to the petitioners.

20. In this context, reliance could be placed on the fact that originally in the matter of issuance of preliminary notification and a declaration under the

provisions of the Land Acquisition Act, 1894, there was no time limit fixed for making an award. Subsequently, in the year 1984, an amendment was brought in the form of insertion to Section 11-A of the Land Acquisition Act. In fact, in the case of Ram Chand and Others Vs. Union of India (UOI) and Others, , which is a decision on a dispute arising prior to the insertion of Section 4 to the Land Acquisition Act, the Supreme Court has held that compensation has to be paid within a reasonable time, even in the absence of any time limit prescribed under the Act and the reasonable time was stated to be about two years in the said case.

21. In the instant case, though the preliminary notification is issued on 3-6-1991, the final notification is yet to be issued. In fact, several adjournments were given in the matter so as to enable the respondent-authorities to take a decision with regard to issuance of a declaration u/s 17 of the Act, even then, no steps have been taken to issue such a declaration. Therefore, we find that the State Government has by not taking steps for over two decades after the issuance of the preliminary notification, abandoned its intention to notify Sy. No. 601/A1 as a Reserved Forest. This becomes all the more clear by the fact that subsequent to the issuance of the preliminary notification in the year 1991 and quarrying lease has also been granted to the petitioner and possibly to the other similarly placed persons in the year 2004. Therefore, the impugned order at Annexure-A is without authority of law.

22. The preliminary notification dated 3-6-1991 is also quashed insofar as Sy. No. 601/A1 is concerned, though in our view, the entire preliminary notification is inchoate. Annexures-A and B are also quashed. The respondent-Authorities are directed to consider the petitioner's application for renewal of the quarrying lease for a further period of ten years, excluding the period of lease when the petitioner was prevented from carrying on the quarrying activities during the subsistence of the Quarrying Deed No. 105 since the year 2004.

23. The writ petition is accordingly, allowed. The renewal of the lease to be effected within a period of 30 days from the date of receipt of certified copy of this order. Parties to bear their respective costs.

18. What distinguishes the present case from the aforesaid case is the fact that in the aforesaid case the Forest Settlement Officer had excluded 366.63 acres notified u/s 4 notification, which included the quarry area which had been granted to the petitioner therein in the year 2004. This fact was also communicated to the petitioner therein in the year 2007. It is that fact which ultimately prompted this Court to grant relief to the petitioner therein. The observations made by the Division Bench in that order to the effect that "in the absence of there being declaration u/s 17 of the Act within a reasonable time, the entire preliminary notification would be inchoate" can be taken as observations by way of obiter dicta and in the context of the lands being excluded from Section 4 notification by the Forest Settlement Officer, as the relief was granted to the petitioner therein based on the communication of the Forest

Settlement Officer who had excluded 366.63 acres of land in Sy. No. 601/A1 from the purview of Section 4 notification under which the quarry lease was granted. The exclusion of the quarry lands from the Notification issued u/s 4 of the Act tilted the decision in favour of the petitioner therein and therefore the absence of a declaration u/s 17 of the Act was irrelevant having regard to the facts of that case. But in the instant case, there has been no exclusion of the lands in question from the purview of the notification issued u/s 4 of the Act. Therefore that decision cannot be a precedent for the present case.

19. Having considered the implication of the decision in V. Sampangi Ramaiah's case, this case would have to be decided on its facts. If the provisions of the Act are applied to the facts of the case, what emerges is that when a notification is issued u/s 4 declaring the decision to constitute any land as Reserved Forest, by virtue of Section 6 of the Act, no contract can be entered into in respect of that land on behalf of the Government with any person except with the previous sanction of the State Government and no right can be acquired in or around or over the land comprised in the notification except by succession or under the grant or 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. No doubt, u/s 6, the State can enter into a contract with any person in respect of the lands notified u/s 4 provided the provisions of that section are fully complied with. Therefore, in that sense the petitioners may be partly right in contending that despite issuance of notification u/s 4 of the Act State had the power to grant the mining leases in favour of the petitioners. But the matter does not rest here.

20. What has to be discerned in this case is, whether the very issuance of a notification u/s 4 of the Act declaring the decision to constitute any land as a reserved forest would bring into play the provisions of the Central Act mandating FC clearance for all non-forest activities. In this context, it would be relevant to re-visit the impugned notification dated 22-6-1991 at Annexure-E. Factually, it is not in dispute that the lands which are the subject-matter of quarrying leases granted in favour of the petitioners are covered by the notification issued on 22-6-1991 u/s 4 of the Act. Placing reliance on Section 4 of the Act, the impugned notices have been issued to the petitioners as the quarrying leases have been granted subsequent to the notification issued u/s 4 of the Act. Therefore, the question is, whether the grant of leases in favour of the petitioners in the absence of FC clearance was legal or not. In order to answer this question, it has to be first decided as to whether the issuance of the notification u/s 4 of the Act would constitute the lands in question as "forest" requiring FC clearance under the Forest (Conservation) Act, 1980. That Act, is a Central Act and does not define the word "forest". Section 2 of the F.C. Act reads as follows.--

2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose.--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.--

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purposes;

(iii) 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;

(iv) 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 re-afforestation.

Explanation.--For the purpose of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for.--

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) any purpose other than re-afforestation,

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, water holes, trench marks, boundary marks, pipelines or other like purposes.

(emphasis added)

21. A bare reading of the said Section would make it apparent that it begins with a non obstinate clause and it overrides any other law for the time being in force in a State. No State Government or any other authority can make an order directing that any forest land or any portion thereof be ceased to be reserved; that any forest land or any portion thereof may be used for any non-forest purposes; 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 organization not owned, managed or controlled by the Government; 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 re-afforestation. The expression "non-forest purpose" is defined in the explanation to mean the breaking up or clearing of any forest land or portion thereof for - (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants; (b) any purpose other than re-afforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment

of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, water holes, trench marks, boundary marks, pipelines or other like purpose.

22. On a reading of the explanation it becomes very clear that quarrying activity is non-forest activity. No doubt, Section 4 of the Act empowers the State Government to declare the decision to constitute any land as a reserved forest, but would the declaration of any land as a reserved forest per se be sufficient to extend the nomenclature of "forest" to such a land for the purpose of the Central Act, so as to require FC clearance, is the question. Having regard to the object of the Central Act, and the fact that it has an overriding effect on all State laws, the Hon<sup>ble</sup> Supreme Court has enunciated what the expression "forest" under that Act would mean, in T.N. Godavarman Thirumulkpad Vs. Union of India and others, . In that case, it has been held that the term "forest", occurring in Section 2 of the Central Act would not only include "forest" as understood in the dictionary sense, but also any land on record as forest in the Government record irrespective of ownership. Thus, the expression "forest" would include; (i) all forests as understood in the dictionary sense (ii) all statutorily recognised forest whether designated as reserved, protected or otherwise; and (iii) forest land recorded as forest in the Government records.

23. As per Chambers English Dictionary "forest" means, a large uncultivated tract of land covered by trees; woody ground and covered with upright objects and unfenced woodland. As far as statutorily recognised forest is concerned, the Indian Forest Act, 1927 was operating in British India and after independence, extended to the whole of India, except the territories immediately before the 1st November, 1956 comprised in part B States. That Act was enacted to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce. Chapter II of that Act pertains to Reserved Forests. It enabled the State Government to constitute any forest land, or waste land, which is the property of the Government or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled as a reserved forest. Sections 3 to 22 of that Act are almost in pari materia with Sections 3 to 18 of the Karnataka Forest Act, 1963. The Karnataka Forest Act of 1963 was enacted pursuant to the integration of Karnataka State so as to consolidate and amend the law relating to forests and forest produce in the State. Under that Act, Section 2 defines the "District Forest" to include "all lands at the disposal of Government and not 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." However, the State Government is competent to modify or set aside such assignment and constitute any such land as reserved, village or district forest, or devote the same to any other purpose it may deem fit. Section 2(8) defines "land at the disposal of the State Government" to mean "land in respect of which no person has acquired: (a) permanent, heritable and transferable right of use and occupancy under any law for the time being in force; or (b) any right created by

grant or lease made or continued by or on behalf of Government".

Section 2(13) defines "Protected Forest" 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 u/s 35. Section 2(14) defines a "Reserved Forest" to mean any land settled and notified as such in accordance with the provisions of Chapter II (comprised of Sections 3 to 28) of the Act. As seen earlier all forest lands recorded as forest in the Government records come within the nomenclature of forest as per the judgment in T.N. Godavarman's case. Thus, the provisions of Central Act, would apply to all forest lands, as understood in its extended meaning, irrespective of ownership or classification thereof.

24. Therefore, by virtue of Section 2 of the FC Act, prior approval of the Central Government is mandatory as well as a pre-condition for the grant of lease of forest lands for non-forest purposes including a quarrying lease. The expression "prior approval" would mean that before a grant of lease is made, there should be a previous approval of the Central Government. It cannot be construed to mean that, after the grant of lease, the approval of the Central Government would be obtained prior to commencement of quarrying operations. The requirement of approval by the Central Government u/s 2 is thus a mandatory condition precedent to the grant as well as renewal of a mining lease in a forest area, as held in Rural Litigation and Entitlement Kendra Vs. State of U.P. and Others, and Ambica Quarry Works Vs. State of Gujarat and Others, . Thus, Section 2 of the Central Act places a restriction on the State Government or other authority to grant any part of the forest land or any portion thereof for non-forest purpose except with the prior approval of the Central Government. In fact, when an application is made for grant of lease of land for quarrying, it would be incumbent upon the State Government to first ascertain all relevant particulars as to whether the grant of lease is legally permissible and viable or not. If the State Government decides that such a lease should be granted, then requirement of prior approval of the Central Government would arise if the quarrying lease happens to be in respect of land in a forest area. In this context, reliance placed by the petitioner on another decision of the Apex Court reported in In Re: Construction of Park at Noida Near Okhla Bird Sanctuary, , pertaining to a project in Noida in Uttar Pradesh is not applicable having regard to the facts of the present case.

25. Coming back to the facts of the present case, we note that the State Government had issued the notification u/s 4 of the Act declaring its decision to constitute, inter alia, the lands in question as reserved forest. We reiterate that the mere publication of such a notification would not constitute any land as a "reserved forest". Subsequent sections enable the citizens to claim rights in the reserved forest and also empower the State to take various steps before constituting the land as a reserved forest. The Forest Settlement Officer appointed u/s 4(1)(c) of the Act can even exclude certain areas from the

boundaries of the land notified u/s 4 of the Act. It is only when the events contemplated under Sections 5, 9, 11 and 16 have occurred that the State Government shall publish a notification specifying clearly the boundary marks or limits of the forest, which is intended to constitute a reserved forest and to declare the same to be reserved forest from the date fixed for such notification subject to the exercise of rights, if any, specified in such notification. Therefore, declaration u/s 17 is to constitute a reserved forest by operation of law, from a certain date vis-a-vis the extent of the reserved forest with boundary marks so as to take care of exclusion of any land from the purview of the reserved forest the areas covered in forest prior thereto.

26. It may be also noted that the definition of "District Forest" in Section 2(2) of the Act, is inclusive and wide enough to expressly include all land at the disposal of Government except the land within the reserved or village forest or the land assigned as free grazing ground or for any other public or community purposes. And the provisions of Section 33 of the Act empowers the Government to make rules to provide for regulating or prohibiting quarrying of stones over the land at the disposal of the Government. The making of rules in exercise of powers conferred, inter alia, by Section 33 of the Act is provided in Chapter IV titled "District Forests". Under Rule 25(1) of the Karnataka Forest Rules, 1969, no person shall put poison or use dynamite or other explosive substance for fishing, hunting or for any other purpose in the district forests. But insofar as the lands in question are concerned, we again reiterate that mere issuance of a notification u/s 4 of the Act is sufficient to constitute the land comprised in it as "forest", in which any non-forest activity would require prior approval u/s 2 of the Central Act. In this context, learned Additional Government Advocate has filed Handbook of Forest (Conservation) Act, 1980 with the Forest (Conservation) Rules, 2003, Guidelines and Clarifications. In Part-C of the Handbook, dealing with the application of the Central Act, in para 1.6, it is stated that mining including underground mining is a non-forest activity. Therefore, prior approval of the Government of India is essential before a mining lease is granted in respect of any forest area. The Act would apply not only to the surface area, which is used in the mining but also to the entire underground mining area beneath the forest. The renewal of an existing mining lease in a forest area also requires prior approval of the Government of India as also continuation or resumption of mining operation on the expiry of a mining lease, without approval, would amount to contravention of the Central Act.

27. The impugned notices categorically refer to the notification issued u/s 4 of the Act, declaring the decision to constitute a reserved forest, which is a forest recognized by a statute as per the definition given by the Hon'ble Supreme Court and therefore, prior approval or FC clearance u/s 2 of the Central Act was a mandatory requirement. In above view of the matter, the Range Forest Officer was justified in issuing the impugned notices to the petitioners and they cannot be quashed as being illegal despite the fact that the lands in question were yet to be declared to be reserved forest u/s 17 of the Act.

28. As far as the challenge made to the notification issued u/s 4 of the Act is concerned, it is in the context of the said notification not culminating into a declaration u/s 17 of the Act. In fact, such a challenge is sought to be substantiated only by placing reliance on the order of this Court passed in V. Sampangi Ramaiah's case. We reiterate that the said order cannot be a precedent for this case for the following reasons. On facts, in that case, the particular quarry land, which was notified u/s 4 was in fact excluded from the said notification by the Forest Settlement Officer-cum-Assistant Commissioner and that was communicated to the petitioner therein. Therefore, Section 4 notification was practically non-existent for the quarrying lease of the petitioner therein. Even then, a direction was given to the authorities to only consider the case of the petitioner therein, for renewal of lease and no direction to renew the lease was issued. But in the instant case, no such exclusion of the lands in question from Section 4 notification has taken place. In the absence of exclusion of the lands in question from the purview of the notification issued u/s 4 of the Act, the grant of quarrying lease without prior approval of the Government of India would amount to an illegal action. Therefore, the order in V. Sampangi Ramaiah's case, cannot be a precedent in the facts of these writ petitions. In the result and for the reasons discussed hereinabove, the writ petitions are dismissed without any order as to costs.