

(2023) 04 TEL CK 0084
In the Telangana High Court
Case No : Writ Petition No. 10182 Of 2023

M/S Shivenari Canteen Services

APPELLANT

Vs

State Of Telangana And Others

RESPONDENT

Date of Decision : 25-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2023) 04 TEL CK 0084

Hon'ble Judges : Surepalli Nanda, J

Bench : Single Bench

Advocate : Dammalapati Srinivas

Judgement

1. This appeal is preferred by the Government Pleader (for short "GP") for Appeals, High Court of Andhra Pradesh, Hyderabad against the order and decree passed in O.S.No.4 of 2008 on the file of the I Additional Senior Civil Judge (Fast Track Court), Mahabubnagar, dated 10.10.2011.

2. The respondents 1 and 2 are the plaintiffs.

3. The parties are hereinafter referred as arrayed before the trial court.

4. The suit was filed by the plaintiffs initially for grant of permanent injunction and subsequently amended seeking the relief of declaration of title and consequential relief of permanent injunction. The plaintiff No.1 is the elder sister of plaintiff No.2. The suit schedule property was Ac.12-27gts.in Survey No.46, Hanwada Mandal, Mahabubnagar District. The suit schedule "A" land was to an extent of Ac.10-00gts. in Survey No.46 and suit schedule "B" land was to an extent of Ac.2-27gts. in Survey No.46. "A" schedule property was purchased by the plaintiff No.1 and "B" schedule property was purchased by plaintiff No.2 from the original owner of Shaik Habeeb Mohammed and from the legal representative of protected tenant Ippali Thimmaiah by name Ippali Shankaraiah on 07.12.2006 under registered sale deed document Nos.8557 of 2006 and 8558 of 2006. They contended was that the land was delivered to them on the same day and they

submitted an application before the MRO, Hanwada Mandal for mutation of ownership and accordingly their names were recorded as owners in the revenue records. They further submitted that on their application on 17.03.2007, the Deputy Inspector of Survey and Land Records, Mahabubnagar inspected and measured the suit lands with the help of plan and tippon and fixed the boundary stones around the suit lands. The Inspector conducted a panchanama and prepared a sketch map of the suit lands. Forest land was situated on the eastern and southern side of the suit "A" schedule land and on southern and western side of the suit "B" schedule land. The plaintiffs further submitted that they kept the suit schedule property fallow. By taking it as an advantage, the subordinates of defendant No.2 came to the suit lands on 12.01.2008 and tried to interfere by making preparation for plantation on the southern and western side of the suit lands. The plaintiffs resisted their acts and maintained their possession and filed initially the suit for injunction against the State of Andhra Pradesh represented by the District Collector as defendant No.1 and the Divisional Forest Officer, Mahabubnagar District as defendant No.2.

4.1. After filing written statement by the defendants denying the title, the plaintiffs amended the relief of suit claim from injunction to declaration of title submitting that the old ROR of 1986 as well as the pahani for the year 2003-04 would reveal that Shaik Ameena Bee W/o.Shaik Mahabub was the owner and possessor of the land in Survey No.46 to an extent of Ac.12-27gts. After the death of Shaik Ameena Bee, her son namely Shaik Habeeb Mohammed's name was recorded in the pahani for the year 2004-05 and in ROR proceeding No.B/848/2006 dated 12.06.2007 of Tahsildar, Hanwada and the same was also recorded in the pahani for the year 2005-06. The plaintiffs purchased the suit lands from the said Shaik Habeeb Mohammed. The contention of defendant No.2 that the land in Survey No.46 was acquired for reserve forest and in lieu of the acquired land in Survey No.46, the original owner Syed Qamruddin was allotted the land in Survey Nos.61 and 157 to an extent of Ac.35-11gts. of Ammapur Village was incorrect. The land in Survey No.61 belonged to Lord Venkateshwara Swamy Temple and the same was an endowment land. The land in Survey No.157 of Ammapur Village was not available.

5. The defendant No.2 filed written statement and the same was adopted by defendant No.1. The defendant No.2 contended that the suit land bearing Survey No.46 to an extent of Ac.12-07gts. was included in the Reserve Forest Block as notified under Section 18 of the Forest Act No.1 of 1326 Fasli. The said notification was published under Section 7 of Forest Act in Government Gazette 12, dated: 27th Behman 50 Fasli and under Section 10 in Government Gazette No.47, dated: 16th Aban 1351 Fasli. As per the revenue records, the Survey No.46 to an extent of Ac.12-07gts. was entered in the prohibitory order book. The suit "A" and "B" schedule properties were totally included in the Reserve Forest of Ibrahimbad. As per the Gazette notification, it was clear that the suit land was originally owned by Syed Qamruddin, R/o. Ammapur. During the settlement, it was decided that the land in Survey No.46 situated at Ammapur

was excluded from agriculture and included in Reserve Forest. In lieu of the area included in the Reserve Forest as indicated by the claimant namely Syed Qamruddin, the land to an extent of Ac.35-11gts. had been allotted to him out of Survey Nos.61 and 157 of Ammapur Village. The Forest Department had already raised Eucalyptus Plantation in the suit lands during the year 1989-90. During the year 2005-06, Kanuga Plantation was raised in the said land. The suit lands were under the possession of the defendant No.2 department. Therefore, the question of alleged interference by defendant No.2 would not arise.

5.1. The defendant No.2 further contended that the plaintiffs were not in possession of the suit lands. The latitude and longitude of the area was taken with hand held GPS and the readings were incorporated in the GIS map which would indicate that the location of the area was inside the boundary of Ibrahimbad Reserve Forest Compartment No.316. The dates of cause of action shown in the plaint were imaginary and created. The alleged purchase by the plaintiffs was bad in law and it had no legal recognition, as the plaintiffs allegedly purchased from a person who was not at all the owner of the property. The department of defendant No.2 had acquired the land in Survey No.46 from a rightful owner and in lieu of the said land, had allotted suitable land. Compensation was already paid. Since the date of inclusion of the land in the Reserve Forest Area, the defendant No.2 department was in actual possession by raising various plantations. As the plaintiffs were never in possession of the land in question, the suit was not maintainable and prayed to dismiss the same.

6. After amending the suit relief from injunction to declaration, the defendant No.2 filed an additional written statement contending that the entries in pahanies and ROR were effected mistakenly by erring officials which were subsequently cancelled. The plaintiff was claiming title basing on cancelled revenue documents. Infact, no title could be conferred basing on the pahanies. The Gazette notification was published under Section 7 in Government Gazette 12 dated 27th Behman 50 Fasli and under Section 10 in Government Gazette No.47 dated 16th Aban 1351 Fasli. Shaik Ameena Bee was shown as owner in the pahani for the year 2003-04. In fact, the plaintiff was claiming title basing on the wrong entries made in the pahanies and ROR. Therefore, the plaintiff could not accrue any title. The suit was not maintainable and prayed to dismiss the same.

7. Basing on the said pleadings, the following issues were settled for trial:

- i) Whether the plaintiff is in possession of the suit schedule property?
- ii) Whether the plaintiff is entitled to perpetual injunction as prayed for?
- iii) To What relief?

The following additional issues were framed after amendment of suit claim:

- i) Whether Shaik Ameena Bee, W/o.Shaik Mahabub was the owner of the land in Survey No.46 of Ammapur Village?

ii) Whether the land in Survey No.46 originally belonged to Syed Qamruddin of Ammapur, as alleged by the defendants?

iii) Whether the land in Survey No.46 was included in the Reserve Forest of Ibrahimbad Village?

iv) Whether the plaintiffs were entitled for the relief of declaration that they were the owners of the suit schedule property?

8. The plaintiff No.2 examined himself as PW.1 and got marked Exs.A1 to A19. The Tahsildar of Hanwada was examined by the plaintiffs as PW.2. The defendants got examined the Forest Range Officer as DW.1 and got marked Exs.B1 to B13.

9. On hearing the learned counsel for the plaintiffs and the learned Government Pleader for the defendants, the trial court answered issue No.1 holding that the plaintiffs were in possession of the suit schedule property and additional issues 1 and 2 in favour of the plaintiffs holding that Syed Qamruddin was the original owner of the land in suit Survey No.46 and Shaik Ameena Bee became the owner of the suit schedule property after him and answered additional issue No.3 against the 2nd defendant holding that the land in suit Survey No.46 was not included in the Reserve Forest of Ibrahimbad Village and that the claim of defendant No.2 was incorrect. The trial court answered additional issue No.4 and issue No.2 in favour of the plaintiffs holding that the plaintiffs were the owners and possessors of the suit schedule property and were entitled for the relief of declaration and also for the consequential relief of perpetual injunction and decreed the suit declaring the plaintiffs 1 and 2 as owners of the "A" and "B" schedule properties respectively and that they were entitled for permanent injunction against the 2nd defendant in respect of the said properties.

10. Aggrieved by the said judgment and decree, the learned Government Pleader for Appeals preferred this appeal contending that the trial court having seen the basic record like Ex.A11, the certified copy of the Sethwar for 1329 Fasli, Ex.A16, Khasra Pahani for the year 1955-58 was showing the name of Syed Qamruddin, erred in not treating the suit land as Government Land and failed to see that the suit land originally belonged to Syed Qamruddin was included in the Reserve Forest Block under Section 18 of the Forest Act by virtue of notification published in the Gazette and the said Qamruddin was granted with an alternative land admeasuring Ac.35-11gts. in Survey Nos.61 and 157 of Ammapur Village apart from compensation. The trial court mis-interpreted the evidence of defendant witness to hold that the plaintiff purchased the property through sale deeds and ignored the fact that the vendors of the plaintiff had no title, as such, the plaintiffs could not get title over the suit land. The trial court erred in placing reliance on the pahanies which were recorded wrongly and failed to see that the entries made in the revenue records would not confer any title. The trial court committed a grave error in not placing reliance on Ex.B7, prohibitory order book, wherein the entries made therein would show that the suit land stood vested

with the Government as a Reserve Forest and erred in not relying on the notification Ex.B8 through which certain lands in Ibrahimbad, Munimoksham, Hanwada and Ammapur Villages were notified to include them into Reserve Forest. The trial court failed to appreciate that the Forest Department raised Eucalyptus Plants from the years 1989 to 2005 and thereafter raised Kanuga plantation and erred in holding that the Forest Department was not in possession and prayed to allow the appeal.

11. Heard the learned Government Pleader for Appeals and the learned counsel for the respondents – plaintiffs.

12. The learned GP for Appeals contended that Ex.B8, Gazette Notification was pertaining to the year 1353 Fasli which is equivalent to 1947-48. It was more than 30 years old document issued under the then Forest Act 1353 Fasli applicable to the Telangana Area up to 1967. On 15.04.1967, the Telangana Forest Act, 1967 came into force and Ex.B7 was a prohibitory order. If any person was aggrieved by the notification, he had to approach the Forest Settlement Officer. The reliance placed by the trial court on revenue entries was not proper. The burden of proof always would lie on the plaintiffs in a suit for declaration of title. The trial court went in a wrong direction in placing burden on the defendants. The trial court ought to have decided the issue of declaration first instead of deciding the issue with regard to the possession. The trial court failed to consider the validity of Ex.B8 and made assumptions basing on ROR records. The jurisdiction of Civil Court itself was barred under Section 5 of the Forest Act. Admittedly, the land acquired under Forest Act was a private patta land belonged to Syed Qamruddin. A claim petition was filed by Syed Qamruddin before the Forest Settlement Officer and after enquiry, alternate land was given to him along with compensation. The legal heirs of Syed Qamruddin created documents with the help of Revenue Officials and relied upon the judgments of the Hon'ble Apex Court in Commissioner Bruhath Bangalore Mahanagara Palike v. Faraula Khan 2021 (1) Apex Court Judgments (SC) 778 on the aspect that mutation entries by themselves do not confer title and title had to be established independently in a declaratory suit. He also relied upon the judgment of the Hon'ble Apex Court in Union of India and Others v. Vasavi Cooperative Housing Society Limited and Others 2014 (2) SCC 269 on the aspect that burden always lies on the plaintiff to establish its case, irrespective of whether defendants prove their case or not. In the absence of establishment of its own title, the plaintiffs must be non-suited even if title set up by defendants was found against them. Weakness of case set up by defendants could not be a ground to grant relief to the plaintiff. He also relied on the judgment of the Hon'ble Apex Court in R.Hanumaiah and Another v. Secretary to Government of Karnataka, Revenue Department and Others 2010 (5) SCC 203 on the aspect that burden was always on the plaintiff to prove his title. He further relied upon the judgment of the Hon'ble Apex Court in Prabhagiya Van Adhikari Awadh Van Prabhag v. Arun Kumar Bhardwaj (Dead) through LRs. And Others 2021 AIR (SC) 4739 wherein it was held that when land vests in Forest Department by virtue of notification

published under a statute, lessee was not entitled to any right only on the basis of entry in the revenue record. He also relied upon the judgment of the Hon'ble Apex Court in *Narinder Singh and Others v. Divesh Bhutani and Others* 2022 AIR (SC) 3479 on the aspect that a Government record is a record maintained by its various departments. Only the entries made after following due process can be a part of any Government record. Government records will include land or revenue records in the record of the Forest Department. The State Government could not exercise power under Section 27 of the 1927 Forest Act declaring that a particular land would cease to be a reserved forest, unless there was prior approval by Central Government. He also relied upon the Division Bench judgment of the Karnataka High Court in *Sri B.R.Ganapathi Singh v. The State of Karnataka, Department of Forest, Ecology of Forest and Others* in W.P.No.29328 of 2018 (GM-FOR) dated 13.03.2020 and the Division Bench judgment of the High Court in Andhra Pradesh in *Divisional Forest Officer, Eluru v. District Judge, West Godavari, Eluru and Others* 2011 (2) ALT 130 on the aspect that no right shall be acquired by any person in or over the land included in the notification under Section 4 except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or any person in whom such right was vested before publication of the notification under Section 4.

13. The learned counsel for the respondents – plaintiffs on the other hand contended that the trial court on considering the oral and documentary evidence filed by both the parties particularly, the sale deeds marked under Exs.A5 and A6 which proves the title of the plaintiffs over the schedule property and Exs.A2 to A4 and A8, the certified copies of the pahanies for the years 2003-04, 2004-05, 2006-07 and the certified copies of the panchanama, record of rights, the Sethwar, the pahanies for the years 1951-52, 1953-54, 1957-58 came to the conclusion that the petitioners were entitled for declaration and also for injunction in respect of the suit schedule property.

14. He further contended that though a status quo order was passed by the trial court which was also confirmed by the VII Additional District Court, the name of the 2nd defendant was entered in the revenue record basing on the proceedings of the District Collector dated 21.10.2010 without conducting any enquiry or without giving any opportunity to the plaintiffs, contravening the procedure under Section 5 of the ROR Act, as such no reliance can be placed upon Exs.B9 to B13 and relied upon the judgment of the High Court of Andhra Pradesh in *Hydrogen Fuel Systems v. Praveena Madan* (2013) 5 ALD 676 on the aspect that Court shall presume the state of things which were shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence as per illustration (d) to Section 114 of the Indian Evidence Act.

15. On considering the rival contentions of both the learned counsel, now the points for consideration in this appeal are:

- a. Whether the respondents – plaintiffs were entitled to seek for a declaration that they were owners of the suit schedule property and were entitled to the consequential relief of injunction?
- b. Whether the judgment of the trial court is in accordance with law or liable to be set aside?

P O I N T No.1:

16. As seen from the pleadings and evidence of PW.1, the plaintiffs purchased the suit schedule property from one Shaik Habeeb Mohammed and from the legal representative of protected tenant Ippali Thimmaiah, namely Ippali Shankaraiah on 07.12.2006 vide registered sale deed document Nos.8557 and 8558 of 2006 and got mutated their names in the revenue records. As per the written statement filed by the respondents and the evidence of DW.1, the Forest Range Officer, they were relying on a Gazette Notification published under Section 7 of the Forest Act, marked as Ex.B8 and contending that as per the Gazette Notification, the suit land was originally owned by Syed Qamruddin and it was included in the Reserve Forest as per the notification and Syed Qamruddin was allotted an alternate land of Ac.35-11gts. in Survey Nos.61 and 157 of Ammapur Village as compensation and as per the revenue records, the land in Survey No.46 to an extent of Ac.12-07gts. was entered in the prohibitory order book.

17. The relation between Syed Qamruddin and Shaik Habeeb Mohammed could be known from the letter addressed by the Tahsildar, Hanwada to the District Collector, Mahabubnagar dated 04.06.2010 marked under Ex.A18. The said letter would reveal that as per revenue records i.e. I-A, old ROR, pahanies, tenancy registers, Survey No.46 to an extent of Ac.12-27gts. situated within the limits of Ammapur Village was shown as an agricultural land. Syed Qamruddin was the original pattedar of this Survey No.46. After him, his sister Smt.Ameena Bee W/o.Shaik Mahabub became the pattedar and after Smt.Ameena Bee, her son, Shaik Habeeb Mohammed became the pattedar. There was one protected tenant (for short "P.T.") over Survey No.46, namely Yerra Hanmaiah. Smt.G.Geetha W/o.G.Laxma Reddy and Sri M.Venkata Ramana Reddy S/o.M.Ram Reddy (plaintiffs 1 and 2 herein) both had purchased the said land from the pattedar Shaik Habeeb Mohammed and from tenantdar Sri Yerra Hanmaiah on 07.12.2006 by registered documents and pattedar passbooks and title deeds were issued to Smt.G.Geetha and to Sri.M.Venkata Ramana Reddy, since then, they were in possession over Survey No.46. The protected tenant Y.Hanmaiah had surrendered his tenancy rights in favour of Smt.G.Geetha and Sri M.Venkata Ramana Reddy and his name was rounded off in the protected tenant (PT) register.

18. PW.1 had also admitted in his cross-examination that the suit survey number originally belonged to late Syed Qamruddin. PW.1 also stated in his cross-examination that they were in possession of Ac.8-00gts. of land out of Ac.12-27gts. of the suit land and the remaining land was in possession of the

Forest Department. Though, he admitted that a part of the land was in possession of the Forest Department, had not amended the suit seeking the relief of recovery of possession. PW.1 further stated in his cross-examination that he did not know whether the name of the Forest Department was entered in the prohibitory order book as owner for Ac.12-07gts. in Survey No.46 and denied that their vendors had no right to sell the suit lands to them.

19. DW.1, the Forest Range Officer stated that an extent of Ac.12-07gts. in Survey No.46 was included in the Reserve Forest Block as notified under Section 18 of the Forest Act No.1 of 1326 Fasli and the said notification was published under Section 7 of the Forest Act in Government Gazette 12, dated: 27th Behman 50 Fasli and under Section 10 of the Act in Government Gazette No.47, dated: 16th Aban 1351 Fasli and as per the revenue records, the land in Survey No.46 to an extent of Ac.12-07gts. was entered in the prohibitory order book, the said land was in possession of Forest Department. He further stated that the entire land in Survey No.46 was included in the reserve forest of Ibrahimbad Reserve Forest. As per the Gazette Notification, the suit land was originally owned by Syed Qamruddin, R/o.Ammapur and during the settlement, it was decided that the land in Survey No.46 situated at Ammapur was excluded from agriculture and included in Reserve Forest and Syed Qamruddin was allotted alternate land to an extent of Ac.35-11gts. in Survey Nos.61 and 157 of Ammapur Village, as land to land compensation. The copy of the Gazette Notification in Urdu marked as Ex.A8 and its English translation would disclose that in pursuance of Section 18 of the Forest Act No.1 of 1326 Fasli, it was notified that the areas comprising of villages Ibrahimbad, Munimoksham, Hanwada and Ammapur Taluks and District Mahabubnagar was declared as Reserve Forest from the date of publication of notification in the Government Gazette. It shall be called the Ibrahimbad Reserve Forest, the total area of which is Ac.933-05gts. The notification was published under Section 7 in Government Gazette 12, dated: 27th Behman 50 Fasli and under Section 10 of the Act in Government Gazette No.47, dated: 16th Aban 1351 Fasli. It would show that under the particulars of Village Ammapur, Poram boke No.47, Ac.60-00gts. was declared as Reserve Forest and under Poram boke No.144, Ac.12-07gts. and patta land No.46, Ac.12-07gts. After mentioning the boundaries of the reserved lands, under the heading "patta", it was specified that four claims have been received regarding the said reservation and that the following decisions were given: Syed Qamruddin, R/o.Ammapur had submitted the claim regarding Survey No.46 situated in Ammapur measuring Ac.12-03gts. After enquiry, it was decided that the said number be excluded from agriculture and included in the reservation. In lieu thereof as indicated by the claimant, Survey Nos.61 and 157 measuring Ac.35-11gts. situated in Ammapur was given to him and it was intimated to the District Office.

20. The learned Government Pleader for Appeals submitted that the notification was issued under Section 18 of the Hyderabad Forest Act, 1326 Fasli. The Government published the notification specifying the limits of the forest, which it

intended to reserve and declare the same to be the reserved forest from the date fixed under such notification. The Hyderabad Forest Act, 1326 was subsequently called as the AP (Telangana) Area Forest Act, 1355 Fasli. The same was repealed and now called as the Telangana Forest Act, 1967. As per Section 4, a Forest Settlement Officer would be appointed to consider the objections if any against the declaration under clause (b) and 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 and under clause 2, a person appointed to be a Forest Settlement Officer under clause (c) of sub-section (1) shall be an officer of the Revenue Department not below the rank of Revenue Divisional Officer. The lands transferred by way of sale, after notification was issued under Section 4, was illegal. The filing of the suits was also barred under Section 5 of the Telangana Forest Act, 1967.

21. The learned counsel for the respondents on the other hand contended that no plea was taken with regard to the bar of suits before the trial court and the said plea cannot be entertained now in the present appeal.

22. But, however, as the above plea is a question of law, the same can be entertained at any stage.

23. On a perusal of Section 5 of the Telangana Forest Act, 1967, it reads as follows:

5. Suits barred: - Save as otherwise provided in this Act, no Court shall between the dates of the publication of the notification under Section 4 and the notification to be issued under Section 15, entertain any suit or other action against the Government to establish any right in, or over, any land, or to forest produce of any land included in the notification published under Section 4.

24. Thus, there is a bar of entertaining any suits by the Courts between the dates of publication of notification under Section 4 and notification to be issued under Section 15. Section 15 is the notification declaring the reserve forest. Ex.B8/a is the notification declaring the areas comprising in the villages Ibrahimbad, Munimoksham, Hanwada and Ammapur Taluk and District Mahabubnagar as Reserved Forest and states that it was also published in the Government Gazette under Section 7 and under Section 10. Thus, all rights are vested with the Government over the said areas after publication of notification and no private parties can have right over the land in Reserved Forest. The details of the said lands declared as Reserved Forest should be entered in the Prohibitory Order Book, which shall be maintained by both the Forest Department and the Revenue Department. The Prohibitory Order Book was marked as Ex.B7. The entries made by the Revenue Officials when there was a prohibitory order were not valid. Basing on the said entries, the respondents – plaintiffs cannot claim right over the suit schedule property.

25. The judgment of the High Court of Andhra Pradesh in Divisional Forest Officer, Eluru v. District Judge, West Godavari, Eluru and Others (cited supra)

also held that:

".... the transfer of land by way of sale after Section 4 notification and the declaration under Section 6 – under Section 7(1)(a) of the AP Forest Act, 1967 during the interval between the publication of a notification under Section 4, and the date fixed by the notification under Section 15, no right shall be acquired by any person in or over the land included in the notification under Section 4 except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or any person in whom such right was vested before publication of the notification under Section 4. Alleged transfer of title over lands of an extent of Ac.342-50 cents in Survey No.537 of Bhogolu Village, by way of sale made by the original claimants to 28 others in the year 1981 is illegal."

26. The Hon'ble Apex Court in *Narinder Singh and Others v. Divesh Bhutani and Others* (cited supra) held that:

"41. If a land is shown as a forest in Government records, it will be governed by Section 2. A Government record is a record maintained by its various departments. A Government record is always made after following a certain process. Only the entries made after following due process can be a part of any Government record. Government records will include land or revenue records, being statutory documents. For the same reason, it will also include the record of the forest department. After all, the forest department is the custodian of forests. It is this department of the State which is under an obligation to protect the forests for upholding the constitutional mandate. Further, it is this department which identifies the forest lands and maintains a record. Therefore, the record maintained by the Forest Department of forest lands after duly identifying the forest lands will necessarily be a Government record."

27. The judgment of the Karnataka High Court in *Sri B.R.Ganapathi Singh v. The State of Karnataka Department of Forest Ecology of Forest and Others* [Law Finder Doc.ID.1715183] would disclose that:

"31. Thus, if a notification under Section 4 of the Act has been issued intending to constitute any land as reserved forest, the same can be excluded from the nomenclature of the reserved forest only by issuance of another notification. The same cannot be done in any other way or manner."

The land comprised in a notification issued under Section 17 of the Act declaring that the land to be reserved forest could be de -reserved only as per Section 28 of the Act, i.e. by issuance of another notification after a resolution in that regard has been passed by both the Houses of Legislature."

By considering the judgment in *Taylor v. Taylor* [(1875) 1 Ch D 426], it was held that when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all and that other methods of performance are necessarily be forbidden.

It was further held that:

"36. 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."

It was further held that:

"46. Hence, insofar as the land in question is concerned, we observe that mere issuance of a Notification under Section 4(1) of the act is sufficient to constitute the land comprised in the said Notification as "forest land", in which any non-forest activity would require prior approval under Section of the F.C. Act."

28. The Gazette Notification marked under Ex.B8 is a 30 year old document and a presumption is carried under Section 90 of the Indian Evidence Act, 1872 with regard to genuineness of the said document. As it is also a public document an added presumption under Section 114 (e) of the Evidence Act as to its correctness is also available as per the judgment of the Hon'ble Apex Court in Iqbal Basith and Others v. N.Subbalakshmi and Others⁸. Ex.B8 is the Gazette Notification which is the record of the Acts of the Official Bodies. Hence, the document carries a lot of probative value. The entries made by the Revenue Authorities in ignorance of the prohibitory order do not carry any value nor give a right to successors or legal representatives of Syed Qamruddin to enter into any sale seeds with the private parties. No evidence was adduced by the respondents – plaintiffs to show that there is another notification issued de-reserving the said lands. Thus, the ownership is vested with the Government. The successors of Syed Qamruddin had no right to sell the property which was declared as Reserve Forest under Ex.B8. Thus, the sale deeds filed by the plaintiffs marked under Exs.A5 and A6 are having no value under the law.

29. The learned counsel for the respondents – plaintiffs contended that the alternate land given to Syed Qamruddin was not in existence, the land in Survey

No.61 was in the name of Endowments Departments and the records of the land in Survey No.157 were not available. But the said contention cannot be considered in this suit or appeal, as the respondents – plaintiffs are not the right persons to question the same. It was for Syed Qamruddin who was allotted the said lands, who should have raised the issue before the Forest Settlement Officer or challenge the Notification before the District Judge, before whom the right of appeal was provided under the Forest Act. Just because the alternate land allotted to Syed Qamruddin was not available they cannot seek declaration of right over the lands which were declared as reserved forests. The burden lies on the respondents – plaintiffs to prove that they acquired right and title over the property from the persons who could validly transfer the said right. When the vendor of the respondents – plaintiffs had no right over the suit schedule property, they could not validly transfer the said right through a registered sale deed. The registered sale deeds marked under Exs.A5 and A6 are not having any value as Shaik Habeeb Mohammed, who sold the lands to the respondents – plaintiffs was not having a valid title over the said lands after notifying the said lands as reserved forest by the Forest Settlement Officer under Ex.B8. As such, the respondents – plaintiffs were not entitled to seek for a declaration that they were owners of the suit schedule property and also not entitled to seek the consequential relief of injunction. The trial court erred in making a contrary observation.

P O I N T No.2:

30. As the trial court passed the judgment ignoring the validity of the notification issued under the Forests Act, 1967, the same is not in accordance with law. As such, the same is liable to be set aside.

31. In the result, the Appeal Suit is allowed setting aside the judgment and decree of the trial court in O.S.No.4 of 2008 dated 10.10.2011 on the file of the I Additional Senior Civil Judge (Fast Track Court), Mahabubnagar. The suit filed by the respondents – plaintiffs is dismissed. No order as to costs.

As a sequel, miscellaneous applications pending in this appeal, if any, shall stand closed.