

(1997) 01 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 31222 of 1996

Magarahole Budakattu Hakku Sthapana Samithi and others APPELLANT
Vs
State of Karnataka and others RESPONDENT

Date of Decision : 20-01-1997

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2, 2 (i)
Wild Life (Protection) Act, 1972 — Section 20, 353

Citation : AIR 1997 Kar 288

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

**Advocate : M/s. L.G. Hananur and Co. and Ravivarma Kumar, for the Appellant;
S. Vijaya Shankar, Advocate General, N.K. Ramesh, H.C.G.P., B.V. Acharya and
Ashok B. Hinchagari, for the Respondent**

Judgement

1. This is a public interest litigation. The petitioner Organisations claim to be working for the welfare of the tribals and are interested in ensuring the maintenance of ecological balance in Nagarahole National Park, which according to them, is essential to be maintained for the environmental reasons as also to protect the interests of the tribals residing in and nearby areas of the National Park.

2. In the present writ petition, the petitioners have challenged the legality and propriety of creating lease hold rights in certain properties situated in the midst of the Nagarahole National Park, under the lease deed dated 25-6-1994 (Annexure 'F'), by the Government of Karnataka in favour of the 5th respondent, namely, M/s. Gateway Hotels and Gateway Resorts Limited, a private company forerunning its business of boarding, lodging and restaurant, for a period of 18 years.

3. The legality of the impugned grant of lease hold rights has been assailed by the petitioners on the ground that the same has been made in flagrant violation of the statutory restrictions contained in the Wild Life Protection Act. 1972, and

the Forest (Conservation) Act. 1980. The propriety of the transaction has been questioned keeping in view the larger interest of the tribals residing in the forest and the apprehension that the promoting of such eco-tourism will spell doom for the precious undisturbed forest cover and will bring in modern day vices of the ultra urban culture.

FACTS NOT IN DISPUTE :

4. The lease hold properties form part of the Nagarahole National Park, which comprises of deep forestation, having rich wild life like elephants, four hundred antelopes, sloth bear, leopard, giant squirrel, adjutant stork, malabar pied hornbill, shahin falcon., etc. and also variety of birds of rare varieties.

5. Pursuant to a direction issued in the present proceedings the Asst. Conservator of Forests through an affidavit dated 9-1-1997 has stated that "the land in question is forest one which form part of Hat Ghat reserve forest. The area in question falls in the buffer area of wild life sanctuary of Nagarahole."

6. Admittedly, on 16-3-1983, the area was notified as National Park u/s 35 of the 1972 Act. A copy of the notification has been placed at Annexure "A".

7. It is a mailer of record that even before the declaration of the area as wild life sanctuary, in the areas in question there existed a departmental saw mill which the Government had handed over to respondent No. 3 -- Karnataka Slate Forest Industries Corporation Limited, under Government Order No; AFD 202 FDP 73, dated 27-3-1975 (Ann. "R2").

8. It is further born out from the records that pursuant to Government Order No: KHF:93:FPC:87 dated 10-4-1987, the aforesaid Saw Mill area at Murkal was transferred to M/s. Karnataka Forest Plantation Corporation, for establishment of a reception Center with related facilities at a cost of Rs. 175 lakhs. Accordingly, the said Plantation Corporation developed a project, namely, Murkal Complex and Wild Life India Cottages comprising of reception center, super deluxe cottages, deluxe cottages, double bedroom dormitory, general toilets, staff quarters, managers quarters, open air dinning hall, kitchens, bore wells, etc., the said complex with details of the structures spread over a large stretch of forest area measuring about 56,41 acres are ascertainable in greater details from the site plan of Murkal, which forms Schedule III to the impugned lease deed.

9. The said structures have now been leased out to the 5th respondent-Company, under the lease deed dated 25-6-1994 (Ann. "F"), for running its business of boarding, lodging and restaurant. Subsequent to execution of the impugned lease deed, the 5th respondent company has undertaken the work of reconstruction/renovation of the demised structures and construction of lead roads for providing required amenities and facilities to its customers intending to enjoy the flora and fauna of the National Park.

FACTS IN DISPUTE :

10. Since, the execution of the lease deed granting rights in the properties in question, which forms an integral part of the National Park is not in dispute, it will be appropriate to cull out some of the relevant and important stipulations contained therein :--

"This indenture of lease made on the twenty fifth day of June. One thousand Nine hundred and Ninety four (1994) between, the Government of Karnataka represented by the Principal Chief Conservator of Forests of Karnataka, Aranya Bhavan, Bangalore, hereinafter called the lessor (which expression shall unless the context does not so admit, include their successors and assigns) on one part and M/s. Gateway Resorts Limited, Company incorporated under the Companies Act, 1956, having its registered office at Gateway Riverview Lodge. Village Dhamandivi, Taluka Khed. District Ratnagiri 415 707, Maharashtra hereinafter referred to as the lessee (which expression shall unless repugnant to the context or meaning there be deemed to mean and include its successors in business and assigns) of the other part ; Witnesseth as follows :

(1)(a) whereas the lessor is the owner in possession of the Wild Lands (India) Project at Village Murkal, Nagarahole, Hunsur Road comprising of main complex, deluxe and super deluxe cottage, together with the structures/civil constructions. Situated thereon including viewing platform facing the lake and all the furniture and fittings and fixtures which will comprise Reception Centre, Double rooms, dormitories with 76 beds more particularly listed in Schedule 1A and indicated in the plan forming schedule III (A) (B) and whereas, the lessor is also the owner in possession of Wild Lands India) Resorts, Murkal, Nagarahole, Hunsur Road comprising of 12 (Twelve) collages and Managers Bungalows shown in plan forming schedule 1 (b) MA. Gateway Hotels and Gateway Resorts Ltd. Corporate Office ; Manduk House, Mandlik Road, Apollo Bunder, Bombay 400 039 (sd.) S. Parameshwarappa, Principal Chief Conservator of Forest, Aranya Bhayan, Malleshwaram, Bangalore -- 560 003, N.J.R. II, whereas the lessee M/s, Gateway Hotels and Gateway Rcsons Limited having agreed to take both premises as stated in 1 (A) and (B) above on lease for rent for running a wildlife resort by providing boarding, lodging and restaurant and connected activities and facilities to visitors to utilise it towards running a Wildlife Resort thereon for pro motion of Wildlife Tourism (hereinafter referred to as the said activities Hi and whereas the Government of Karnataka in their order No. (1) AHFF 145 FPC 89 Bangalore dated 21 -7-92 and FEE 61 FPC 93 Bangalore dated 30-8-93 for Murkal Complex and FEE 61, FPC 93, Bangalore dated 9-12-93 for Wild Land (India) Cottages -- have ordered to abide by the Principal Chief Conservator of Forests and M/s. Gateway Hotels and Gateway Resorts Limited. Now this indenture witnesseth and it is hereby agreed by and between the parties that :

1. effectively from the date of execution of this in demure the lessor doth hereby demise to the lessee the premises morefully described in schedule 1(A) and (B) above and appended hereto forming a part of the agreement on an as is where is condition for a period of 18 (eighteen) years on terms and conditions as set out

hereinafter and upon the lessee paying to the lessor the rent mentioned hereinafter.

2.

5. The lessee shall be responsible to undertake the necessary advertisements, publicity and such acts necessary for attracting the visitors both Indian and Foreign.

6. The lessee shall run such business of boarding, lodging, restaurants under the name and style in the demised premises as is deemed fit by the lessee.

LESSEES COVENANTS

a. The lessee shall strictly comply with the applicable rules and regulations relating to running of wildlife resorts, protection and preservation of forest and wildlife and environment.

b. The lessee will be responsible to keep the said demised premises in safeguard and sound conditions save normal wear and tear and also do such acts as are necessary for maintaining hygiene and sanitation and shall also at their cost do the necessary routine repairs colours, washing, polishing, etc., which are necessary for the upkeep and running of the said premises as a wildlife resort without any damage to the said demised premises.

f. The lessee shall not without previous consent in writing of the lessor make any structural changes which are external to demised premises but this consent shall not be unreasonably withheld. However, the lessee will be entitled to carry on all alterations within the existing structures without any previous consent of the lessor.

j. The lessee shall not cut, damage, or fell any standing trees in the premises.

11. The petitioners have alleged that under the guise of renovation of the structures, the 5th respondent-company is putting up new structures extending its operational activities to unworked forest lands by constructing metalled roads, cutting trees and is driving away the tribals residing around the area. They have also alleged that powerful generator sets have been installed which in due course will severely affect the unhindered natural movement of wild animals of the National Park, who had been coming to the nearby natural lake for drinking water. In support of the said facts, apart from making affidavit statements, they have also placed on record the photographs to substantiate their stand. The authenticity of the photographs has not been challenged by the respondents. But according to them the activities demonstrated in those photographs merely evidences renovation activities to make the resort habitable and comfortable for the visitors. According to them, they have not constructed any new structure. They have also seriously repudiated the allegations that they have cut any tree or are trying to make new metalled roads. According to them they have only placed boulders on preexisting jungle path ways to make the roads motorable for

an easy access to the resort.

TSSUES INVOLVED

12. In the aforesaid factual background the legal issues which emerge for consideration are, whether the assignment of interest in favour of the 5th respondent company by way of lessee or otherwise was legally permissible under the provisions of (i) the Wild Life (Protection) Act, and/or (ii) the Forest Conservation Act.

Re: Wildlife (Protection) Act, 1972

13. Let me first refer to the relevant provisions of Wild Life (Protection) Act. This Act has been enacted by the Parliament for protection of wild animals, birds and for matters connected therewith or ancillary or incidental thereto. Clause 21 of Sec. 2 defines "National Park" to mean an area inter alia declared to be National Park under Sec. 35 of the said Act.

14. Sec. 20 of the 1972 Act, provides for bar of accrual of rights in any area declared as a sanctuary u/s 18. It reads thus :--

Sec. 20 : Bar of accrual of rights :--

"After issue of a notification under Sec. 18, no right shall be acquired in, on or over the land comprised within the limits of the area specified in such notification, except by succession, testamentary, or intestate."

15. Section 35 of the 1972 Act empowers the State Government to constitute an area as a national park for the purpose of propagating or developing wildlife therein or its environment for the reason of its ecological, fauna, flora, geomorphologic or zoological association or importance. Subsection (3) of the said section provides that :

"Where any area is intended to be declared as a national park, the provisions of Sections 19 to 26 (both inclusive) shall, as far as may be, applied to the investigation and determination of claims, and extinguishment of rights, in relation to a land in such area as they apply to the said matters in relation to a land in a sanctuary."

16. A conjoined reading of Secs. 20 and 35(3) of the Act spells out a restriction on acquisition of any right in, on or over the land comprised within the limits of the area of a national park except by succession, testamentary or intestate. Therefore, it seems obvious to me that on and after the date of declaration by the State Government of its intention to declare an area as a national park under Sec. 35(1), no one can acquire any right in, on or over the land comprised therein either by way of a transfer within the meaning of Transfer of Property Act, 1882 or by easement or license as understood under the Easements Act, 1882.

Re: The Forest (Conservation) Act, 1980

17. This Act was enacted to provide for conservation of forests by or pulling an effective check on further deforestation which ultimately results in ecological imbalance. Sec. 2 of the Act envisages restrictions on the dereservation of forests and use of forest land for non-forest purpose. The clause (iii) of Sec. 2 which is relevant for the present purpose is to following effect :

"Sec. 2(iii) -- Notwithstanding any thing 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 State Government, any order directing,

(i)

(ii) . . ., and

(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."

18. From the above mentioned restrictive provision, it is clear that no State Government can assign by way of lease or otherwise any forest land or portion thereof to a person other than a governmental instrumentality except with the prior approval of the Central Government. In this context, the legal meaning of two expressions which has been made an issue at the bar namely, "forest land" and "assigned by way of lease or otherwise" needs to be appropriately ascertained.

19. Recently, in its order dated 12-12-1996 passed in the case of T.N. Godavarman Thirumulkpad Vs. Union of India and others, , the Apex Court has held that at page 1230: of AIR :

"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 is to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213 , *Rural Litigation and Entitlement Kendra v. State of U.P.* 1989 Supl (1) SCC 504 : (AIR 1989 SC 594), and recently in the order dated 29th

November, 1996 in W.P.(C) No. 749/95 (Supreme Court Monitoring Committee v. Mussorie Dehradun Development Authority and others)."

20. From the above order, which has the status of law as recognised under Art. 141 of the Constitution of India, it is clear that, for the purpose of Sec. 2 of the 1980 Act.

(i) "'forest" will take within its sweep all forests as understood in the dictionary sense as well as the statutory recognised forests whether designated as reserved, protected or otherwise;

(ii) "forest land" will include the "forest" understood as above as also any area recorded as forest in the Government records; and,

(iii) the provisions of the Act will apply to all forest lands irrespective of its ownership or classification thereof.

21. In the case of Union of India and others Vs. Kamath Holiday Resorts Pvt. Ltd., a site in the reserved forest was leased out to the respondent by the Collector of the Union Territory for the purpose of putting up a snack bar and a restaurant to cater the needs of the tourists visiting the forest. The step was said to have been taken for promoting tourism in the area. Nonetheless, the Supreme Court held the action to be impermissible since the lease was granted without obtaining the prior approval of the Central Government as mandatorily required u/s 2 of the 1980 Act.

22. The further question canvassed at the bar was that if an area, even if it forms a part of the forest land, but has already been deforested before the coming into force of the 1980 Act, then the restrictive provisions containing in Sec. 2 thereof cannot have any application. This plea of wide application has been sought to be supported by a judgment of the Supreme Court reported in State of Bihar Vs. Banshi Ram Modi and Others, .

23. In Banshiram Modi's case (supra), in an area of five acres in respect whereof already a mica mining lease has been executed and in pursuance thereof lands had already been dug up and mining operations were being carried on even from before the coming into force of the 1980 Act, the State Government permitted the lessee, by amendment of the lease deed, to win and remove feldspar and quartz also in addition to mica. It was in the background of these facts that the Supreme Court had negative the contention that the State Government had violated Sec. 2 of the Act. The reason which prevailed with the Supreme Court was that by according permission to win two more minerals from the already broken and dug out area will not amount to fresh breaking up of forest land for the purpose of Sec. 2 of the Act.

24. The Supreme Court in its subsequent judgment in the case of Ambica Quarry Works v. State of Gujarat and Ors., (1987) 1 SCC 213 , after considering and explaining its above referred earlier judgment in the case of State of Bihar v. Banshiram Modi, has held that the decision therein was rendered in the

background of the facts of that case. In the case before their Lordships, the appellants were asking for a renewal of the quarry leases. The question arose as to whether for even renewal of quarry leases in respect of already broken areas, approval of the Central Government has to be obtained as required under Sec. 2 of the Act. In the said context in para. 19, it has been held that at page 1078 :

"In the instant appeals the situation is entirely different. The appellants are asking for a renewal of the quarry leases. It will lead to further deforestation or at least it will not help reclaiming back the areas where deforestations have taken place. In that view of the matter, in the facts and circumstances of the case, in our opinion, the ratio of the said decision cannot be made applicable to support the appellants demands in these cases because the facts are entirely different here. The primary purpose of the Act which must subserve the interpretation in order to implement the Act is to prevent further deforestation."

25. The said view has been reaffirmed by the Supreme Court in the case of *Slate of A. P. v. Anupama Minerals*. 1995 (81) SCC 117 : AIR 1994 SCW 5143 wherein it has been held that at page 5144; of AIR SCW :

"This Court in *Ambica Quarry Works v. State of Gujarat* held that when a public authority is vested with the power, the expression "may" has been construed as "shall" because if the conditions for the exercise of the power are fulfilled, it is coupled with a duty. When the grant of renewal was sought to be made then the authority has been invested with the duty to grant renewal. On the facts and circumstances in these cases specially in view of the prohibition contained in the Act renewal cannot be granted since the Act has come into force. So any grant of renewal should be consistent with the provisions contained in the Act. The purpose of the Act is conservation of forests and to prevent the depletion of forests. In other words the Act intended not only to protect the existing forests but also to conserve and protect the existing in accordance with the provisions of the Act. In view of the prohibition for grant of lease in the reserved forest area, grant of renewal in the face of the prohibited area will be violated of law."

26. It is in the context of the said interpretative developments that the Supreme Court, in its above order in the case of *T.N. Godavarman Thirumulkpad Vs. Union of India and others*, , had to declare that :

"The earlier decision of this Court in *State of Bihar Vs. Banshi Ram Modi and Others*, has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority."

27. Therefore, keeping in view the law declared by the Supreme Court, as noticed above, if any land is identifiable as a "forest land", then, irrespective of the fact whether the same is virgin. broken or deforested, it will be incompetent on the part of the State Government to permit the use of such land for the purposes referred to in Sec. 2 of the Act except with the prior approval of

the Central Government.

28. Now, I proceed to ascertain the meaning of the expression "assigned by way of lease or otherwise". In the context of the statutory provisions, the word "assign" would mean "to make over a right or interest to another" (See Mozley's and Whiteley's Law Dictionary). According to Black's Law Dictionary as well, the word has the same meaning for the present purposes. Therefore, the restrictive Sec. 2 of the 1980 Act will apply to making over of a right or interest by the State Government or other authority, by way of lease or otherwise to any private person including a company in or over any forest land or in portion thereof. In the said sense, interest in an immovable property can be assigned by way of conveyance by any of the modes recognised under the Transfer of Property Act, 1882 namely, sale, lease, mortgage, charge, ascent, gift, disclaimer, release or any other assertion of property or any interest therein by an instrument except a will. The other two types of assignment of rights in an immovable property have been recognised under the Easements Act, 1882. These are easementary rights and rights as a licensee. These rights have been defined in the following manner :

"Sec. 4 -- "Easement"

An easement is a rights which the owner or occupier of a certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do some thing, or prevent and continue to prevent from something being done, in or upon, or in respect of, certain other land not his own."

"Sec. 52 -- "Licence"

Where one person grants to another or to a definite number of persons, a right to do, or to continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence."

29. From the above, it is clear that Sec. 2(iii) of the 1980 Act restricts the right of the State Government to transfer or create any right in or over a forest land or a portion thereof either by of lease or otherwise. The expression "otherwise" will, in my opinion, include assignment of rights even by way of easement or licence.

Application of law to the present facts

30. Keeping in view the facts as stated above, it cannot be seriously disputed that the State Government has, assigned a portion of the forest land by way of lease or otherwise thereby creating a right in the properties in question which forms a part of the "national park" - cum - "reserve forest" in favour of the fifth respondent, which is a private company, without seeking prior approval of the Central Government. There is an absolute prohibition on the grant of such rights under Sec. 20 read with Sec. 353) of the Wildlife (Protection) Act, 1972. As such the grant of lease in question is void and cannot be acted upon by the fifth respondent. Further, the transaction is also hit by Sec. 2 of the Forest

Conservation Act, for want of prior approval of the Central Government.

31. The respondents have tried to resist the present public interest proceedings by raising the pleas also of locus standi, mala fide and laches. So far as the objections based on locus standi is concerned, apart from other considerations, in my opinion, if the Court finds that the question raised are of substantial public interest, then the issue of locus standi of the person placing relevant facts and materials before the Court becomes irrelevant. The legal position to the said effect is now more than settled. The allegations of mala fide have been raised on behalf of the fifth respondent company against the petitioner organisations on the plea that they are merely proxies on behalf of some interested parties. The allegations is too wild and sweeping requiring any serious consideration by this Court, inasmuch as no concrete foundations have been laid down to substantiate the said allegations. So far as the plea of laches is concerned that also cannot weigh in favour of the respondents, because, keeping in view the facts as emerging in the present case, though both the State Government as well as the 5th respondent company, who are supposed to have well equipped legal assistance have been demonstrated to have tried to flout the mandatory environmental laws. The issues raised herein are quite fundamental in nature affecting the wider public interest requiring maintenance of ecological balance and environmental requirements. As such the Court cannot refuse to enter into the said issues on the plea of laches which has been evolved to subserve the equity and not to defeat the same. All the three pleas are therefore rejected without entering into any greater details.

32. For the said reasons, there cannot be any escape from directing the fifth respondent to immediately stop all its activities on the forest land in question and hand over its possession to the State Government. The present public interest litigation thus succeeds and accordingly allowed with costs assessed at Rs. 10,000/- to be paid equally by the State Government and the 5th Respondent.

33. Petition allowed.