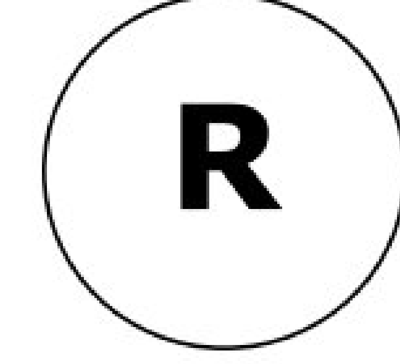
HC-KAR

**IN THE HIGH COURT OF KARNATAKA
AT BENGALURU**



DATED THIS THE 18TH DAY OF AUGUST, 2025

**BEFORE
THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ**

**WRIT PETITION NO.19674 OF 2024 (GM-FOR)
C/W
WRIT PETITION NO.392 OF 2021 (GM-FOR)**

IN W.P.NO.19674 OF 2024

BETWEEN

MR. MOHAMMED SHOAIB
S/O. MR. MOHAMMED IQBAL,
AGED ABOUT 52 YEARS,
RESIDING AT NO.15,
INFANTRY ROAD,
BANGALORE- 560001.

...PETITIONER

(BY SRI. CHANDAN.K., ADVOCATE)

Digitally signed by ASHPAK KASHIMSA MALAGALADINNI
Location: High Court of Karnataka, Dharwad Bench, Dharwad

AND

1. STATE OF KARNATAKA
   REP BY ITS ADDITIONAL CHIEF,
   SECRETARY, FOREST DEPARTMENT,
   KARNATAKA GOVERNMENT SECRETARIAT,
   ROOM NO. 447, 4TH FLOOR, GATE NO.2,
   M.S BUILDING, BANGALORE-560001.

2. RANGE FOREST OFFICER,
   OFFICE OF THE RANGE FOREST OFFICER,

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HC-KAR

DEVANAHALLI SUB-DIVISION,
DEVANAHALLI-562110.

…. RESPONDENTS

(BY SRI. KIRAN V RON., AAG A/W
SRI. MAHANTESH SHETTAR., AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR AND OTHER WRIT OR DIRECTION AND QUASH THE IMPUGNED NOTICE DATED 26.06.2024 BEARING NO. SA:NO./VA.AA.AA/DE.VA/AA.AA.MO/133/2024-25 ISSUED BY RESPONDENT NO.2 IN SO FAR AS PETITIONER THEREIN PRODUCED AS ANNEXURE-A TO THIS WRIT PETITION AS VOID, INOPERATIVE AND BAD IN LAW AND ETC.

IN W.P.NO.392 OF 2021

BETWEEN

1. M/S PRAKRUTI CENTURY PROPERTIES
   HAVING REGISTERED OFFICE
   AT NO.10/1 LAKSHMINARAYANA COMPLEX
   PALACE ROAD, BANGALORE
   REPRESENTED BY ITS AUTHORIZED SIGNATORY
   SRI CHETHAN KUMAR S.

2. SRI M A MOHAMMED SANAULLA
   S/O M ABDUL SAB
   AGED ABOUT MAJOR
   R/A CHIKKASANNE VILLAGE
   KASABA HOBLI
   DEVANAHALLI TALUK
   BANGALORE RURAL DISTRICT.

3. SRI M A MOHAMMED AMANULLA
   S/O M ABDULLA
   AGED ABOUT MAJOR
   R/A CHIKKASANNE VILLAGE
   KASABA HOBLI DEVANAHALLI TALUK
   BANGALORE RURAL DISTRICT.

4. SRI MOHAMMED ATHAULLA
   S/O SRI ABDULLA

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AGED ABOUT MAJOR
R/A CHIKKASANNE VILLAGE
KASABA HOBLI DEVANAHALLI TALUK
BANGALORE RURAL DISTRICT.

5. SRI M A MOHAMMED KHALIULLA
   S/O SRI ABDULLA
   AGED ABOUT MAJOR
   R/A CHIKKASANNE VILLAGE
   KASABA HOBLI DEVANAHALLI TALUK
   BANGALORE RURAL DISTRICT.

...PETITIONERS

(BY SRI. CHANDAN.K., ADVOCATE)

AND

1. STATE OF KARNATAKA
   REP BY ITS ADDITIONAL CHIEF,
   SECRETARY, FOREST DEPARTMENT,
   KARNATAKA GOVERNMENT SECRETARIAT,
   ROOM NO. 447, 4TH FLOOR, GATE NO.2,
   M.S BUILDING, BANGALORE-560001.

2. DEPUTY FOREST CONSERVATION OFFICER,
   BANGALORE RURAL DIVISION
   DEVANAHALLI, SAVAKANAHALLI GATE,
   DEVAHAHALLI TALUK,
   BANGALORE RURAL DISTRICT-563102.

.... RESPONDENTS

(BY SRI. KIRAN V RON., AAG A/W
SRI. MAHANTESH SHETTAR., AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR AND OTHER WRIT OR DIRECTION AND QUASH THE IMPUGNED NOTICES ALL DATED 13.11.2020 PRODUCED AS ANNEXURE-A TO A6 AND ETC.

THESE WRIT PETITIONS COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 24.04.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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CAV ORDER

1. The petitioners in WP No.392 of 2021 are before this court seeking the following reliefs:

   a. Issue a writ of certiorari or and other writ or direction and quash impugned notices dated 13.11.2020 bearing nos.
   1) A4/U.A.SO/BE.GRA.Vi/DE.VA/F.O.C-07/06-07,
   2) A4/U.A.SO/BE.GRA.Vi/DE.VA/F.O.C-08/06-07,
   3) A4/U.A.SO/BE.GRA.Vi/DE.VA/F.O.C-09/06-07,
   4) A4/U.A.SO/BE.GRA.Vi/DE.VA/F.O.C-13/06-07,
   5) A4/U.A.SO/BE.GRA.Vi/DE.VA/F.O.C-14/06-07,
   6)A4/U.A.SO/BE.GRA.Vi/DE.VA/F.O.C-14/06-07
   issued by R2 produced as Annexure-A1 to A6 to this writ petition as void, inoperative and bad in law.

   b. Grant such other reliefs that this Hon'ble Court may deem fit to grant in the circumstances of the case, in the interest of justice and equity.

2. The petitioners in WP No.19674 of 2024 are before this court seeking for the following reliefs:

   a. Issue a writ of certiorari or and other writ or direction and quash impugned notice dated 26.06.2024 bearing no. Sa:No.Va.AA.AA/DE/VA/AA.AA.MO/133/2024-25 issued by respondent No.2 in so far as petitioner therein produced as Annexure-A to this writ petition as void, inoperative and bad in law.

   b. Grant such other reliefs that this Hon'ble Court may deem fit to grant in the circumstances of the case, in the interest of justice and equity.

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Facts in WP No.392 of 2021:

3. The Petitioners No.2 to 5 claim to be bona fide owners of the land bearing survey Nos. 68, 118, (old No.69/3, 69/2, portion of 69/3, 69/4 and 69/5), situated at Chikkasane village, Kasaba Hobli, Devanahalli post.

4. Petitioner No.1 is stated to be a registered partnership firm who has entered into a Joint Development Agreement ['**JDA**'] dated 30.07.2007, 17.01.2008 and 02.01.2009 with Petitioners No. 2 to 5, who, as aforesaid, are stated to be the owners of land bearing survey No. 68/1 measuring 11 acres 18 guntas, 69/2 measuring 8 acres 35 guntas, 69/3 measuring 10 acres 11 guntas,69/4 measuring 10 acres 10 guntas and 69/5 measuring 10 acres 10 guntas, totally measuring 51 acres 4 guntas situated at Chikkasane village, Kasaba Hobli, Devanahalli taluk, Bangalore Rural district.

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5. Petitioner No.1 had applied for sanction of a residential layout called 'Century Sports Village' on 15.09.2010, which came to be approved by the Bangalore International Airport Area Planning Authority [***'BIAPPA'***] vide order dated 06.02.2014. The Layout being sanctioned, 40 per cent of the sites were released by an order dated 02.12.2014, in pursuance of which it is claimed that sales have been made to various persons.

6. It is claimed that the lands in the year 1924 were treated as a military camping ground and thereafter the government, considering the said land to be fit for cultivation, granted a portion of the said land for defence personnel in the year 1932.

7. The defence personnel who were granted the subject lands did not make payment of taxes for the years 1934-1935 and 1935-1936, and as such, the lands were auctioned to one Sri.Subbaraya Mudaliar to

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recover the same. The said Subbaraya Mudaliar, having purchased the said lands in a public auction, a sale certificate came to be issued on 08.03.1937 bearing certificate No. 1040/36-37. He in turn, sold those lands to Sri.A.S.Ashwatnaryaana, Sri.A.S.Umashankar and Sri.A.S.Raghuveer under a sale deed dated 27.03.1952. The said Ashwatnarayana, A.S.Umashankar and A.S.Raghuveer sold an extent of 10 acres of that land in favour of Smt.A.S.Vanajamma, wife of A.S. Ramaswamy, under a registered sale deed dated 19.01.1963. Smt.Vanajamma thereafter sold the aforesaid 10 acres to Sri.I.H.Chettira, I.M.Kariappa, Sri. I.M.Muthanna, and Sri.I.M.Ganapati, vide sale deed dated is 03.11.1965.

8. Subsequently, the land measuring 33 acres 24 guntas in survey No. 69, was also conveyed by Sri.A.S.Ashwatnarayana, Sri.A.S.Umashankar and Sri.A.S.Raghuveer to the aforesaid Sri.I.M.Kariappa,

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I.M.Muthanna, and I.M.Ganapati under a registered sale deed dated 03.11.1965. The said, Sri.I.M.Kariappa, I.M.Muthanna, and I.M.Ganapati further sold an extent of 10 acres of that land to Sri.Mohammad Khaliullah-Petitioner No. 5 herein, an extent of 8 acres 35 guntas to Mohammad Sanaullah-Petitioner No.2 herein, an extent of 10 acres to Mohammad Amanullah-Petitioner No.3 herein and an extent of 10 acres to Mohammad Attaullah-Petitioner No.4 herein all under different sale deeds, all dated 19.08.1977. Thereafter, Petitioner Nos. 2 to 5, are stated to be in possession of these conveyed lands.

9. Contending that there is interference with his possession by the Forest Department, Petitioner No. 2-Mohammad Sanaullah, had filed a suit in O.S. No. 600/1981 seeking a permanent injunction against the Forest Department, restraining the Forest Department from interfering with the peaceful

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possession of Petitioner No.2 in Survey No. 69/2. The said suit came to be dismissed on 13.12.1985 with costs.

10. The Munsiff Court, Devanahalli, held that Mohammad Sanaullah was not in lawful possession of the suit property, he had not proven any interference by the forest department and that he was not entitled to any injunction. Challenging the same, the Petitioner No. 2-Mohammad Sanaulla filed a Regular Appeal in R.A. No. 10/1986 before the Principal Civil Judge. The said Regular Appeal was allowed, and a permanent injunction was granted in favour of Petitioner No.2-Mohammad Sanaulla, on 24.07.1989, restraining the Forest Department from interfering with his possession. The Principal Civil Judge, Bangalore District, in the said R.A. No. 10/1986 came to the conclusion that Mohammad Sanaulla was in lawful possession of the suit property and that he had proven interference by the Forest

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Department, and the finding of the Munsiff Court in that regard was not proper and correct.

11. The Forest Department challenged the said judgment in R.A. No. 10/1986, by filing a Regular Second Appeal in RSA. No. 673/1996. However, the same came to be withdrawn, by the Forest Department on 11.03.1997 on the ground that the Forest Department had filed a suit in O.S. No. 34/1997, on the file of the Civil Judge, Bangalore Rural Court for declaration that the lands in question to be declared as forest land and in view of the institution of the said suit, the Forest Department wanted to withdraw the appeal. The Forest department having filed OS No.34/1997 on 18.01.1997, the same came to be renumbered as OS No.1424/2006 on its transfer to the Court of the Principal Civil Judge, Devanahalli.

12. In the said suit the Forest Department had sought for a declaration that an area to the extent of 8 acres 35

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guntas of the suit schedule property was forest property, and the said suit came to be dismissed on 8.03.2012, on the ground that there was no documents/evidence produced to establish that the land belongs to the forest department. The Principal Civil Judge took into account the fact that the auction was conducted by the government itself and, as such, the forest department could not claim any right of ownership therein. Following the dismissal of OS No.1424/2006, the Forest Department challenged the said order in RFA No.1287/2012, wherein the operation of the order in OS No. 1424/2006 was stayed in the year 2019. However, while granting the said order, this Court has categorically observed that the Forest Department shall not dispossess the Petitioners or anyone claiming ownership under the petition.

13. The Respondents had initiated criminal proceedings against Petitioner Nos. 2 to 6 in the year 2006 in

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F.O.C.No. 7/2006-07, F.O.C. 8/2006-07, F.O.C. 9/2006-07, F.O.C. 13/2006-07 and F.O.C. 14/2006-07 before the Civil Judge (Junior Division) and JMFC Devanahalli. These proceedings were challenged by Petitioner Nos. 1 to 6 in Criminal Petition No. 1852, 1853, 1854, 1856 and 1857 of 2012 respectively and this Court vide its order dated 13.06.2012, quashed all the said proceedings, reserving liberty to the Forest Department to conduct a survey and proceed with the matter in accordance with law if there is any encroachment on the forest land. The Forest Department wrote a letter to the Tahsildar, Bhuvanahalli, on 09.01.2015 for a joint survey to ascertain encroachment. The surveyor, having issued a notice on 31.01.2015, a joint survey was conducted and a report submitted by the Tahsildar, Bhuvanahalli, stating that only survey No.30 is a forest land on which there is some encroachment,

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further that survey Nos.69/2, 69/3, 69/4 and 69/5, 68/1 and 68/2 were not forest land.

14. While things stood thus, the Forest Department once again issued notices on 31.11.2020 for encroachment of the forest land alleging violation of Rule 41(2), Section 2(ii) of the Forest Conservation Act, 1980 [hereinafter referred to as '**FCA 1980]** and Section 24-G, 24-GG, 24-H of the Karnataka Forest Act, 1963 [hereinafter referred to as '**KFA 1963**']. Petitioners issued replies to the said notices. It is challenging the said notices that the petitioners are before this Court.

Facts in WP No.19674/2024:

15. The sole petitioner, Mohammed Shoaib contends that the land in survey no. 68, situated at Chikkasane Village, Devanahalli Taluk, measuring 16 acres 18 guntas, belonged to one Sri.B.Muniyappa Devanahalli, having acquired the same under

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Darkast vide AD 63-1944-45, dated 29.08.1945. The said B.Muniyappa had mortgaged the property to Land Mortgage Co-operative Bank Society, Devanahalli, for a sum of Rs.1,500/-. Since the mortgage was not discharged, the Assistant Registrar of Co-operative Societies passed a decree against the said B.Muniyappa Devanahalli in Order No.7/1953-54, dated 13.08.1954.

16. Thereafter, an auction was conducted in Execution Petition No.107/1961-62, where Smt.Sanjeeda Begum was confirmed to be the successful bidder, and a sale certificate came to be issued by the Assistant Registrar of Cooperative Societies on 29.04.1963, which has been registered with the Office of the Sub-Registrar. Thereafter, Smt.Sanjeeda Begum, under a settlement deed dated 18.11.1974, conveyed the said property to her son, Mohammad Iqbal, who, in turn, conveyed the

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said property in favour of the Petitioner, being his son, under a settlement deed dated 30.03.2002.

17. Out of the said 16 acres 18 guntas, he sold 5 acres to one Shadab Vahab, s/o Abdul Wahab, under a registered sale deed dated 04.08.2025 and retained 11 acres 18 guntas, as regards which he entered into a Joint Development Agreement [**JDA**] with M/s. Prakruti Century Properties, which is Petitioner No.1 in WP No. 392 of 2021.

18. The Petitioners obtained conversion of the property from agricultural to residential purposes in terms of the order dated 30.10.2006 of the Deputy Commissioner, which property was made part of the application dated 15.09.2010 for a residential layout submitted by Prakruti Century Properties, which was so sanctioned on 02.12.2014. 40% of the sites were released on 02.12.2014, 30% on 03.05.2017, and the remaining 30% on 12.09.2019, in terms of which

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sales have been carried out in favour of various purchasers. References were made to these lands in a suit in OS No.1424 of 2006, the Regular Appeal filed thereafter, as also the Regular First Appeal, which is pending consideration.

19. Reference is made to the judgment dated 8.03.2012 dismissing OS No. 1424 of 2006, resulting in the Forest Department filing a Regular First Appeal in RFA No. 1287 of 2012, which also came to be dismissed on 16.04.2021, which is challenged by the Forest Department in an appeal before the Hon'ble Supreme Court in Civil Appeal No.5801 of 2022. The Hon'ble Apex Court allowed the appeal vide order dated 20.09.2022 and remanded the matter to the Trial Court. The Trial Court, after considering the evidence on record, once again by its order dated 15.12.2023, dismissed the suit of the Forest Department. Aggrieved by which the Forest

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Department has filed a Regular First Appeal in RFA No. 160 of 2024, which is pending.

20. Reference is also made to the various proceedings initiated in FOC 7, 8, 9, 13 and 14 of 2006-07, challenge made in Criminal Petition No. 1852, 1853, 1854, 1856 and 1857 of 2012, quashing of the FOC proceedings, liberty being reserved to conduct a survey, which survey was conducted by the Tahsildar, Bhuvanahalli, indicating that there is no forest land situated in survey No. 69, hence there is no encroachment. It is in that stage that the Forest Department issued one more notice on 09.03.2021. The Petitioner is before this Court challenging the said notice stating that 80% of the sites have already been sold and the remaining sites are in the process of being sold, seeking for the aforesaid reliefs.

21. Sri. K. Chandan, learned counsel appearing for the Petitioners, would submit that,

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21.1. The proceedings which have been initiated now in both the writ petitions under the Forest Act are not maintainable. There is a large delay in the initiation of the proceedings. His submission is that the land in question has never been shown to be forest land in any of the revenue records, at least from the time of auction in the year 1936 with respect to survey No. 69 and from the year 1945 with respect to survey No. 68 From the year 1936 and or 1945, no action has been initiated by the Forest Department under the Forest Act.

21.2. The proceedings, which were initiated in 2006-07, have been quashed. There is a delay of nearly 60 years. Even taking into account the second auction in the year 1945, since the earlier FOC cases had been initiated in the year 2006-07. Even those proceedings initiated in the year 2006-07 have been quashed by this

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Court in various criminal petitions in 1852 to 1857 of 2012, vide order dated 13.06.2012. Liberty having been reserved to conduct a survey, the said liberty has also been exercised by the Forest Department. The orders passed in the criminal petitions have attained finality with the quashing of the FOC proceedings.

21.3. A survey having been conducted on 12.06.2015, the Tahsildar, Bhuvanahalli, has categorically indicated that there is no encroachment of any forest land. The orders passed in the criminal petitions, not having been challenged, liberty having been exercised, a report having been submitted by the Tahsildar that there is no encroachment, the question of the Forest Department once again contending that there is an encroachment is completely impermissible and is not sustainable.

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21.4. A joint survey was conducted in the year 2015, and a unilateral survey was carried out in the year 2017, on the basis of which the present notices have been issued in the year 2021, which is not permissible. The survey report of the year 2015 has not been challenged. The survey carried out in the year 2017 is not a joint survey of which the Petitioners are part of, and as such, the present notices could not have been issued.

21.5. His submission is that it is not just a show-cause notice, which is challenged in these proceedings. It is the jurisdiction of the forest department to issue a show cause notice after the same was earlier quashed in the year 2012, disentitling the Respondents to issue a fresh show cause notice and or initiate fresh FOC proceedings, which is under challenge.

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21.6. His further submission is that neither the Mysore Forest Regulation, 1900 [hereinafter referred to as **'MFR 1900']** nor the KFA 1963, provides for any limitation period in order to recover any land which has been used for non-forest purposes. However, any such recovery would have to be made within a reasonable period of time. Merely not providing for a period of limitation would not empower the Forest Department to take action at any time they choose to at their whims and fancies. The property, having been put to use by private persons in the year 1936 in respect of survey No. 69 and in the year 1945 in respect of survey No. 68, it was required that action be taken within a reasonable period of time. The action taken in the year 2006-07, even if eschewed, at the most, action could be said to have been taken in the year 2021, which is

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more than 85 years from 1936 and 75 years from the year 1945, which cannot be said to be a reasonable period of time, even if it were to be considered that the subject lands were forest land, which they are not.

21.7. He relies upon the decisions of the Hon'ble Apex Court in **Sita Sahu and Ors. vs State of Jharkhand and Others**.[1], more particularly para nos. 10 and 11 thereof, which are reproduced hereunder for easy reference:

> *10. Apart from the reasoning given by the High Court, it appears to us that the judgment of this Court in Ibrahimpatnam (supra) is decisive on the contention of limitation urged before us. Under somewhat similar circumstances suo-motu power was given to the Collector under section 50B (iv) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 to call for and examine the record relating to any certificate issued or proceedings taken by the Tahsildar under this section for the purpose of satisfying himself as to the legality or propriety of such certificate or as to the regularity of such proceedings and pass such order in relation thereto as he may think fit. In this judgment, to which one of us (Shivraj V. Patil, J.) was a party, the Court observed (para 9):*

[1]Manu SC 0744/2004 | 2004 INSC 508

"Even before the Division Bench of the High Court in the writ appeals, the appellants did not contend that the suo motu power could be exercised even after a long delay of 13-15 years because of the fraudulent acts of the non-official respondents. The focus of attention before the Division Bench was only on the language of sub-section (4) of Section 50-B of the Act as to whether the suo motu power could be exercised at any time strictly sticking to the language of that sub-section or it could be exercised within reasonable time. In the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud and more so when the contention that the suo motu power could be exercised within a reasonable period from the date of discovery of fraud was not urged, the learned Single Judge as well as the Division Bench of the High Court were right in not examining the question of fraud alleged to have been committed by the non-official respondents. Use of the words "at any time" in Sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act). Hence, it appears that without stating from what date the period of limitation starts and within what period the suo motu power is to be exercised, in Sub-section (4) of Section 50-B of the Act, the words "at any time" are used to that the suo motu power could be exercised

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within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of the parties. Use of the words "at any time" in Sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of the dictionary meaning of the words "at any time", the suo motu power under Sub-section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainly and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo motu power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation."

11. We are, therefore, of the view that the use of the words "at any time" in section 71A is evidence of the legislative intent to give sufficient flexibility to the Deputy Commissioner to implement the socio-economic policy of the Act viz. to prevent inroads upon the rights of the ignorant, illiterate and backward citizens. Thus, where the Deputy Commissioner chooses to exercise his power under Section 71A it would be futile to contend that the period of limitation under Limitation Act has expired. The period of limitation under the Limitation Act is intended to bar suits brought in civil courts where the party himself chooses to exercise his right of seeking restoration of immovable property. But, where, for socio-economic reasons, the party may not even be aware of his own rights, the legislature has stepped

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> *in by making an officer of the State responsible for doing social justice by clothing him with sufficient power. However, even such power cannot be exercised after an unreasonably long time during which third party interests might have come into effect. Thus, the test is not whether the period of limitation prescribed in the Act of 1963 had expired, but whether the power under Section 71A was sought to be exercised after unreasonable delay.*

21.8. By referring to **Sita Sahu's** case, he submits that the period of limitation under Limitation Act is intended to bar suits brought in Civil Courts, even where socio-economic reasons exist, where an officer of the State has been made responsible for doing social justice, even then such power cannot be exercised after an unreasonably long time during which third party interest might have come into being. Thus, even if no limitation period is prescribed under the Andhra Pradesh's local laws (Telangana area), limitation period is prescribed under the Limitation Act, 1963 and the power under Section 71A of the Chota Nagpur Tenancy Act, 1908 was required to be exercised without any

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unreasonable delay. He submits that the exercise of powers under Section 71A is to restore possession to members of the scheduled tribes whose lands were unlawfully transferred by the Deputy Commissioner. That ruling, he submits, would be equally applicable as regards a claim that the land in question is a forest land.

21.9. He relies upon the decision in ***Chhedi Lal Yadav and Ors. vs Hari Kishore Yadav and Ors.***[2] of the Hon'ble Apex Court, more particularly para no.9 thereof which is reproduced hereunder for easy reference:

> ***9.*** *The learned counsel appearing for the appellants vehemently submitted that the delay must be overlooked because the Act is a beneficial piece of legislation intended to bring relief to farmers who had been dispossessed during the proscribed period. The reliance was placed on a judgment of this Court in New India Assurance Co. Ltd. v. C. Padma [New India Assurance Co. Ltd. v. C. Padma, (2003) 7 SCC 713 : 2003 SCC (Cri) 1709] , where this Court held that in a motor accident which took place on 18-12-1989, a claim*

[2](2018) 12 SCC 527

petition barred by time but filed on 2-11-1995, after limitation itself was removed from the statute was maintainable. This Court held that there could be no resort to Article 137 of the Limitation Act, 1963 even though no period of limitation was prescribed. Accordingly, the Court held that the claim petition could not be rejected at the threshold on the ground of limitation, after the deletion of sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 which had provided a period of six months. This view was taken having regard to the purpose of the statute. We, however, find that the judgment relied on has no application to the present case. It is a settled law where the statute does not provide for a period of limitation, the provisions of the statute must be invoked within a reasonable time.

21.10. He relies on the decision in ***Nekkanti Rama Lakshmi vs State of Karnataka and Anr.***[3], which is reproduced hereunder for easy reference:

1. *This appeal is preferred against the judgment [Nekkanti Ramalakshmi v. State of Karnataka, 2006 SCC OnLine Kar 881] of the High Court of Karnataka at Bangalore. A learned Single Judge of the High Court upheld [Nekkanti Rama Lakshmi v. State of Karnataka, 2006 SCC OnLine Kar 883] the order of the appellate authority under the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, which came into force in 1979 (for short "the Act"). The appellate authority had by its order set aside the order of the Assistant Commissioner, Davanagere. The appellate*

[3](2020) 14 SCC 232

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authority had annulled the transfer of land measuring 1 acre and 2 guntas, which was sold out of a total of 2 acres and 2 guntas, and further directed the Assistant Commissioner, Davanagere to restore the disputed land to the possession of the applicant.

2. *The land was originally granted to one Kariyappa on the basis of a grant which had not been produced on record. The grant was on 30-6-1965. Kriyappa sold the land to one Mekha Narasimha Murthy on 15-12-1977. The appellant, Smt Nekkanti Rama Lakshmi purchased the land on 27-6-1984 from Mekha Narasimha Murthy.*

3. *With effect from 1-1-1979, the Act came into force. That Act vide Section 4 ["**4. Prohibition of transfer of granted lands**.—(1) Notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of thegrant of such land or the law providing for such grant, or sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.(3) The provisions of sub-sections (1) and (2) shall apply also to the sale of any land in execution of a decree or order of a civil court or of any award or order of any other authority."] annulled the transfer of any granted land in contravention of the terms of grant of such land.*

4. *Section 5 ["**5. Resumption and restitution of granted lands**.—(1) Where, on application by any interested person or on information given in writing by any person or suo motu, and after such enquiry as he deems necessary, the Assistant Commissioner is satisfied that the transfer of any granted land is null*

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and void under sub-section (1) of Section 4, he may—(a) by order take possession of such land after evicting all persons in possession thereof in such manner as may be prescribed:Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard;(b) restore such land to the original grantee or his legal heir. Where it is not reasonably practicable to restore the land to such grantee or legal heir, such land shall be deemed to have vested in the Government free form all encumbrances. The Government may grant such land to a person belonging to any of the Scheduled Castes or Scheduled Tribes in accordance with the rules relating to grant of land.(1-A) After an enquiry referred to in sub-section (1) the Assistant Commissioner may, if he is satisfied that transfer of any granted land is not null and void pass an order accordingly.(2) Subject to the orders of the Deputy Commissioner under Section 5-A, any order passed under sub-section (1) and (1-A) shall be final and shall not be questioned in any court of law and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by the Assistant Commissioner in pursuance of any power conferred by or under this Act.(3) For the purposes of this section, where any granted land is in the possession of a person, other than the original grantee or his legal heir, it shall be presumed until the contrary is proved, that such person has acquired the land by a transfer which is null and void under provisions of sub-section (1) of Section 4."] of the Act provided for resumption and restitution of granted lands. It provided for an application to be made by an interested person to the Assistant Commissioner for restoration of such land. It also provided for exercise of suo motu power.

5. *Rajappa, son of Kriyappa (R-2 herein) made an application for restoration of such land to himself by*

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an application dated 24-3-2004 i.e. approximately after 25 years of when the Act came into force.

6. *As stated earlier, the Assistant Commissioner, Davanagere rejected that application. The appellate authority allowed the application and the High Court upheld the order of the appellate authority. This appeal is preferred by the second purchaser of the said land.*

7. *Shri R.S. Hedge appearing for the appellant urged several grounds. It is contended by Shri Hegde that proceedings are void for non-joinder of the first purchaser of the land. It is further contended that the non-alienation period i.e. period for which Kriyappa could not have transferred the land was not 15 years but was 10 years under the Rules of the land and, therefore, transfer was legal having been made after 10 years. However, the applicant had not produced the original grant, and, therefore, it was not possible for the purpose to come to a conclusion that the transfer was in breach of the non-alienation period. We, however, find that one of the points raised on behalf of the appellant deserves acceptance. That point is that the application for restoration of the land was made by the heir of Kriyappa after unreasonably long period i.e. 25 years from when the Act came into force. Section 4 of the Act itself has a ubiquitous effect in it, annulling the transfer of granted land "made either before or after the commencement of the Act" as null and void. The Act does not specify how much before the commencement of the Act. Thus on a plain and critical reading of the Act, it seems that it covers proceedings made in time before the Act was enacted. However, we are not called upon to deal with the reasonableness of this provision and we do not propose to say anything on this. The validity of the Act has been upheld by a judgment of this Court in Manchegowda v. State of Karnataka [Manchegowda v. State of Karnataka, (1984) 3 SCC 301].*

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8. *However, the question that arises is with regard to terms of Section 5 of the Act which enables any interested person to make an application for having the transfer annulled as void under Section 4 of the Act. This section does not prescribe any period within which such an application can be made. Neither does it prescribe the period within which suo motu action may be taken. This Court in Chhedi Lal Yadav v. Hari Kishore Yadav [Chhedi Lal Yadav v. Hari Kishore Yadav, (2018) 12 SCC 527 : (2018) 5 SCC (Civ) 427] and also in Ningappa v. Commr. [Ningappa v. Commr., (2020) 14 SCC 236] reiterated a settled position in law that whether statute provided for a period of limitation, provisions of the statute must be invoked within a reasonable time. It is held that action whether on an application of the parties, or suo motu, must be taken within a reasonable time. That action arose under the provisions of a similar Act which provided for restoration of certain lands to farmers which were sold for arrears of rent or from which they were ejected for arrears of land from 1-1-1939 to 31-12-1950. This relief was granted to the farmers due to flood in Kosi River which make agricultural operations impossible. An application for restoration was made after 24 years and was allowed. It is in that background that this Court upheld that it was unreasonable to do so. We have no hesitation in upholding that the present application for restoration of land made by respondent Rajappa was made after an unreasonably long period and was liable to be dismissed on that ground. Accordingly, the judgments of the Karnataka High Court, namely, R. Rudrappa v. Commr. [R. Rudrappa v. Commr., 1998 SCC OnLine Kar 671 : (2000) 1 Kant LJ 523] , Maddurappa v. State of Karnataka [Maddurappa v. State of Karnataka, (2006) 4 Kant LJ 303] and G. Maregoudav. Commr. [G. Maregouda v. Commr., (2000) 2 Kant LJ SN 4B] holding that there is no limitation provided by Section 5 of the Act and,*

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therefore, an application can be made at any time, are overruled. Order accordingly.

9. *The appeal is allowed accordingly.*

21.11. By relying on **Chedi Lal Yadav,** which has also been referred to in **Nekkanti Ramalakshmi's** case, his submission is that any powers that are to be exercised by an authority are to be exercised within a reasonable period of time. In the present case, 85 and 75 years are not a reasonable period of time. On that ground itself, he submits that the Petitioners cannot be subjected to unnecessary proceedings initiated by the Forest department and the proceedings are required to be quashed.

21.12. The earlier proceedings, which were initiated for similar alleged encroachment of forest land in FOC No. 7, 8, 9, 13 and 14, of 2006-07, were quashed in Criminal Petitions No.1852 to 1857 of 2012, on 13.06.2012. Once a proceeding

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initiated under the Forest Act has been quashed, the question of initiation of fresh proceedings, as done now for allegedly the very same offence and or issue, is not sustainable in law. There are no circumstances which can be said to exist which can be said to be changed circumstances requiring the initiation of those proceedings.

21.13. In pursuance of the orders passed in Criminal Petition No. 1852 of 2012 and other matters, the Tahsildar, Bhuvanahalli, has conducted a joint survey in the presence of the Petitioners and the representatives of the Forest department and has categorically come to a conclusion that there is no encroachment of any forest land and that in survey No. 68 and 69 there is no forest land. The claim of the Petitioners being only as regards survey No. 68 and 69, the question of there being any

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encroachment of forest land when such survey numbers are not designated as forest land, would not arise. These are matters which this Court can take into account even in a writ petition without relegating the Petitioners to any other remedy.

21.14. The show-cause notice, which has been issued, is without jurisdiction, causes injustice to the Petitioners, and therefore, this Court ought to intercede in this matter.

21.15. As regards the probable contention of the forest department, which was taken in the suit filed as also the appeals which were filed thereafter, he submits that once a grant of the land has been made, the said land does not continue to be forest land. Even if the notification relied upon by the Forest department were to be admitted to be true, and the land were to be considered

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to be forest land belonging to the Forest Department, these lands in Sy No. 69 were as far back as the year 1932, granted to a defence personnel, namely Shri. Manikaraj who had defaulted in making payment of taxes, resulting in the property being auctioned in the year 1936, in favour of Sri.Subbaraya Mudaliyar whose details are found mentioned in the Kethwar register. The grant having been made to a defence personnel Shri. Manikaraj by the State, the auction having been carried out by the department of the State, it cannot now be contended that the land is forest land as alleged or otherwise.

21.16. He refers to Section 20 of the MFR 1900 which is reproduced hereunder for easy reference:

> *20. No right of any description shall be acquired in or over a State Forest, except by succession or under grant or contract in writing made by or on behalf of the Government or of some person in whom such right or the power to create such right*

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> *was vested when the notification under section 17 was published.*

21.17. Though no right of any description shall be acquired in or over a State forest, the same is subject to exceptions, namely by succession or under a grant or contract in writing made by or on behalf of the government. The grant made to the defence personnel Shri. Manikaraj is an exception to Section 20 of the MFR 1900, which has been made in writing for and on behalf of the government, which are found mentioned in the Kethwa Register.

21.18. There being a default on part of the grantee in making payment of due taxes, an auction has been conducted by the government, which would not have been conducted if the lands were forest land. By conduct of such an auction, the grant made in favour of defence personnel Shri. Manikaraj is confirmed, bringing

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it into the exceptions to Section 20 of the Regulation of 1900. He refers to the explanation to Section 20 and elaborates that Section 20 provides an exception to Section 17 of MFR 1900. Section 17 is reproduced hereunder for easy reference:

> *17.* ***When the following events have occurred, viz.-***
>
> *(a) the period fixed under section 5 for preferring claims has elapsed, and all claims, (if any) made within such period have been disposed of by the Forest Settlement Officer; and*
>
> *(b) if such claims lave been made, the period fixed by section 15 for appealing from the orders passed on such claims has elapsed, and all appeals, (if any) presented within such period have been disposed of by the appellate authority; and*
>
> *(c) all proceedings prescribed by sections 10 and 18 have been taken and all lands or buildings, (if any) to be included in she proposed State Forest, which the Forest Settlement Officer has under section 10 elected to acquire under the Mysore Land Acquisition Act, 184, have become vested in Government under section 16 of that Act;*
>
> *the Government may publish a notification in the official Gazette specifying the limits of the forest which it is intended to constitute a State Forest and declaring the same to be a State Forest from a date fixed by such notification, subject to the exercise of rights (if any) specified at foot of the said notification.*

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From the date so fixed such forest shall be deemed to be a 'State Forest'.

21.19. Thus, taking into consideration Section 20 and the explanation thereto, the same acts as an exception to Section 17, the said lands, having been granted by way of a writing made by the government, are binding on the Forest Department as well.

21.20. Insofar as land in survey No.69 is concerned, the same having been granted to the defence personnel, Shri. Manikaraj by the government in the year 1932, the auction having been conducted on 30.09.1996, with Subbaraya Mudaliyar being declared as a successful bidder, a sale certificate was issued and registered on 19.11.1936 as Document No.1040 in Book 1, Volume 380, as per Rule 99 and Section 187 of the Mysore Land Revenue Code and Rules, 1888. The said Rule 99 of the Mysore Land

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Revenue Rules, 1888, is reproduced hereunder for easy reference:

> *99. (a) Every sale, shall, as a rule, be held on the day named in the proclamation, and, if necessary, continued from day to day (close holidays excepted), until all the properties specified in the proclamation shall have been sold. The Officer conducting the sale, may, however in his discretion, adjourn any sale for a period not exceeding three days, recording his reasons for such adjournment: provided that, when the sale is conducted by the Revenue Inspector in or within the precincts of the Amildar's or Deputy Amildar's Office, no such adjournment shall be made without the leave of the Amildar or Deputy Amildar if he is at headquarters.*
>
> *[(b) Where any land or other property is sold by public auction an upset price shall, if the Deputy Commissioner thinks fit, be placed thereon:*
>
> *Provided that where in the opinion of the Deputy Commissioner difficulty is likely to be experienced in effecting speedy recovery of the arrears or bidders are likely to be deterred from offering bids, no such upset price shall be placed.) (Substituted by Notification No. RD 221PES 358, dated 3-9-1958)*
>
> *[(c) Where in the opinion of the Deputy Commissioner, difficulty is likely to be experienced in effecting speedy recovery of the arrears or bidders are likely to be deterred from offering bids, it shall be lawful for the Deputy Commissioner or his nominee to bid at the auction and purchase the land or other property for a bid of rupee one:*
>
> *Provided that in the case of land forfeited under Section 159, the Deputy Commissioner may direct that the land be either resumed and dealt with as an unoccupied land or disposed of in such other manner as he may deem proper.) (Inserted by Notification No. RD 221 PES 358, dated 3-9-1958)*

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[(d) Where the quit-rent due on an Inam land or village has been apportioned amongst several shareholders, and the lands held by each sharer are separately registered in the accounts, the holder of each sub-divided portion will be responsible for the quit-rent due on his portion only, but where no such apportionment of quit-rent has taken place, and the proprietary right in an Inam village is held jointly by several persons, the joint liability of the shareholder should be insisted upon for arrears of quit-rent due to Government. If, however, shareholders, notwithstanding that the lands are not divided, wish to have their shares separately registered, so that each sharer may pay his quota of the Government dues, and produce before the Deputy Commissioner an agreement signed by all of them, containing a full statement of the shares held by each and the amount of quit-rent payable by him, their several shares may accordingly be registered; and in such case, or where the shares have already been separately registered as Vrittis, the quit-rent due by each sharer may be collected from him. If any shareholder falls into arrear, his share shall first be sold and if it does not realize the arrear due, the joint responsibility may then be enforced and the other shares also sold, after due notice. The purchaser of the share sold will acquire all the rights of the defaulter, but free of all encumbrances created by him.

(e) The certificate of sale of immovable property, to be granted under Sections 187 and 188, shall be in Form of Appendix K, and shall be engrossed on impressed stamp paper to be produced by the purchaser.]

21.21. Section 187 of the Mysore Land Revenue Code, 1888, is reproduced hereunder for easy reference:

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Section 187 - On confirmation of sale, purchaser to be put in possession. Certificate of purchase

After a sale of any occupancy or alienated holding has been confirmed in manner aforesaid, the Deputy Commissioner shall put the person declared to be the purchaser into possession of the land included in such occupancy or alienated holding, and shall cause his name to be entered in the revenue records as occupant or holder in lieu of that of the defaulter, and shall grant him a certificate to the effect that he has purchased the occupancy or alienated holding to which the certificate refers.

21.22. As regards Survey No. 68, he submits that this land had been granted in favour of Sri.Muniyappa Devanalli, which is not in dispute. Once a grant has been made, again Section 20 of the MFR 1900 would become applicable to the said survey No. 68. A mortgage having been created on the said land, proceedings having been initiated before the Assistant Registrar of Co-operative Societies, it is said Assistant Registrar who conducted an auction where Smt.Sajeeda Begum was declared successful. Thus, this auction was also

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conducted by an officer of the government and as such, the government cannot now contend that the grant in favour of Muniyappa and the auction conducted by the Assistant Registrar of Co-operative Societies would not confer any right and or that the Forest Department continues to hold a right in the said property.

21.23. The impugned notice having been issued under Section 64A, of the KFA 1963, invoking Section 24G, 24GG, 24H and 73D of the KFA of 1963, as also Rule 41(2) of the KFR of 1969 and Section 2(2) of the Forest Conservation Act 1980 [***'FCA of 1980'*** for short], would not be applicable to the present case. Section 64A of the KFA is reproduced hereunder for easy reference:

> *64A. Penalty for unauthorisedly taking possession of land constituted as reserved forest, district forest, village forest, protected forest and any other land under the control of the Forest Department.—*

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(1) Any person unauthorisedly occupying any land in reserved forest, district forest, village forest, protected forest and any other land under the control of the Forest Department may, without prejudice to any other action that may be taken against him under any other provision of this Act or any other law for the time being in force, be summarily evicted, by a Forest Officer not below the rank of an Assistant Conservator of Forests and any crop including trees raised in the land and any building or other construction erected thereon shall, if not removed by him within such time as the Forest Officer may fix, be liable to forfeiture:

Provided that before evicting a person under this sub-section he shall be given a reasonable opportunity of being heard.

(2) Any property forfeited under sub-section (1) shall be disposed of in such manner as the Forest Officer may direct and the cost of removal of any crop, building or other work and of all works necessary to restore the land to its original condition shall be recoverable from the person evicted in the manner provided in section 109.

(3) Any person aggrieved by an order of the Forest Officer under subsection (1) may, within such period and in such manner as may be prescribed, appeal against such order to the State Government or to such officer as may be authorised by the State Government in this behalf and the order of the Forest Officer shall, subject to the decision in such appeal, be final

21.24. Section 64A contemplates unauthorizedly occupying any land in a reserve forest, district forest, village forest, protected forest or any other land under the control of the Forest

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department. This, he submits, is a free condition for the exercise of powers under Section 64A. Once there is a grant which has been made by the State government, either in favour of defence personnel or in favour of Sri.Muniyappa even assuming that the land is waste forest land, by way of such grant, the exception in terms of Section 20, of the MFR 1900 would apply, this land would no longer continue to be forest land, either as reserved forest, district forest, village forest or protected forest and obviously the same would not be in control of the Forest department, since the grantee was in control thereof. Therefore, he submitted that the precondition required for the application of Section 64A not being satisfied, the question of the State government seeking to forfeit the said land would not arise.

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21.25. Section 24 is reproduced hereunder for easy reference:

> ***24. Acts prohibited in reserved forests.***—*Any person who,—*
>
> *(a) makes any fresh clearing prohibited by section 6, or*
>
> *(b) sets fire to a reserved forest or in contravention of any rules made by the State Government in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest; or any person who, in a reserved forest,—*
>
> *(c) in contravention of the rules made in this behalf by the State Government,—*
>
> *(i)kindles, keeps or carries any fire except at such seasons as the Forest Officer may notify in this behalf;*
> *(ii)trespasses or pastures cattle, or permits cattle to trespass;*
>
> *(d) causes any damage by negligence in felling any tree or cutting or dragging any timber;*
>
> *(e) fells, cuts, girdles, lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages the same;*
>
> *(f) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest produce;*
>
> *(g) clears or breaks up any land for cultivation or any other purpose;*
>
> *[(gg) unauthorisedly occupies land for any purpose*
>
> *(h) damages, alters or removes any cairn, wall, ditch, embankment, fence, hedge, or railing;*

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(i) poisons or dynamites water;

(j) in contravention 1[of any law or rules, enters any reserved forest with fire arms or any other weapon meant for hunting]1, hunts, shoots, fishes or sets traps or snares, or who abets committing of any of the above prohibited acts shall, on conviction, be punishable with imprisonment for a term which may extend to 2[one year or with fine which may extend to two thousand rupees]2, or with both, and in addition be liable to pay such compensation for the damage done to the forests as the convicting court may direct to be paid.

21.26. What has been proposed to be invoked against the petitioners are Section 24G which relates to clearing or breaking up of any land for cultivation or any other purpose, Section 24GG which relates to unauthorizedly occupying the land for any purpose and Section 24H relates to damaging, altering or removing any cairn, wall, fence etc. or destroying the land for any purpose.

21.27. What has been proposed to be invoked against the petitioners is Section 24G, which relates to unauthorizedly occupying the land for any purpose in a reserved forest. He submits that

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when section 64A is not applicable, by virtue of the land granted not being a reserved forest, district forest, village forest or protected forest, section 24 being applicable only to reserved forest, cannot be pressed into service as regards either survey No. 68 or 69 of Chikkasane village.

21.28. Section 73 of the KFA 1963 would also not be applicable. Section 73 is reproduced hereunder for easy reference:

> ***73. Penalty for counterfeiting or defacing marks on trees or timber and for altering boundary marks.****—Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code,—*
>
> *(a) knowingly counterfeits upon any timber or standing tree a mark used by Forest Officers to indicate that such timber or such tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or*
>
> *(b) unlawfully affixes to any timber or standing tree a mark used by Forest Officers; or*
>
> *(c) alters, defaces or obliterates any such mark placed on any timber or standing tree by or under the authority of a Forest Officer; or*

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(d) alters, moves, destroys or defaces any boundary mark of any forest or waste land to which the provisions of this Act are applicable; shall, on conviction, be punishable with imprisonment which may extend to two years, or with fine, or with both.

21.29. Section 73 relates to boundary marks of forests, more particularly Sub-section (D) of Section 73 relates to altering, moving, destroying or defacing a boundary mark of any forest or wasteland to which the provisions of the Act are applicable. The present lands not being forest land, there being a grant as aforesaid, the question of Section 73 being made applicable would not arise.

21.30. As regards violation of Rule 41 of the Karnataka Forest Rules 1969, he submits that these Rules came into force in the year 1969 and would not be applicable to the grants which had been made in the year 1936 and 1945. Rule 41 is reproduced hereunder for easy reference:

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*41. **Grant of lands by the Deputy Commissioner**:*

(1) No land containing valuable trees or other forest growth shall be granted by the Deputy Commissioner, unless the concerned 1[Deputy Conservator of Forests] gives his concurrence.

(2) No land from well wooded areas or adjacent to wooded areas in the district or protected forests or within 100 metres of reserved forests shall be granted for occupancy.

(3) No land containing 25 or more sandal trees of over 20 cm, in girth at 1.37 metres from ground level per hectare shall be given out for cultivation or other purpose or leased for any purpose, except with the concurrence of the 1[Deputy Conservator of Forests] or of the Conservator of Forests.

(4) Lands containing smaller number of such developed sandal trees or sandal trees of lesser girth may be given out for occupancy by the Deputy Commissioner in consultation with the 1[Deputy Conservator of Forests], unless in the opinion of the latter they are valuable sandal-bearing areas. The Deputy Commissioner, before granting, such land, shall get a complete and correct list of all sandal trees and saplings in the land and record the list in the register maintained for the purpose and obtain an agreement from the grantee for preserving all such trees.

21.31. His submission is that Sub-rule (2) of Rule 41 would apply to protected forests or within a 100-meter radius of reserved forests, which cannot be granted by the Deputy Commissioner. This prohibition of grant having

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been introduced in the year 1969, he submits that there was no such prohibition which was in existence in the year 1932 when the grant was made in favour of Defence Personnel, and in the year 1945 when a grant was made in favour of Sri.Muniyappa. Thus, going on to contend now that there was a grant made by the Deputy Commissioner in violation of sub-Rule (2) of Rule 41, is a complete misconception on part of the Forest Department. He submits that Section 2 of the FCA of 1980 would also not be applicable inasmuch as the said Section relates to restrictions on de-reservation of forest or use of forest land for non-forest purposes. This Act also came into force in the year 1980, and cannot be made retrospectively applicable to actions which have been taken in the year 1932 and 1945. His submission is that Section 2 of

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the FCA of 1980 would be applicable only to forest lands which are still forest lands as on the day the FCA of 1980 came into force.

21.32. The revenue records never having indicated that the lands were forest land, there being no document indicating that the Forest department has any title over the property or control over the land, the revenue documents too indicate that the title of the land in survey No. 68 and 69 was vested with the predecessors of the Petitioners and subsequently with the Petitioners. The revenue documents being contrary to any of the claims made by the Forest Department, the Forest Department or any other department of the government cannot claim any interest in the land in survey No. 68 and 69. These proceedings amount to harassment of the Petitioners when the land is

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not forest land; Section 64A of the KFA cannot be involved.

21.33. He relies upon the decision of the Hon'ble Apex Court in ***B.S. Sandhu vs Government of India and Ors.***[4], more particularly para nos. 16 and 17 thereof, which are reproduced hereunder for easy reference:

> **16.** The High Court has also taken a view in the impugned order [*Court on Its Own Motion* v. *State of Punjab*, (2004) 4 RCR (Civil) 619 : (2005) 2 ICC 16 (P&H)] that as the entire land of Village Karoran, District Ropar, was closed in the PLP Act, 1900, it was "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980. Para 53 of the impugned order [*Court on Its Own Motion* v. *State of Punjab*, (2004) 4 RCR (Civil) 619 : (2005) 2 ICC 16 (P&H)] of the High Court is quoted hereinbelow: [*Court on Its Own Motion case* [*Court on Its Own Motion* v. *State of Punjab*, (2004) 4 RCR (Civil) 619 : (2005) 2 ICC 16 (P&H)] , RCR (Civil) p. 644]
>
> "*53*. For the reasons aforementioned and relying upon the expression 'forest' and 'forest lands' as defined by Their Lordships in *T.N. Godavarman case* [*T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267] and the principles laid down in *M.C. Mehta case* [*M.C. Mehta* v. *Union of India*, (2004) 12 SCC 118] , we hold that the entire land of Village Karoran which has been notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 thereof, is a 'forest land' and attract the provisions of Section 2 of the

[4](2014)12 SCC 172

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Forest (Conservation) Act, 1980, if sought to be used for 'non-forest purposes'."

17. Hence, the first question that we have to decide is whether the conclusion of the High Court that the land which is notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 of the aforesaid Act is "forest land" is correct in law. Sections 3, 4 and 5 of the PLP Act, 1900 as it was originally enacted are extracted hereinbelow:

> "**3.** Whenever it appears to the local Government that it is desirable to provide for the better preservation and protection of any local area, situated within or adjacent to the Sivalik mountain range or affected or liable to be affected by the deboisement of forest in that range or by the action of chos, such Government may, by notification, make a direction accordingly.
>
> **4.** ***Power to regulate, restrict or prohibit, by general or special order, within notified areas, certain matters***.—In respect of areas notified under Section 3 generally or the whole or any part of any such area, the local Government may by general or special order temporarily or permanently, regulate, restrict or prohibit—
>
> (*a*) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under Section 3;
>
> (*b*) the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under Section 3;
>
> (*c*) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (*b*) of this sub-section of any forest produce other than grass, save for bona fide domestic or agricultural purposes;

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(*d*) the setting on fire of trees, timber or forest produce;

(*e*) the admission, herding, pasturing or retention of sheep or goats or camels;
(*f*) the examination of forest-produce passing out of any such area; and

(*g*) the granting of permits to the inhabitants of towns and villages situate within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own use therefrom, or to pasture sheep or goats or to cultivate or erect buildings therein and the production and return of such permits by such persons.

5.*Power in certain cases, to regulate, restrict or prohibit, by special order, within notified areas, certain further matters*.—In respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under Section 3, the local Government may, by special order, temporarily regulate, restrict or prohibit—

(*a*) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under Section 3;

(*b*) the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under Section 3;
(*c*) the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (*b*) of this sub-section, of any forest produce for bona fide domestic or agricultural purposes; and

(*d*) the admission, herding, pasturing or retention of cattle generally other than sheep and goats, or of any class or description of such cattle."

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21.34. By relying on **B.S.Sandhu's** case, his submission is that the word 'forest' must be understood according to its dictionary meaning and must cover all statutorily recognised forests. Even if a forest, as held in ***T.N. Goda Varman's*** case, were to be understood to apply to areas recorded as forest in the government record, irrespective of ownership, the same would not be applicable to the present case, since there is no ownership recorded of survey Nos. 68 and 69 in the name of the government. What is required to be considered is whether the said land was forest land or not, when FCA 1980 came into force, that is, as on 25.10.1980, on the basis of documents available on record.

21.35. This is not a matter which will require a trial of a disputed question of fact, inasmuch as it is for the Forest Department to establish by any

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document on record that the land in Survey Nos. 68 and 69 were forest land, as on 25.10.1980. There being no such documents that had been placed on record, the Forest Department having filed a suit for declaration of title by declaring it to be forest land, there is a dispute which existed as on 25.10.1980 as regards the very nature of the land. The same, not being forest land, the decision in **T.N.Godavarman's** case would not be applicable to the present case.

21.36. He submits that the proceedings and the Show-cause notice in the present case have been issued in the very same quashed proceedings in FOC No. 7 to 9, 13 and 14 of 2006-07. Once those proceedings have been quashed, they cannot be revived in a manner other than that known to law, which should have been only by way of an order of a superior Court. Those FOC

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proceedings having been quashed, there being no revival of the said proceedings, no fresh Show-cause notice could be issued in the very same proceedings; those proceedings do not exist in the eyes of the law as of today.

21.37. On the above basis, he submits that the writ petitions have to be allowed and the reliefs sought ought to be granted.

22. Mr.Kiran Ron, the Additional Advocate General, appearing for the State and Forest Department, would submit that,

22.1. What is challenged in the present proceedings are six show cause notices, all dated 13.11.2020, issued by Respondent No.2, under Section 64A of the KFA of 1963 calling upon the Petitioners to submit all the relevant documents in the enquiry to be held on 19.11.2020, the said notices had been issued in pursuance of

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the government notification bearing No. R7803-6, dated 08.01.1921, whereunder the State forest came to be constituted, on the ground that the Petitioners had encroached on the land.

22.2. He relies upon the decision in ***Union of India and Anr vs Kunisetty Satyanarayana***[5], more particularly para nos.13 and 14 thereof, which are reproduced hereunder for easy reference:

> ***13.*** *It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.*
>
> ***14.*** *The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite*

[5] (2006)12 SCC 28

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> *possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.*

22.3. By relying on **Kunishetti-Satnayana's** case, he submits that a show-cause notice cannot be challenged in writ proceedings.

22.4. He again reiterates that the High Court should be extremely circumspect while dealing with a writ petition against a show-cause notice. Thus, he submits that any and all contentions which have been taken up by the petitioners in the present matter could be taken up before the second respondent in answer to the show-cause notice. The same is not required to be considered by this Court in detail as sought to be contended by the Petitioners. He submits that Petitioners No. 2 to 5 in WP No.392/2021

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are related to each other. Petitioner No. 1 therein is a developer who has entered into a JDA with Petitioner No. 2 to 5 in WP 392, as also Petitioner in WP No. 1964/2024. The lands subject matter of the joint development agreement being Survey No.68 and 69 which are forest lands.

22.5. The land in survey No. 66, 67 of Chikkasane and survey No. 14 of Bhuvanahalli, which were then existing survey nos., were declared to be comprised of the Bhuvanahalli State Forest, vide Gazette Notification No. R7807-FT-126-20-8, dated 08.01.1921. These survey nos. underwent a change with survey No. 66 being renumbered as survey No. 68, survey No. 67 being renumbered as survey No. 69, survey No.14 being renumbered as survey No.30 and as such the new numbers survey No. 68 and 69 which the petitioners claim ownership of were

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actually old No. 66 and 67 which were declared to be forest land and as such the gazette notification dated 08.01.1921 would be applicable to the present land. A table of survey Nos and change thereof is produced hereunder:

2. As this land is declared as Bhuvnahalli State Forest vides Gazette Notification No. R.7807-Ft-126-20-8, dated 8th January 1921 and the extent of the forest area with respect to village and survey number as follows:

Sl. No.	*Village Name*	*Old Sy. NO.*	*New Sy. No.*	*Extent (A-G)*
1	*Chikkasanne*	*66*	*68*	*16-18*
2	*Chikkasanne*	*67*	*69*	*34-09*
3	*Bhuvanahalli*	*14*	*30*	*8-21*
			Total	*59-08*

22.6. The aforesaid land, measuring 59 acres 8 guntas was declared as Bhuvanahalli State Forest under Section 17 of the Mysore Forest Regulation, 1900 in the year 1921. Any transaction post 1921 as regards the aforesaid land, which is declared as State Forest, is illegal and cannot be used for any non-forestry purposes. In this regard, he relies upon the

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decision of the Hon'ble Apex Court in ***State of Karnataka vs I.S. Nirvane Gowda***[6], more particularly para no. 4 thereof, which is reproduced hereunder for easy reference:

> *Learned counsel for the appellants contended that the High Court committed a serious error in interfering with the concurrent findings recorded by both the courts below when those finding s were based on proper consideration and appreciation of evidence brought on record. The learned counsel contended that Exh. D.1- being the true copy of the gazette Notification dated 26t h June, 1937, was rightly accepted by the Trial Court as well as the First Appellate Court an d the High Court was not justified in not accepting the same particularly when it had become a part of the record and no objection had been taken by the respondents at the time of recording the evidence. He also submitted that Exh.D.2, being the statement of lands taken for Indavara State Forest in Hukkund Village, should have been accepted . He further submitted that Hanumanthappa- the Range Forest Officer supported the case of the appellants on the basis of the record. Merely because the Higher officer in the department was not examined, his testimony could not be rejected. The trial court as well as the first appellate court, based on the evidence, recorded findings that the lands in question were the part of reserved forest. We do not find any good ground or a valid reason for rejection of Exh.-D.1 by the High Court. When the lands were included in reserve forest, the entries in the revenue records were of no consequence and further mere Saguvali Chits did not confer any title on the suit lands. This apart the revenue authorities were not competent to deal with the property which were the part of the reserved forest. Th e First Appellate Court was right in affirming the judgment and decree of the Trial*

[6]CA No. 7309-10 of 1996

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> *court. We find it difficult to sustain the impugned judgment and decree as far as these respondents- I. S. Nirvane Gowda and B. Govindaraj in these two appeals are concerned. In this view these appeals are entitled to succeed.*

22.7. By relying on **Nirvane Gowda's** case, he submits that where the lands were included in a reserved forest, the revenue records were of no consequence, issuance of saguvali chits and or the like did not confer any title on the said land. The revenue authorities were neither competent nor did they have the authority to deal with forest land.

22.8. He relies upon Section 30 of the MFR 1900, which is reproduced hereunder for easy reference:

> *30. (1) The Government may, by notification in the official Gazette, direct that, from a date to be fixed by such notification, any forest constituted a State Forest under this Regulation or any portion thereof, shall cease to be a State Forest or portion of a State Forest.*
>
> *(2) From the date so fixed, such forest or portion shall cease to be a State Forest or portion of a State Forest; but the rights, if any, which have been extinguished therein shall not revive in consequence of such cessation.*

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22.9. By relying on Section 30, he submits that the government may, by notification, in the official gazette, direct any forest constituted as a State forest under that regulation and or issue a notification that it shall cease to be a State forest or a portion of a State-forest. Thus, he submits that unless and until the government issues such a notification under Section 30, any particular survey No. and or the extent thereof ceases to be a State forest or a portion of a State forest, such survey no. and the land comprised therein shall continue to be a state forest, as regards which the Petitioners cannot claim any equity.

22.10. The Government Land Protection Committee had called upon the District Commissioner of Bangalore and the Tahsildar, Devanahalli, to furnish details regarding the grant of the land

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to the defence personnel, which was auctioned in favour of Sri.Subbraya Mudaliyar. The Tahsildar, Devanahalli Taluk, has written to the District Commissioner on 02.12.2020, that there is no record found in his office regarding the grant of the disputed land to any defence personnel, namely Shri. Manikaraj or otherwise, and subsequently auctioned in favour of Sri. Subbaraya Mudaliyar.

22.11. The Tahsildar has confirmed that the land belongs to the Forest Department, as per the aforesaid gazette notification dated 08.01.1921. As such, he submits that there being no grant made in favour of the defence personnel, the question of the Petitioners claiming an interest under the so-called grant and the subsequent auction on account of non-payment of land revenue is bereft of merits and is not sustainable.

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22.12. The proceedings which had been initiated in OS No.1424/2006 and the subsequent proceedings thereof, were not required to be so initiated by the forest department. The said proceedings have been initiated under ill advice. The Notification continues to hold force; it is the said notification which is required to be implemented and which is now sought to be implemented. The existence of the said suit, the appeal and or any proceedings, will not take away the applicability of the notification issued on 08.01.1921.

22.13. As regards the joint survey conducted on 28.01.2015 and 29.01.2015 by the Tahsildar Bhuvanahalli, in pursuance of the Order Dated 13.06.2012 in Criminal Petition No. 1852-1857 of 2012, he submits that the Assistant Commissioner having received the said survey report on 12.06.2015 being of the opinion that

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the said joint survey was not conducted in accordance with the Gazette notification dated 08.01.1921, had requested the Range Forest Officer, the Assistant Conservator of Forests, Deputy Conservator of Forests, for a fresh survey in terms of the notification dated 08.01.1921 and as such, had not accepted the joint survey.

22.14. Thereafter, the Technical Assistant and Deputy Director of Land Records, Bangalore Rural District, were directed by the Tahsildar, Devanahalli Taluk to conduct a joint survey, according to the notification dated 08.01.1921, vide their correspondence dated 21.04.2017.

22.15. On 10.07.2017, the ADLR, Devanahalli Taluk, issued a notice to attend the joint survey to be conducted on 25.07.2017. Though Petitioner No.1 received the notice, the other Petitioners

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refused to receive the notice. A survey was conducted in the presence of Petitioner No. 3-Sri. M. A. Mohammad Amanullah, who refused to sign the Mahazar, which is apparent from the report of the Assistant Conservator of Forests dated 16.09.2017 addressed to the Deputy Conservator of Forests. He submits that the joint survey conducted earlier by the Tahsildar not being in accordance with the notification of 08.01.1921, a fresh survey was conducted in accordance with said notification, and it is this survey report which is the root cause for the issue of the impugned show-cause notices.

22.16. This, he submits, are changed circumstances which are required to be considered. Liberty having been reserved by this Court in an order dated 13.06.2012 in criminal petition No. 1852 to 1857 of 2012, to conduct a joint survey and proceed therefrom, the said joint survey has

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been conducted and proceeded therefrom in the very same proceedings, namely FOC 7. Hence, the Petitioners cannot have any grievance therewith. The quashing of FOC No.7, 8, 9, 13 and 14 of 2006-07 was only with reference to the joint survey not having been conducted and liberty having been reserved to conduct such a survey. A survey now having been conducted in terms of the notification dated 08-01-1921, encroachment having been found, the authorities are well within their rights to issue a show cause notice, which is required to be replied to by the Petitioners , which will be considered in accordance with law. Hence, the present writ petition is not maintainable.

22.17. The Authorities are only implementing the orders dated 13.06.2012 in Criminal Petition No. 1852 to 1857 of 2012, therefore, the Petitioners cannot have any grievance in

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relation thereto. Encroachment having been found, proceedings having been initiated under section 64A, the land having been notified as a forest land, cannot be used for any other purpose other than forest purposes. The Petitioners are seeking to play on the change in the survey nos.. The old survey No. 66 of Chikkasane village has now been renumbered as survey No. 68, Survey No. 67 of Chikkasane village is now renumbered as survey No. 69.

22.18. This confusion in the numbering had resulted in the Tahsildar submitting earlier survey reports in respect of old survey No. 66 and old survey No. 67, and not with reference to new survey Nos. 68 and 69. Irrespective of the numbering, what is required to be considered is the boundaries of the notification of 1921, and those boundaries have now been considered and a new survey made; the land claimed by

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the petitioners coming within the boundaries of the forest land, action has been taken which cannot be found fault with.

22.19. The land measuring 59 acres 8 guntas continues to be forest land, in fact insofar as survey No. 30 which is also forest land, new survey No. 30 of Bhuvanahalli, which is stated to be forest land by the authorities concerned would establish the claim of the forest department that the notification as regards the old survey numbers would also continue to apply to the new survey Numbers. The subsequent sales which have occurred after the notification had been issued on 18.01.1921, there being no fresh notification in section 17 or 30 of the MFR 1900, post the notification dated 08.01.1921, the question of anyone claiming any right in the land notified to be a forest land under Gazette notification is not sustainable, so

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also any other claim made subsequent thereto under any auction, sale or subsequent sale thereto.

22.20. There being large amounts of forest lands which have been so encroached, the government Land Protection Committee has been created to recover forest lands from private individuals who have encroached such valuable forest lands and by virtue of the same, these kinds of issues have surfaced. His submission is that the concerned State authorities ought to discharge their functions in a proper manner. Any document and/or reply that is placed before the concerned officers would be considered from the right perspective, and orders would have to be passed.

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22.21. The above petitions, being premature, cannot be entertained until orders are passed by the concerned officer.

22.22. The purported auction in the year 1936 is subsequent to the final notification dated 08.01.1921. Once a particular land has been constituted as a State/reserve forest, there being no challenge thereto, the question of contending that it is an alleged grant, the said land does not continue to be forest land is completely misplaced. Irrespective of the suit having been filed by the Forest Department, he submits that the action taken by the Officers of the Forest Department under the relevant provision are sustainable and the writ petitions are required to be dismissed.

22.23. He relies upon the decision of the Hon'ble Apex Court in ***Commissioner, BDA and Anr vs***

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Brijesh Reddy and Anr[7], more particularly para no. 18 thereof, which is reproduced hereunder for easy reference:

> ***18.*** *It is clear that the Land Acquisition Act is a complete code in itself and is meant to serve public purpose. By necessary implication, the power of the civil court to take cognizance of the case under Section 9 CPC stands excluded and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4, declaration under Section 6 and subsequent proceedings except by the High Court in a proceeding under Article 226 of the Constitution. It is thus clear that the civil court is devoid of jurisdiction to give declaration or even bare injunction being granted on the invalidity of the procedure contemplated under the Act. The only right available for the aggrieved person is to approach the High Court under Article 226 and this Court under Article 136 with self-imposed restrictions on their exercise of extraordinary power.*

22.24. By relying on **Brijesh Reddy's** case, he submits that there is a bar under the Forest Conservation Act for the civil court to exercise jurisdiction. Even as regards the suit which had been filed by the forest department, no finding could be rendered by a civil court in respect of forest land. The said civil suit filed before a civil

[7](2013) 3 SCC 66

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court is devoid of jurisdiction, and as such, any finding rendered even in favour of the petitioners being without jurisdiction, cannot be considered by the Court.

22.25. He also relies upon the decision of the Hon'ble Allahabad High Court in ***Divisional Forest Officer, North Kheri vs Surjan Singh and Ors.*** [8], more particularly para Nos.22, 25, 30 and 37 thereof, which is reproduced hereunder for easy reference:

> ***22.*** *In view of above, once the notification has been issued under Section 4 of the Act of 1927, all claims can be raised before the Forest Settlement Officer, who can consider the same and decide the claim after affording opportunity of evidence exercising the powers of a civil court in the trial of the suit. After finalisation of the proceedings, the notification under Section 20 is issued declaring the land as reserved forest. Section 20 of the Act of 1927 is extracted hereinbelow:*
>
> *"**20. Notification declaring forest reserved.**— (1) When the following events have occurred, namely:*
>
> *(a) the period fixed under Section 6 for preferring claims have elapsed and all claims (if any) made under that section or Section 9 have been disposed of by the Forest Settlement Officer;*

[8] (2024) SCC Online Allahabad 661

(b) if any such claims have been made, the period limited by Section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or court; and

(c) all lands (if any) to be included in the proposed forest, which the Forest Settlement Officer has, under Section 11, elected to acquire under the Land Acquisition Act, 1894 (1 of 1894), have become vested in the Government under Section 16 of that Act, the State Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

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

State Amendments

Uttar Pradesh- In Section 20, in sub-section (1), for clause (b), substitute the following clause, namely—

(b) if any such claims have been made, the period limited by Section 17 for appealing from the orders passed on such claims has clasped and all appeal (if any) persented within such period have been disposed by the District Judge; and

[Vide Uttar Pradesh Act 23 of 1965, Section 8 (w.e.f. 23-11-1965)]."

25. *In view of above, it is evident that as per scheme of the Act, in the proceeding beginning with notification under Section 4, all claims regarding land included in the notification are adjudicated by an authorised officer i.e. Forest Settlement Officer, who exercises all the powers of the civil court in trial of the suits as per Section 8, the appeal of which can be preferred under Section 17. Section 5 of the Act of 1927 provides that after issue of a notification under Section 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*

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made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued. The said notifications published in the Official Gazettes are public documents which need not be proved and they shall be deemed to have been issued in accordance with law after following the due procedure of law.

30. *In State of U.P. v. Kamal Jeet Singh[2], the Division Bench of this Court considered the scheme of the Forest Act and has held that the Forest Settlement Officer has the powers of a civil court and once the notification under Sections 4 and 20 of the Forest Act has been issued, it attains finality and except revision before the State no authority has jurisdiction to determine the rights as contained in Section 27-A of the Forest Act. Thus, the Revenue Authorities could not have determined the rights under Section 229-B of the U.P. Z.A. & L.R. Act, 1950.*

37. *It is also noticed that the trial court examined the legality and validity of the notification issued under Sections 4 and 20 of the Act of 1927 without being challenged, whereas the same could not have been done because the same could even not have been challenged in suit for permanent injunction. The notification issued under the statutory provision could not be held illlegal without being challenged. Even otherwise, the trial court has held that it is not completely legal, meaning thereby it's legality has not been disputed but it has been held only on the ground that the appellant has failed to prove as to when notice of the notification was given to the respondents and when it's munadi was done, whereas once notification under Sections 4 and 20 of the Act of 1927 were issued and published in Official Gazette, it will be deemed that they have been issued in accordance with law after following due procedure of law and it could not have been held illegal or inoperative without challenge to the notifications in appropriate proceedings but not in a suit for permanent injunction.*

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22.26. By relying on **Surjan Singh's** case, the notification designating the particular land as forest land having attained finality in the same not having been challenged, this type of notification would have to be taken at face value and the rights of the parties determined.

22.27. By relying on ***Brijesh Reddy and Srujan Singh's*** case he submits that whenever any notification is issued under any particular enactment, without challenging the said notification, the contract cannot be alleged or contended. If at all the Petitioners are aggrieved by the notification dated 08.01.2021, it is for them to have challenged the said notification. No challenge having been made, reliance on subsequent auction and or sale deed would not be to the benefit of the Petitioners so long as the notification of 08.01.2021 stands.

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22.28. Once again by referring to para no.4 of the decision in ***Nirvani Gowda's*** case reproduced supra, he submits that, any sale, any grant or auction conducted, post the notification issued on 08.01.1921 does not confer any right and cannot be relied upon by the Petitioners. His submission is also that by the mere usage of the word 'grant', it would not de-reserve the reserve forest without a de-notification. Mere grant, even if accepted for the purpose of argument, would not take away the reservation of the land as a reserve forest, and in this regard, he relies upon the decision of the Division Bench of this Court in ***KSRTC vs Mallaiah***[9], more particularly para no. 7 thereof, which is reproduced hereunder for easy reference:

7. Having heard the learned counsel for the parties and having perused the Appeal Papers along with the original Trial Court Records as also additional evidentiary

[9]RFA No.1653/2011

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material placed on record with leave, we are inclined to grant indulgence in the matter for the following reasons:

(a) Rivers and forests have defined civilizations throughout the history of mankind. They were revered and worshiped in ancient India as organic entities. Kautilya's Arthashaastra mentions about the importance of forest and forest departments. A lot of forest jurisprudence has developed by the Apex Court through a series of directions issued from time to time vide T.N. Godavarman Thirumulpad Vs. Union of India. Judicial Institution is a stake holder along with other. The Apex Court in Common Cause vs. Union of India1 has observed that natural recourses such as air, water, forest, lakes, rivers & wildlife are public properties; they are entrusted to the Government for safe & proper use. The doctrine of public trust enjoins upon the Government to protect these resources. Hugo Grotius (1583-1645) centuries ago declared "That belongs to all belongs to none and that belongs to none belongs to all". India is a signatory to several International Conventions concerning Forests, Ecology and Environment. These covenants/conventions which have been ratified by India are binding to the extent that they are not inconsistent with the provisions of the domestic law2 . In cases relating to rivers and forests, the constitutional courts are not mere arbiters but the stake holders too. Cases of that nature cannot be treated as a lis inter parte. All this should prelude our discussion in the matter.

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

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

(c) The Appellant-State Government has produced in this appeal the Mysore Government Notification dated 6.6.1929 issued u/s 17 of the 1900 Act whereby Chamundibetta State Reserve Forest has been constituted. Maharajas of Mysore Kingdom were known for their love for Mother Nature in general and forests in particular. They used to worship forests as Vanadevata (Goddess of Forest). The Forest Map has also been produced by the learned HCGP with leave of the court. These are not only not disputed by the plaintiffs side but their learned counsel seeks to rely upon them also to show that the suit lands have not been comprised in the said forest. True it is that the survey numbers in which the suit lands are situate are not in so many words found in the subject Notification or the Forest Map. However, when a State Reserve Forest is sought to be constituted by Notifications of the kind, the land comprised therein is demarked by the boundary lines. If suit lands obviously fall within the said boundary lines, non-mentioning of the survey numbers pale into insignificance. After all, it has been a settled position since the days of Privy Council that as between numbers denoting the area and the boundaries, the latter shall prevail over the former, should there be discordance.

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

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"In the instant case, by virtue of Notification dated 04.08.1994 and as per the boundaries indicated therein, certain lands were declared to be constituted as reserved forest i.e., by specifying the constitution and limits of such land, by intelligible boundaries… A reading of the provisions from Sections 4 to 17 of the Act would indicate that when once it has been decided to constitute land within certain boundaries as reserved forest and a declaration is made to that effect then, a proclamation has to be made by the Forest Settlement Officer. There is a bar to accrual of forest rights over the land comprised in the Notification, except by succession or under a grant of contract in writing made or entered into by or on behalf of the Government or some person in whom such right, or power to create such right was vested when the Notification was issued. Thereafter, the Forest Settlement Officer shall have to make an inquiry into all claims duly preferred. Where no claim is preferred under Section 5 of the Act and of the existence of which no knowledge has been acquired by inquiry under Section 7 of the Act, all claims shall be extinguished unless, before the final notification under Section 17 of the Act is published, the Forest Settlement Officer is satisfied that a person had sufficient cause for not preferring such a claim within the period fixed under Section 5 of the Act. In such case, the Forest Settlement Officer shall proceed to dispose of the claim as per law. Where a claim is admitted, the Forest Settlement Officer has to specify certain details and record the same in the final record. Subsequent to following of the procedure contemplated under Sections 5, 6, 11 to 14 of the Act, the State Government has to publish a Notification, specifying clearly and according to the boundary marks erected or otherwise, the limits of the forest which it intended to constitute as reserved forest and declaring the same to be a reserved forest from the date fixed by such notification, subject to the exercise of rights (if any) specified in such notification. From the date so fixed, such forest shall be deemed to be a reserved forest. A Notification issued under Section 17 of the Act shall be published in accordance with Section 18 of the Act."

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(e) There is force in the submission of learned counsel appearing for the appellants that in the absence of any challenge to the 1929 Notification, the constitution of Chamundibetta State Reserved Forest would remain intact by operation of law. 'Once a forest, always a forest' should operate as a Thumb Rule vide NARINDER SINGH vs. DIVESH BHUTANI5 , in these days when forests are fast depleting with unprecedented acceleration because of dreadful population growth and allied factors. The Apex Court has specifically observed that unless the forest is denotified, the same would continue as forest ever. There is absolutely no material on record to indicate that any subsequent Notification was issued by the State Government denotifying the suit lands from being State Reserve Forest.

(f) Learned Panel Counsel and the learned HCGP are more than justified in pointing out that the Revenue Records since 1950 had reflected the suit lands as being 'State Forest Acquired', for decades uninterruptedly. However, for the first time, name of Sri.Mayaga S/o Malla came to be entered only for the years 1970-71 to 1973-74. In some records, his name is continued for a bit longer period, is also true. On what basis, these entries came to be abruptly made in the name of a private party remains a secret within the mystery wrapped in enigma. Even in appeal, nothing has been stated by the respondent plaintiffs, despite being repeatedly asked. The other significant thing is that even for these years, in the usage column of the RTC, the word 'Acq' being the short form of acquisition continues. From the year 1980-81, the entry 'State Forest Acquired' is restored to other columns without the name of Mayaga. There is a strong presumption in the given circumstances u/s 133 of the 1964 Act as to these long standing entries being genuine. Conversely, the entries made in the Revenue Records sansany conveyance or the like does not enjoy presumptive value.

(g) Pursuant to 1929 Notification issued u/s 17 of the 1900 Act, as observed above, the Chamundibetta State Reserve Forest came to be formed and it obviously comprised of the suit lands. The Forest Map which is more than thirty year old and which has come from the

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proper custody namely the Forest Department enjoys presumptive value u/s 90 of the Indian Evidence Act, 1872, nothing of rebuttal having been shown. The arguable absence of entries in the Revenue Records would not rob away the legal effect of such a statutory Notification, making of entries being only incidental to the same. Whatever be that, there was 1935/1940 Notification issued under the 1894 Act, as well. However, appellants too have not placed on record any more material to show that the same resulted into accomplishment of acquisition of the subject lands. Of course, decades have rolled since the issuance of that Notification, is obvious. In the Clin of Time, things vanish and memory fades, needs no research to know.

(h) The long standing entries in favour of the Forest Department would also lend credence to the contention of Sri.P.D.Surana, learned Panel Counsel appearing for the KSRTC that acquisition having been duly accomplished, the said entries having been made continued unopposed and therefore, even if 1929 Forest Notification is held to have not comprised the suit lands, there is absolutely no case for the plaintiffs' side. The Apex Court in STATE OF KARNATAKA VS. I.S. NIRAVANE GOWDA6 at paragraphs 3 & 4 has observed as under: " … The learned counsel contended that Ext.D-1, being the true copy of the Gazette Notification dated 26.6.1937, was rightly accepted by the trial Court as well as the first appellate Court and the High Court was not justified in not accepting the same particularly when it had become a part of the record and no objection had been taken by the respondents at the time of recoding the evidence. He also submitted that Ext. D-2, being the statement of lands taken for Indavara State Forest in Hukkund Village, should have been accepted. … The trial Court as well as the first appellate Court, based on the evidence, recorded findings that the lands in question were the part of reserved forest. We do not find any good ground or a valid reason for rejection of Ext. D-1 by the High Court. When the lands were included in reserve forest, the entries in the revenue records were of non consequence and further, mere saguvali chits did not confer any title on the suit lands. This apart, the Revenue Authorities were not competent to deal with

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the property which was the part of the reserved forest. ..."

(i) Learned counsel appearing for the State & its officials is right in telling us that in view of the statutory scheme enacted in 1900 Act as interpreted by the Coordinate Bench in B.R.GANAPATHI SINGH supra, the suit itself was not maintainable. The grievance of private citizens in respect of land comprised in section 17 Notification has to be worked out as provided under the very same statute. In fact, at para 36, what has been observed being supportive of this view, is reproduced: "Further, in the aforesaid context, we do not think that there can be any distinction with regard to a piece of land which has been decided to be constituted as reserved forest under Section 4(1) of the Act and land being deemed to be reserved forest under Section 17 of the Act which is like a final notification. The reason being, once the land is constituted as reserved forest under Section 4(1) of the Act, it is by issuance of a Notification then the claims would have to be made and it is only on the consideration of the claims that an application for exclusion of the land constituted as reserved forest under Section 4(1) of the Act could be ordered. Merely because the procedure contemplated under the Act subsequent to the issuance of a Notification under Section 4 of the Act is not yet completed or no Notification has been issued under Section 17(1) of the Act, in our view, would not make any difference, as the object and purpose of reserving any land is to treat the said land as being constituted a reserved forest. If such a land or any portion thereof is excluded on adjudication of claims, it would not find a place in Notification issued under Section 17 of the Act. In such a case, it would no longer be constituted as reserved forest. But, till that procedure is not completed by the Forest Settlement Officer, it remains to be constituted as reserved forest."

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

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of State Reserve Forest or after the issuance of 1935/1940 acquisition Notification. It has been a settled position of law that once a special statute establishes separate machinery for working out the grievance, ordinarily, the jurisdiction of civil courts stands excluded vide a Five Bench decision in DHULABAI vs. STATE OF MADHYA PRADESH7 . The following observations therein are worth advertence: "1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit… Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not." Whether the contention as to maintainability of a suit was specifically taken in the pleadings or not, the same can be raised even in appeal, needs no mentioning. However, such a contention is loosely taken in the Written Statements.

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

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respondents in view of the 1929 Forest Notification, more particularly because of the observations made in GANAPATHI SINGH supra and in NARINDER SINGH too i.e., 'once the forest, always forest'. Much deliberation beyond this in this regard is not required.

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

(m) There is yet another aspect that arises because of the Survey Report dated 23.07.2021 which specifically states that the KSRTC Bus Stand and its allied units do exist in the area not comprised in the suit lands, although a small portion thereof partly protrudes in one of the suit lands. We appreciate the fairness of learned counsel appearing for the respondent-plaintiffs in submitting on instructions that his clients are fully in agreement with the Survey Report and that they have no objection whatsoever to the same. He has also added that his clients have absolutely no grievance whatsoever for the continued existence of the KSRTC Bus Stand and its allied units/activities.

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

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

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22.29. The only document which the Petitioners have relied upon is the Ketwar Register to indicate the above transaction, viz., the grant in favour of Shri. Manik Raj on 17.11.1932 by Darkast No. 807/32-33. He submits that the Darkast register and the issue register have been produced, which do not indicate any such grant in favour of Shri Manik Raj. The only mention which has been found is in the Kethwar register, which is suspicious. If at all there was a grant made, the same would have been reflected in the issue register and the Darkast register. No such entry being found therein, and there being no other document to support such a grant, reliance cannot solely be placed on the Kethwar register. He submits that despite a search being conducted by the authorities, there are no documents which were

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found or available indicating the auction said to have taken place in the year 1936, except for two documents which have been placed by the Petitioners . Compliance with the requirements of Mysore Land Revenue Code, 1888, have not been placed on record, and as such, this alleged auction not having occurred can also not be considered by this Court. This, again being a disputed question of fact, cannot be ascertained in a writ petition.

22.30. His submission is that a mere sale certificate maintained in the office of the Sub Registrar cannot confer any title on the petitioners' vendor, and thereafter the petitioners, when the original revenue records do not disclose the grant or the auction proceedings on account of the alleged default of the grantee. The petitioners are deemed to be fully aware of the Notification dated 8.01.1921. The petitioners,

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having purchased the property in the year 1977, being the subsequent purchasers, cannot claim any right, title or interest superior to their predecessors. In this regard, he relies upon the decision of the Hon'ble Madras High Court in ***B. Nagaraj vs State of Tamil Nadu***[10], more particularly para nos. 7 and 8 thereof, which are reproduced hereunder for easy reference:

> ***7.*** *In that regard, the judgment of the Apex Court in the case of Meera Sahni Vs. Lt.Governor of Delhi (reported in 2008 (9) SCC 177), is also relevant, wherein it was held that a person entering to the sale or any injunction of the land under acquisition after issuance of the Notification under Section 4(1) of the Act of 1894, has no right to challenge the acquisition proceedings or seek lapse of the proceedings. The relevant paragraphs of the said judgment, are quoted hereunder for ready reference: "17. When a piece of land is sought to be acquired, a notification under Section 4 of Land Acquisition Act is required to be issued by the State Government strictly in accordance with law. The said notification is also required to be followed by a declaration to be made under Section 6 of the Land Acquisition Act and with the issuance of such a notification any encumbrance created by the owner, or any transfer made after the issuance of such a notification would be deemed to be void and would not be binding on the government. A number of decisions of this Court have recognized the aforesaid proposition of law wherein it was held that subsequent purchaser cannot challenge acquisition proceedings and also the validity of the notification or the irregularity in taking*

[10] WA No.1204/2022

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possession of the land after the declaration under Section 6 of the Act. 18. In U.P.Jal Nigam Vs. Kalra Properties (P) Ltd. (1996 (3) SCC 124), it was stated by this Court that (SCC p.126, para 3): "3. ...Having regard to the facts of this case, we were not inclined to further adjourn the case nor to remit the case for fresh consideration by the High Court. It is well settled law that after the notification under Section 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property." 19. In Sneh Prabha Vs. State of U.P. (1996 (7) SCC 426), it is stated as under (SCC p.430, para 5): "5. ...It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice toeveryone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out and an implement to anyone to encumber the land acquired thereunder. It authorizes the designated officer to enter upon the land to do preliminaries etc. Therefore, any alienation of the land after the publication of the notification under Section 4(1) does not bind the government or the beneficiary under the acquisition. On taking possession of the land, all rights, title and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder."

8. *In the light of the ratio propounded by the Apex Court on the issue, so far as the writ petitioners are concerned, they have no right to challenge the Award issued in the year 1994, on the ground that it was after two years of the Declaration under Section 6 of the Act of 1894, having purchased the land much subsequent to the Notification issued under Section 4(1) of the Act of 1894.*

22.31. He therefore submits that the statutory proceedings which have been initiated under

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Section 64A of the KFA 1963 are proper and correct proceedings, the Petitioners would be entitled to place on record all the documents in support of their claim which would be considered by the respondent officials. These proceedings have been initiated in pursuance of a survey carried out as per the boundaries to the notification of 08.1.1921. He relies upon the Order of remand in ***State of Karnataka and Anr vs M.A. Mohamad Sanaulla and Anr.***[11] by the Hon'ble Apex Court, more particularly para no. 18 thereof which is reproduced hereunder for easy reference:

> *18. The document dated 14.08.1979 clearly reflected that Survey No. 67 (old) had been renumbered in resurvey as Survey No. 69 (new). It is not in issue that in 1921 notification under the Forest Regulation Survey No. 67 was covered. Subsequently in the resurvey, its number is changed to 69. It would automatically be understood that Survey No. 69 (new) was notified as Forest Land way back in 1921. This aspect of the matter of whatever worth it may be has been left out for consideration by the courts below.*

[11]CA 5801/2022

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22.32. By relying on the above he submits that even the Hon'ble Apex Court has accepted that there is no dispute as regards Sy.No.67 being renumbered as Sy.No.69, Sy.No.66 being renumbered as Sy.No.68 which were notified on 8.1.1921 and submits that any orders that may be passed would have to be inconformity with the finding of the Hon'ble Apex Court.

22.33. His submission is also that the boundaries prevail over the survey number, the boundaries being clearly demarcated in the notification dated 08.1.1921; the change in survey number cannot be taken advantage of by the Petitioners to usurp forest land. A survey having been carried out, the Petitioners not having participated in the same and having refused to sign the mahazar cannot now seek to take advantage of those fact situations.

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22.34. In this regard he relies upon the decision in ***Narasimha Shastry vs Mangesha Devaru***[12], more particularly para No. 6 thereof which is reproduced hereunder for easy reference:

> **6.** As early as in the year 1948, the Privy Council in the case of *B.K.A.P. Co-operative Society* v. *Government of Palestine* [1948 PC 207.] observed as follows:—
>
> "In construing a grant of land a description by fixed boundaries is to be preferred to a conflicting description by area. The statement as to area is to be rejected as falsa demonstratio."
>
> Same view was taken referring to this decision by the High Court of Madras in the case of *Siviseshamuthu* v. *Balakrishna* [AIR 1963 Madras 147.] and it was reproduced by the trial Court in its judgment as-
>
> "Where the property sold is part of a definite survey number and in the sale deed the exact boundaries of the part sold are given and the area mentioned is only approximate, the description by boundaries should prevail in ascertaining the actual property sold under the document."
>
> Nagpur High Court in the case of *T. Rajlu Naidu* v. *M.E.R. Malar* [AIR 1930 Nagpur 197.] also took the same view that-
>
> "In the case of a discrepancy the dimensions and boundaries and the area specified within the boundaries will pass whether it be less or more than the quantity specified."

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[12]1987 SCC Online Kar. 278

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Keeping in view this well established proposition and principle in the matter of construction of a document or instrument, the Court has to find out what exactly was the property sold under the sale deed relied upon by the plaintiff.

22.35. By relying on ***Narasimha Shastry***'s case he submits that the boundaries would prevail over measurements and as such, the boundaries as per the notification would prevail over both measurements as also the identity of properties by way of survey number.

22.36. He relies upon the decision in ***Sheodhyan Singh and Ors. Vs Musammat Sanichara Kuer & Ors***[13], more particularly para nos. 6 and 7 thereof, which are reproduced hereunder for easy reference:

> **6.** In the present appeal, the learned counsel for the respondents does not ask us to go beyond the sale certificate and the final decree for sale; his contention is that there is a mere misdescription of the plot number in the two documents and that the identity of the plot sold is clear from the circumstances which we have already set out above. He relies on *Thakur Barmha* v. *Jiban Ram Marwari* [(1913) LR 41 IA 38] . In that case what had

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[13]1961 SCC Online SC 164

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happened was that the judgment-debtor owned a mahal in which ten annas share was mortgaged while the remainder was free from encumbrances. A creditor of his attached and put up for sale six annas share out of the mortgaged share. The property attached was sold. When the auction purchasers applied for the sale certificate they alleged that a mistake had been made in the schedule of the property to be sold in that the word "not" had been omitted from the description of the six annas share and that the property should have been described as being six annas not mortgaged. This prayer of theirs was allowed by the executing court and the appeal to the High Court failed. On appeal to the Privy Council, it was held that in a judicial sale only the property attached can be sold and that property is conclusively described in and by the schedule to which the attachment refers, namely, the six annas share subject to an existing mortgage. The Privy Council therefore allowed the appeal and observed that a case of misdescription could be treated as a mere irregularity; but the case before them was a case of identity and not of misdescription. It was pointed out that a property fully identified in the schedule may be in some respects misdescribed, which would be a different case. Thus the effect of this decision is that where there is no doubt as to the identity and there is only misdescription that could be treated as a mere irregularity. Another case on which reliance has been placed on behalf of the respondents is *Gossain Das Kundu* v. *Mrittunjoy Agnan Sardar* [(1913) 18 CLJ 541] . In that case the land sold was described by boundaries and area; but the area seems to have been incorrect. It was held to be a case of misdescription of the area and the boundaries were held to prevail.

7. We are of opinion that the present case is analogous to a case of misdescription. As already pointed out the area, the khata number and the boundaries all refer to Plot No. 1060 and what has happened is that in writing the plot number, one zero has been missed and 1060 has become 160. It is also important to remember that there is no plot bearing No. 160 in Khata No. 97. In these circumstances we

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> are of opinion that the High Court was right in holding that this is a case of misdescription only and that the identity of the property sold is well established, namely, that it is Plot No. 1060. The matter may have been different if no boundaries had been given in the final decree for sale as well as in the sale certificate and only the plot number was mentioned. But where we have both the boundaries and the plot number and the circumstances are as in this case, the mistake in the plot number must be treated as a mere misdescription which does not affect the identity of the property sold. The contention of the appellants therefore with respect to this plot must fail.

22.37. By relying on ***Sheodhyan Singh's*** case, he submits that when the boundaries have been clearly identified even if there is mistake in the survey number, the same would have to be ignored, thus he submits that the confusion sought to be created by the petitioners even as regards survey numbers even after they are re-numbered is to be ignored by this Court and what is required to be considered is the boundary as per the notification published in the gazette.

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22.38. He relies upon the decision in ***Y. Subbarao vs Azizunnisa Begum***[14], more particularly para nos. 41 and 42 thereof, which are reproduced hereunder for easy reference:

> ***41.*** *The law is well settled that if a property is described by distinct boundaries which can be identified, any mistake in the survey number of the land has to be ignored. The maximum 'falsa demonstration non-nocet' has been applied in such a situation.*
>
> ***42.*** *Even if the property is known by a definite name as happens when a particular land has a local name or where the particular building has a particular name, the identity of the property can be established.*

22.39. He relies upon a judgment of this Court in ***KSRTC vs Mallaiah***[15], more particularly para No. 7C thereof, which is reproduced hereunder for easy reference:

> *7(c) The Appellant-State Government has produced in this appeal the Mysore Government Notification dated 6.6.1929 issued u/s 17 of the 1900 Act whereby Chamundibetta State Reserve Forest has been constituted. Maharajas of Mysore Kingdom were known for their love for Mother Nature in general and forests in particular. They used to worship forests as Vanadevata (Goddess of Forest). The Forest Map has also been produced by the learned HCGP with leave of the court. These are not only not disputed by the*

[14] 1983 SCC Online AP 73
[15] RFA 1653/2011

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

22.40. By relying on all of the above case laws, he submits that the boundaries would prevail over measurement and or identity of the survey number. The extent of land in occupation of the Petitioners coming within the boundaries of the notification dated 08.01.1921, the same amounts to forest land as regards which the State can take necessary action.

22.41. He relies upon the decision of the Hon'ble Apex Court in ***T.N. Godavarman Thirumulpad***

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(57) vs Union of India and Ors.[16] more particularly para no. 19 thereof, which is reproduced hereunder for easy reference:

> ***19.*** *From the aforesaid, it is quite clear that all encroachers into the Tatokola Forest have to be evicted. It is no doubt true that according to Section 64-A a show-cause notice has to be issued. But that can only be with a view to enable the person to whom notice is issued to show that his land does not fall within the boundaries of the forest as drawn up by the Survey of India. If the land is identified as falling within the Survey of India boundary then there could be no other defence open to the person concerned and the State would be under an obligation and duty to evict the encroacher, by force if necessary.*

22.42. By relying on **Godavarman's** case he submits that the scope of an enquiry under 64A has been dealt with by the Hon'ble Apex Court and the Hon'ble Apex Court has categorically held that the only defence available to encroachers is to show that it does not fall within the boundary of the forest notification. Thus, he submits that a survey having been carried out, requirements laid down by **Godavarman's** case being satisfied, this Court ought not to

[16] 2008 16 SCC 337

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intervene with the impugned notice at this stage.

22.43. As regards the judgment passed in RA No.10/1986 he submits that in a matter relating to a reserved forest a Civil Court would not have jurisdiction and in this regard he relies upon the decision in ***State of Chhattisgarh and Anr. vs Chandra Bhan Singh and Anr.***[17]**,** more particularly para nos. 7, 12, 15 and 19 thereof, which are reproduced hereunder for easy reference:

> ***7.*** *It is this judgement and decree dated 25.11.2004 which has been challenged by the appellants/defendants No. 1 & 2 by way of instant second appeal which was admitted by this Court on the following substantial questions of law : -"Whether after issuance of notification deciding to constitute any land, a reserve forest, and appointing a Forest Settlement Officer to inquire into and determine the existence, nature and extent of any right, alleged to exist in favour of any person, in or over any land comprised within such limits etc., the jurisdiction of Civil Court is barred?"*
>
> ***12.*** *As regards the contention of learned senior counsel for the respondents/plaintiffs that the notification shown by the State Government would*

[17]2013 SCC Online CHH 170

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not be applicable in the case of the plaintiffs for the reason that it does not disclose the Khasra No. of the suit land of the plaintiffs, it is submitted that an explanation, given under Section 4(1) of the Forest Act, specifically holds that for the purpose of specifying the situation and limits of the land to be declared as forest land it is sufficient to describe the limits of the forest by roads, rivers and other readily intelligible boundaries. For convenience sake, the explanation of Section 4(1) of the Forest Act is reproduced below : -

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

15. *Dealing with the issue of whether the jurisdiction of the Civil Court was barred or not, if we see the decision of Hon'ble Supreme Court in the case of Rajasthan State Road Transport Corporation v. Bal Mukund Bairwa, reported in (2009) 4 SCC 299, the Supreme Court has categorically held that if a statute while creating rights and obligations does not constitute a forum for enforcing the same, the plenary jurisdiction of civil court cannot be held to have been taken away. That is to say in the event if there is a forum for enforcing the provisions of law in the special statute created for the specific purpose then in that case by implication the jurisdiction of the civil court would be taken away. The decision of the Supreme Court in the said case was on the basis of the principles laid down in the case of Rajasthan State Road Transport Corporation v. Krishna Kant, reported in AIR 1995 SC 1715, where the Hon'ble Supreme Court has held that power of a civil court would be only in a case where there is no other alternative remedy available for a person for the recognition, observance and enforcement of his right. In such case, the recourse of the civil court would be open. However, in the same judgement, the Hon'ble Supreme Court in categorical terms held that where there is an alternate remedy under an Act created, then only the remedy is to approach the forum created by the said Act.*

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> ***19.*** *Thus, from the plain reading to the settled position of law, it is evidently clear that where under the provisions of law or in a statute, the legislature has created a hierarchy of authority and also the provisions of challenging these orders of the authorities by way of appeal for the determination of the issues is sufficient for enforcing that the jurisdiction of the civil court to try the same is barred as has been decided by the Hon'ble Supreme Court in the case of Desika Charyulu v. State of Andhra Pradesh, reported in AIR 1964 SC 807. That being so, the trial Court has erred in law in deciding the issue that it has the jurisdiction in entertaining Civil Suit No. 193-A/2002 and passing the judgement and decree dated 30.12.2003 which has also been affirmed and confirmed by the first appellate Court vide its judgement and decree dated 25.11.2004 passed in Civil Appeal No. 1-A/2004. Needless to say, if the law permits the respondents/plaintiffs may approach the competent authority under the provisions of law.*

22.44. By relying on ***Chandra Bhan Singh's*** case, he submits that it is the limits of the forest by way of intelligible boundaries which should have to be considered to determine if any particular land is part of a forest land or not. The mere description or identification by a number would not be sufficient. What is required to be considered is the boundaries in the notification reserving the land for forest.

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22.45. He relies upon the decision in ***Girish H.E. and Ors. vs State of Karnataka and Ors.***[18], more particularly para no. 10 thereof, which is reproduced hereunder for easy reference:

> ***10.*** *The notification issued under Section 4 of the Act may be termed as a Preliminary Notification. The same has to be published by the Forest Settlement Officer under Section 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 under Section 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 under Section 4.*

22.46. By relying on **Girish H.E.'s** case, he submits that on a notification issued under Section 4 of the Act, no right can be acquired in or over the land comprised in the notification except by succession or under grant or contract in writing or entered into by or on behalf of the government. The notification having been

[18] 2013 SCC Online Kar 10537

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issued in this case, much prior to the so-called grant in favour of the defence personnel [Manik Raj], the defence personnel would not get any right over the property, since no grant or sale has been made in his favor by or on behalf of the government.

22.47. He relies upon the decision in ***Commissioner, BDA vs Brijesh Reddy and Anr.***[19], more particularly para nos. 14 to 18 thereof, which are reproduced hereunder for easy reference:

> **14.** Section 9 of the Code of Civil Procedure, 1908 provides jurisdiction to try all suits of civil nature excepting those that are expressly or impliedly barred which reads as under:
>
> "**9.*Courts to try all civil suits unless barred***.—The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."
>
> From the above provision, it is clear that courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The jurisdiction of civil court with regard to a particular matter can be said to be excluded if there is an express provision or by implication it can be inferred that the jurisdiction is

[19] 2013 3 SCC 66

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taken away. An objection as to the exclusion of civil court's jurisdiction for availability of alternative forum should be taken before the trial court and at the earliest failing which the higher court may refuse to entertain the plea in the absence of proof of prejudice.

15. In *State of Bihar* v. *Dhirendra Kumar* [(1995) 4 SCC 229] the core question was whether a civil suit is maintainable and ad interim injunction could be issued where proceedings under the Land Acquisition Act, 1894 was taken pursuant to the notice issued under Section 9 of the Act and possession delivered to the beneficiary. On going through the entire proceedings initiated under the Land Acquisition Act, this Court held as under: (SCC p. 230, para 3)

"*3.* … We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil court to take cognizance of the case under Section 9 CPC stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable."

After holding so, this Court set aside the finding of the trial court that there is a prima facie triable issue. It also held that the order of injunction was without jurisdiction.

16. In *Laxmi Chand* v. *Gram Panchayat, Kararia* [(1996) 7 SCC 218] while considering Section 9 of the Civil Procedure Code, 1908 vis-à-vis the Land Acquisition Act, 1894, this Court held as under: (SCC p. 220, paras 2-3)

"*2.* … It is seen that Section 9 of the Civil Procedure Code, 1908 gives jurisdiction to the civil court to try all civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure envisaged to effectuate public

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purpose, compulsorily acquiring the land for use of public purpose. The notification under Section 4 and declaration under Section 6 of the Act are required to be published in the manner contemplated thereunder. The *inference* gives conclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made under Section 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference under Section 18 and a further appeal under Section 54 of the Act. If the Government intends to withdraw from the acquisition before taking possession of the land, procedure contemplated under Section 48 requires to be adhered to. If possession is taken, it stands vested under Section 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts viz. the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil court."

17. In *Bangalore Development Authority* v. *K.S. Narayan* [(2006) 8 SCC 336] , which arose under the Bangalore Development Authority Act, 1976 and which was similar to the case on hand, this Court held that a civil suit is not maintainable to challenge the acquisition proceedings. In that case one

"K.S. Narayan filed Original Suit No. 5371 of 1989 in the Court of the City Civil Judge, Bangalore, praying that a decree for permanent injunction be

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> passed against the defendant Bangalore Development Authority, their agents and servants restraining them from interfering with the plaintiff's possession and enjoyment of the plaint scheduled property and from demolishing any structure situate thereon. The case of the plaintiff was that the plaintiff purchased the property in dispute bearing No. 46, situated in Banasawadi Village, K.R. Pura Hobli, Bangalore, South Taluk from S. Narayana Gowda by means of a registered sale deed dated 17-6-1985. The erstwhile owners of the property had obtained conversion certificate from the Tahsildar and the property is situated in a layout which is properly approved by obtaining conversion for non-agricultural use from the competent authority. The plaintiff applied for mutation entries and the same was granted in his favour. The property in dispute was not covered by any acquisition proceedings as neither notice of acquisition had been received nor any award regarding the said property had been passed. The defendant had no right, title or interest over the property but it was trying to dispossess the plaintiff from the same on the ground of alleged acquisition. The plaintiff issued a notice to the defendant on 11-7-1989 calling upon it not to interfere with his possession and enjoyment of the property in dispute….

3. The suit was contested by the defendant Bangalore Development Authority on the ground inter alia that the plaintiff was not the owner of the property in dispute. S. Narayana Gowda, who is alleged to have executed the sale deed in favour of the plaintiff on 17-6-1985, had no right, title or interest over the property in dispute and he could not have conveyed any title to the plaintiff. It was further pleaded that the disputed land had been acquired by the Bangalore Development Authority after issuing preliminary and final notifications in accordance with the Bangalore Development Authority Act and the possession had also been taken over and thereafter it was handed over to the engineering section on 22-6-1988 after completion of all formalities. The award for the land acquired had

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already been made and the compensation amount had been deposited in the civil court under Sections 30 and 31(2) of the Land Acquisition Act. It was specifically pleaded that it was the defendant Bangalore Development Authority which was in possession of the plaint scheduled property on the date of filing of the suit and, therefore, the suit for injunction filed by the plaintiff was not maintainable and was liable to be dismissed." (SCC pp. 337-38, paras 2-3)

It is relevant to note that in the above decision in *K.S. Narayan case* [(2006) 8 SCC 336] , the acquisition proceedings in question had been taken under the Bangalore Development Authority Act, 1976 and the provisions of Sections 17 and 19 are somewhat similar to the provisions of Sections 4 and 6 of the Land Acquisition Act, 1894. After noting out all the details, this Court allowed the appeals and set aside the decision rendered by the High Court.

18. It is clear that the Land Acquisition Act is a complete code in itself and is meant to serve public purpose. By necessary implication, the power of the civil court to take cognizance of the case under Section 9 CPC stands excluded and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4, declaration under Section 6 and subsequent proceedings except by the High Court in a proceeding under Article 226 of the Constitution. It is thus clear that the civil court is devoid of jurisdiction to give declaration or even bare injunction being granted on the invalidity of the procedure contemplated under the Act. The only right available for the aggrieved person is to approach the High Court under Article 226 and this Court under Article 136 with self-imposed restrictions on their exercise of extraordinary power.

22.48. He relies upon a decision of this Court in ***State of Karnatraka and ors. vs Mohd.***

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Fayazoddin and ors.[20], more particularly para No. 22 thereof, which is reproduced hereunder for easy reference:

> ***22.*** *In the instant case, the Courts below have fell in error in holding and declaring that the plaintiff is the owner in possession of the suit land, when once after the declaration of the land as forest land under Section 4 and Section 17 of the Forest Act, there is total bar on the Civil Court to entertain the suit to establish any right as envisaged under Section 6(3) of the Forest Act and the suit land after declaring as a Reserve forest as per Ex.D14, suit is not maintainable. Once the land is acquired and mandatory requirements are complied including the possession over the suit land, which vest with the Government, when documents at Ex.D1 to Ex.D4(a) evidence compensation is paid, the plaintiff having failed in his attempt in LAC No.74/1980 to seek enhanced compensation, the suit of the plaintiff is not maintainable as envisaged under Section 6(3) of the Forest Act. The Courts below have committed serious error in decreeing the suit, there is perversity and illegality in the judgment and decree of the Courts below warranting interference by this Court and the substantial question of law is answered in favour of the appellant and for the foregoing reasons, this Court pass the following:*
>
> *ORDER*
>
> *I. The Regular Second Appeal is* ***allowed.***
>
> *II. The judgment and decree of the Courts below are hereby set aside and the suit of the plaintiff is dismissed.*

[20] RSA No.200390/2014

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22.49. By relying on ***Mohd. Fayazoddin's case,*** he submits that the Civil Court would not have jurisdiction to pass any order of declaration or injunction when notice has been issued under Section 4 and 17 of the Forest Act, there would be total bar on the Civil Court to entertain the suit to establish any right as envisaged under subsection (3) of Section 6 of the Forest Act. Thus, he once again reiterates that irrespective of the petitioner itself having filed the suit, the said suit could not be considered by the Civil Court and orders passed as regards land which is forest land coming within the purview of the Forest Act.

22.50. On all the above grounds, he submits that the writ petition is required to be dismissed with a direction to the petitioners to submit a reply which would be considered by the Respondents in accordance with law.

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23. In reply, Sri. Chandan, learned counsel for petitioners submits that,

23.1. The judgment in ***Kunishetty Satyanayana's*** case would not be applicable to the present facts. In that case, a show cause notice had been issued in respect of securing employment on the basis of a forged caste certificate. In the present case, the issue is pertaining to the title of the land. The Respondent-Forest department itself had initiated civil proceedings which came to be dismissed and now a show cause notice has been issued after more than 80 years. By relying on para No.16 in ***Kunishetty Satyanarayana's*** case, he submits that in exceptional cases the Hon'ble Apex Court has held that the High Court can quash charge sheet or show cause notice if it is found without jurisdiction or for some other reason if it is

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wholly illegal. The said para 16 in **Kunishetty Satyanarayana's**[21] case is reproduced hereunder for easy reference:

> ***16.*** *No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.*

23.2. He submits that ***Kunishetty Satyanarayana's*** case was also distinguished by the Hon'ble High Court of Madras in ***S. Sridharan vs Engineer in Chief (WRO) and Chief Engineer (General), PWD***[22], more particularly para nos. 19 and 20 thereof, which are reproduced hereunder for easy reference:

> *19. The decision relied on by the learned Government Advocate in Union of India and Anr. v. Kunisetty Satyanarayana is not applicable to the question involved in this matter. In the said decision, the Honourable Apex Court has considered about the merits and legality of issuing a show cause notice or charge sheet and the question of delay in issuing the charge memo was not at all considered in the said decision. On the other hand, the Honourable Apex Court has specifically held even in that decision as here under:*

[21] 2006 12 SCC 28
[22] Manu/TN/1088/2009

Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show cause notice or charge sheet. Albeit, in some very rare and exceptional cases the High Court can quash a charge sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

20. As far as the case on hand is concerned, it is to be reiterated that there is an inordinate and unexplained delay of six years in issuing the first charge memo as the incident took place during the year 1984 and the first charge memo was issued in the year 1990 and the said charge memo was ultimately cancelled without any enquiry by order dated 20.04.2004 without indicating any contemplation of issuing fresh charge memo against the petitioner. The impugned second charge memo was issued two months thereafter, i.e., on 30.06.2004 and as such the second charge memo was issued against the petitioner nearly 20 years after the alleged incident causing grave prejudice to the petitioner resulting miscarriage of justice and such action of the first respondent is no doubt wholly illegal and unjustified warranting interference of this Court to quash the impugned charge memo.

For the foregoing reasons, this Court has no hesitation to come to an irresistible conclusion to the effect that the inordinate and unexplained delay in issuing the impugned charge memo would vitiate the disciplinary proceedings and the charge memo dated 30.06.2004 issued by the respondent herein in his proceedings in Charge Memo No. CII(2)/17421/90-45 is liable to be quashed and accordingly quashed and the Writ Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. There is no order as to costs.

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23.3. He submits by relying on ***S.Sridharan's*** case that this Court could exercise jurisdiction when there is a gross delay in the initiation of the proceedings. As regards the contention that the proceedings before the Civil Court are without jurisdiction and the findings of the Civil Court are not required to be looked into, he submits that the said proceedings had not been initiated by the Petitioners but were initiated by the Respondents, the Respondents after having initiated civil proceedings cannot now contend otherwise, in fact in the first proceedings filed by Contending that there is interference with his possession by the Forest Department, Petitioner No. 2-Mohammad Sanaullah, had filed a suit in O.S. No. 600/1981 seeking a permanent injunction against the Forest Department, restraining the Forest Department from interfering with the peaceful possession of

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Petitioner No.2 in Survey No. 69/2. The said suit came to be dismissed on 13.12.1985 with costs.

23.4. One of the petitioners at the second appeal stage filed by the Forest department and the suit having been dismissed, the first appeal having been allowed, in the second appeal filed by the Forest department, the Forest department withdrew the appeal on the ground that it had filed the said suit. The State, having competent persons to advise them, having acted on such advice and filed civil suits, cannot now contend that the civil suit is not maintainable and the findings given in the civil suit are not binding.

23.5. As regards the contention that boundaries prevail over the measurement, his submission is that in the joint survey, it has been clearly

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and categorically indicated that there is no encroachment by the Petitioners in Sy. nos.68 and 69, another unilateral survey got carried out by the forest department which will not enure to their benefit and as such, once there is no encroachment, the issue of whether the boundaries prevail over the measurement or measurement prevail over boundaries or whether there is a dispute as regards identity of the property itself is not something which will be required to be considered.

23.6. As regards the contention that there is a fundamental duty on the Government to preserve forest land, he submits that such duty is required to be exercised within a reasonable period of time. The notification having been issued on 08.01.1921, the grant having been made in the year 1932, an auction having been held in the year 1936 in respect of Sy.No.69,

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the grant in respect of Sy.No.68 having been made in the year 1945, proceedings could have been initiated in the year 2006-07 and once again in the year 2021, that not being so, there is a delay of more than 80 years and as such, this Court ought to intervene and allow the instant petition.

23.7. He differs from the contention of the learned Additional Advocate General that once lands are declared as reserved forests, entries in revenue records in subsequent transactions are of no consequence. He submits that the government itself, having granted the said lands and thereafter having auctioned the land, the government cannot contend to the contrary; the same would be a dishonest contention. In this regard, he relies upon the decision of the Hon'ble Apex Court in **Anand Arya and Anr vs**

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Union of India and Anr[23], more particularly para nos. 19, 20 and 21 thereof, which are reproduced hereunder for easy reference:

> ***19.*** *Mr K.K. Venugopal, learned Senior Counsel appearing for the State of U.P. strongly supported the view taken by the CEC. The learned counsel submitted that the omission to identify the trees at the project site as forest or deemed forest was not due to any mistake or by chance. He pointed out that in the parameters set out by the State Level Expert Committee for identification of forests or forest-like areas it was clarified that "trees mean naturally grown perennial trees" and it was further stipulated that "the plantation done on public land or private land will not be identified as forest-like area". Mr Venugopal submitted that the guidelines made by the Expert Committee were reported to this Court and accepted by it on 12-12-2007. The project site clearly did not come within the parameters fixed by the Expert Committee and it was rightly not identified as a forest-like area. The parameters fixed by the Expert Committee for identification of forests or forest-like area were never challenged by anyone and now it was too late in the day to question those parameters, more so after those were accepted by this Court. Mr Venugopal contended that the non-inclusion of the project site as a forest or forest-like area by the State Level Expert Committee should be conclusive of the fact that the area was not forest land and the trees standing there were no forest.*
>
> ***20.*** *Mr Bhushan contended that a tract of land bearing a thick cluster of trees that would qualify as forest land and forest as defined by the orders of this Court would not cease to be so simply because the parameters adopted by the Expert Committee were deficient and inconsistent with this Court's orders. In support of the submission that there was actually a forest in that area that was cut down for the project*

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[23] 2011 1 SCC 744

he relied upon the report of the FSI dated 7-8-2009 in which the forest cover status at the project site based on IRS 1D/P6 LI88 III data is shown as follows:

Forest Cover Status in the Area of Interest (AOI) of Noida from 2001 to 2007 — Area in ha							
Assessment (State of Forest Report)	*Date of satellite data (sic)*	*Very dense forest*	*Moderately dense forest*	*Open forest*	*Total forest cover*	*Non-forest*	*Total area*
8th (2001)	Oct 2000	0	3.74	10.42	14.16	32.27	46.43
9th (2003)	Nov 2002	0	6.05	10.71	18.76	29.67	46.43
10th (2005)	Nov 2004	0	7.54	14.23	21.77	24.66	46.43
11th (2007)	Oct 2006	0	9.04	12.73	21.77	24.66	46.43

21. *In the report it was also stated that the latest forest cover assessment by the FSI was based on satellite data of 2006 and it did not have any data of the later period. It further stated that the felling of trees might have taken place after October 2006. Mr Bhushan invited our attention to the order of this Court in T.N. Godavarman Thirumulpad (98) v. Union of India [(2006) 5 SCC 28] (SCC paras 16, 18, 33, 37, 38) to show that this Court had accepted the reliability of the FSI Report based on satellite imagery.*

23.8. By relying on ***Anand Arya's*** case, he submits that the Hon'ble Apex Court took into consideration the revenue records and considered the factum that the land had never

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been shown as forest and accepted the contents of the revenue records.

23.9. He also relies upon the decision of the Hon'ble Apex Court in ***Elizabeth Jacob vs District Collector, Idukki and Ors.***[24], more particularly para nos. 13 and 14 thereof, which are reproduced hereunder for easy reference:

> ***13.*** *The records also showed that the Forest Department planted some trees in the land in the year 1992 after the property was attached and that on 3-11-1994, the Tahsildar, Peermade wrote to the Forest Department to vacate the land, as it had to be sold by public auction. The Forest Department did not initiate any action in regard to the land even thereafter. On the other hand, the Revenue Authorities asserted their possession and put up the land for sale in 1998 under the provisions of the Act. The appellant purchased the land in the auction-sale and obtained a sale certificate, under which the land vested in her free from encumbrances.*
>
> ***14.*** *The Division Bench also noticed that the land had been shown as "government poramboke" (that is wasteland belonging to the Government) in the revenue records at the relevant time and that the notification under the Forest Act relied upon by the respondents did not show that the land was forest land. The Division Bench did not record any finding that the land was a forest land, but on the other hand, held that the State Government had not produced any material to show that the land was forest land or part of reserve forest. It also observed that as the Revenue Authorities had proceeded on*

[24] 2008 15 SCC 166

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the basis that Ansari and others had right over the land and as the Revenue Authorities had sold the land to the appellant in a revenue auction, the State Government could not in the normal course turn around and say that no rights were acquired by the appellant as purchaser at the revenue auction.

23.10. By relying on **Elizabath Jacob's** case, he submits that when a common man is led to believe that lands have a good title and there are no encumbrances whatsoever by way of an action of the government itself, the rights of such a common man are required to be protected.

23.11. He also relies upon the decision of the Hon'ble Apex Court in ***Godrej and Boyce Manufacturing Company Ltd. vs State of Maharashtra and Ors.***[25] more particularly paras nos. 81 to 84 thereof, which are reproduced hereunder for easy reference:

[25] 2014 3 SCC 430

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81. *In Pratibha [Pratibha Coop. Housing Society Ltd. v. State of Maharashtra, (1991) 3 SCC 341] the eight unauthorised floors were constructed in clear and flagrant violation and disregard of the FSI. The demolition order had already attained finality in this Court and thereafter six of the unauthorised floors had been demolished and the seventh was partially demolished. This Court found no justification to interfere with the demolitions. Again, the issue of compensation does not arise in such a situation.*

82. *The application of the principle laid down by this Court, therefore, depends on the independent facts found in a case. The remedy of demolition cannot be applied per se with a broad brush to all cases. The State also seems to have realised this and that is perhaps the reason why it moved the application that it did in Godavarman.*

83. *Looking at the issue from the point of view of the citizen and not only from the point of view of the State or a well-meaning pressure group, it does appear that even though the basic principle is that the buyer should beware and therefore if the appellants and the purchasers of tenements or commercial establishments from the appellants ought to bear the consequences of unauthorised construction, the well-settled principle of caveat emptor would be applicable in normal circumstances and not in extraordinary circumstances as these appeals present, when a citizen is effectively led up the garden path for several decades by the State itself. The present appeals do not relate to a stray or a few instances of unauthorised constructions and, therefore, fall in a class of their own. In a case such as the present, if a citizen cannot trust the State which has given statutory permissions and provided municipal facilities, whom should he or she trust?*

84. *Assuming the disputed land was a private forest, the State remained completely inactive when construction was going on over acres and acres of land and of a very large number of buildings thereon and for a few decades. The State permitted the construction through the development plans and by*

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granting exemption under the Urban Land (Ceiling and Regulation) Act, 1976 and providing necessary infrastructure such as roads and sanitation on the disputed land and the surrounding area. When such a large-scale activity involving the State is being carried on over vast stretches of land exceeding a hundred acres, it is natural for a reasonable citizen to assume that whatever actions are being taken are in accordance with law otherwise the State would certainly step in to prevent such a massive and prolonged breach of the law. The silence of the State in all the appeals before us led the appellants and a large number of citizens to believe that there was no patent illegality in the constructions on the disputed land nor was there any legal risk in investing on the disputed land. Under these circumstances, for the State or Bombay Environment Action Group to contend that only the citizen must bear the consequences of the unauthorised construction may not be appropriate. It is the complete inaction of the State, rather its active consent that has resulted in several citizens being placed in a precarious position where they are now told that their investment is actually in unauthorised constructions which are liable to be demolished any time even after several decades. There is no reason why these citizens should be the only victims of such a fate and the State be held not responsible for this state of affairs; nor is there any reason why under such circumstances this Court should not come to the aid of victims of the culpable failure of the State to implement and enforce the law for several decades.

23.12. By relying on **Godrej and Boyce's** case he submits that citizens having acted for several decades on the basis of what has been held out by the State, the State cannot belatedly take action to the contrary thereto.

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23.13. He relies upon the decision of the Hon'ble Apex Court in ***Chandavarkar Sita Ratna Rao vs Ashalata S. Guram***[26], more particularly para nos. 16 to 21 thereof, which are reproduced hereunder for easy reference:

> ***16.*** *This appeal challenges the said judgment and order. As mentioned hereinbefore two questions require consideration — how far and to what extent in exercise of its jurisdiction under Article 226 or 227 of the Constitution and in this respect regarding power to deal with factual findings, the jurisdiction of the High Court is akin both under Articles 226 and 227 of the Constitution, can the High Court interfere with the findings of fact? It is well settled that the High Court can set aside or ignore the findings of fact of an appropriate court if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the courts below have come or in other words a finding which was perverse in law. This principle is well settled. In D.N. Banerji v. P.R. Mukherjee [(1952) 2 SCC 619 : AIR 1953 SC 58 : 1953 SCR 302, 305] it was laid down by this Court that unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities. We have noted that both the trial court and the appellate court after discussing evidence have come to the conclusion that the appellant was a licensee in possession on or before*

[26] 1986 4 SCC 447

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February 1, 1973. The learned trial court had expressed doubt about Ex. A but ultimately accepted the position. There was leave and licence agreement. The learned Appellate Bench of the Court of Small Causes doubted Ex. A and said that it was a concocted story. It is true that there were discrepancies in the evidence of the obstructionists and there was inconsistency in the conduct of the judgment-debtor in resisting the suit. Yet all these are for the courts finding facts and it such fact-finding bodies have acted properly in law and if the findings could not be described as perverse in law in the sense that no reasonable person properly instructed in law could have come to such a finding, such findings should not be interfered with within the exercise of the jurisdiction by the High Court under Article 226 and Article 227 of the Constitution.

17. *In case of finding of facts, the court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarta [(1975) 1 SCC 858 : AIR 1975 SC 1297] where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and reappreciating. Speaking for the Court, Bhagwati, J. as the learned Chief Justice then was, observed at p. 1301 of the report as follows: (SCC p. 864, para 7)*

"The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court? It is well settled by the decision of this Court in Waryam Singh v. Amarnath [AIR 1954 SC 215 : 1954 SCR 565] that the

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... power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways v. Sukumar Mukherjee [AIR 1951 Cal 193 (SB)] to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bose v. Commr. of Hills Division [AIR 1958 SC 398 : 1958 SCR 1240] and it was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority."

***18.** The history and the development of the writ of certiorari, and scope and ambit of its application have been emphasised by Lord Denning in R. v. Northumberland Compensation Appeal Tribunal, Ex Parte Shaw [(1952) 1 All ER 122, 128] . It is not necessary to reiterate these. But the courts must guard themselves against the error mentioned by Morris, L.J. in the said decision at page 133 to use the power under Article 227 as the cloak of an appeal in disguise. The writ of certiorari does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings. These inhibitions are more often than not transgressed by the courts in exercise of jurisdiction under Article 227.*

***19.** In this connection reference may also be made to the observations of this Court in Harbans Lal v. Jagmohan Saran [(1985) 4 SCC 333] . See in*

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this connection the observations of this Court in Trimbak Gangadhar Telang v. Ramchandra Ganesh Bhide [(1977) 2 SCC 437 : AIR 1977 SC 1222] , Smt M.M. Amonkar (Smt) v. S.A. Johari [(1984) 2 SCC 354] and also the observations of this Court in Harbans Lal v. Jagmohan Saran [(1985) 4 SCC 333] .

***20.** It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear-cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings were perverse and not based on any material evidence or it resulted in manifest injustice (see Trimbak Gangadhar Telang [(1977) 2 SCC 437 : AIR 1977 SC 1222]). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error.*

***21.** But the findings of the High Court on the factual aspect would not help the appellant to become a licensee under Section 15-A of the said Act. It is to that question, therefore, attention must be given.*

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23.14. By relying on ***Chandavarkar Sita Ratna Rao's*** case, he submits that a Constitutional Court exercising jurisdiction under Article 227 could go into questions of fact and look into the evidence if justice so requires it, in the present case, he submits that justice would require this Court to consider all the facts and pass necessary orders and in this regard he submits that the show-cause notice issued by the Forest Department in unjust, moreover, the Forest Department has been harassing the Petitioners for the last several years and the Petitioners do not expect to be served any justice from the Forest Department itself.

23.15. He relies upon the decision in ***Shamshad Ahmad and Ors. Vs Tilak Raj Bajaj and Ors.***[27], more particularly para nos. 31 & 32

[27] 2008 9 SCC 1

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thereof, which are reproduced hereunder for easy reference:

> ***31.*** *So far as the larger question, namely, whether subsequent events can be taken into consideration by an appellate, revisional or writ court, we express no opinion in view of the fact that the appeal can be decided without entering into the said controversy. We may, however, note that the learned counsel for both the sides referred to leading decisions of this Court. In some of the cases, the Court held that the crucial date for deciding requirement of a landlord is the date of institution of suit/proceeding. In other cases, however, a contrary view has been taken. There is thus a cleavage of opinion on that vexed issue. We leave the matter there.*
>
> ***32.*** *On merits, in our judgment, the submission of the learned counsel for the appellants is well founded that the prescribed authority was wrong in dismissing the application filed by the landlords. We had already observed that the prescribed authority negatived the contention of the tenant that the application was not maintainable. It, therefore, entered into the merits of the matter and decided it against the landlords. It observed that Applicant 6 hailed from "a reputed family of Dehradun" and "they had a very big business of timber wood". It also noted that Applicant 6 had been enjoying the facilities of car, scooter, telephone, etc.*

23.16. By relying on ***Shamshad Ahmad's*** case he again submits that the powers of the High Courts under Article 226 and 227 are very wide and extensive, it is for this Court to exercise such jurisdiction to render justice otherwise,

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the powers which have been conferred on this Court would be rendered redundant.

23.17. He relies upon the decision in ***Sanjay Kumar Jha vs Prakash Chandra Chaudhary and Ors.***[28], more particularly para No. 13 thereof, which is reproduced hereunder for easy reference:

> ***13.*** *It is well settled that in proceedings under Article 226 of the Constitution of India, the High Court cannot sit as a court of appeal over the findings recorded by a competent administrative authority, nor reappreciate evidence for itself to correct the error of fact, that does not go to the root of jurisdiction. The High Court does not ordinarily interfere with the findings of fact based on evidence and substitute its own findings, which the High Court has done in this case. Even assuming that there had been any error in the computation of marks in respect of fixed and movable assets, the High Court could, at best, have remitted the case of respondent Prakash Chandra Chaudhary to the authorities concerned for reconsideration.*

23.18. By relying on ***Sanjay Kumar Jha's*** case his submission is that the High Courts cannot function as a Court of appeal, insofar as the reappreciation of evidence is considered when a

[28] 2019 2 SCC 499

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fact in question is concerned; at most, it may remit such a matter to cure evidential deficiencies, if any.

23.19. At this stage, on enquiry with the counsels if they are agreeable for a fresh joint survey in terms of the notification 08.01.2021, though Sri.Kiran Ron, learned AAG submits that the State is ready for such a joint survey to be carried out, Sri. Chandan submits that there is no fresh survey which is required to be carried out, survey has already been carried out and a report is placed on record which could be considered by this Court.

23.20. On further enquiry, as to whether the claim of the Petitioners is that the lands subject matter of the present petition were the forest lands mentioned in the notification dated 08.09.2021, but only on account of grant they were not

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forest land or is the case of the Petitioners that the land in Sy.No.68 and 69 belonging to the Petitioners were never forest land; the submission of Sri.Chandan, learned counsel is that the land which is owned and possessed by the Petitioners are not forest lands as per the joint survey report and as such, there is no requirement of a fresh survey to be carried out.

23.21. In this regard he refers to the pleadings and or applications which have been filed as also the orders which have been passed in the earlier proceedings. By referring to the application under Order 6 Rule 17 filed by the plaintiff in OS No.1424/2006 he submits that the application for amendment filed therein has been rejected, hence the question of any survey now to be conducted would not arise. The said order having been challenged in WP No.23284/2023, he submits that this Court vide

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its order dated 27.10.2023 recording the submission of the learned AAG has dismissed the Writ Petition as not pressed. Thus, the amendment not having been pressed into service, there is no challenge to the sale deeds executed by I.N.Mutthanna nor is there any allegation that false documents have been created over the forest property, as such, the question of appointment of a Commissioner would not arise.

23.22. He relies upon the IA under Order 26 Rule 9 filed in RFA No.160/2024 for conduct of a detailed joint survey as per the boundaries mentioned in Notification dated 08.01.2021, which has been objected to by the Petitioners herein and the said application is still pending consideration. When such an application is pending in RFA 160/2024 he submits that this Court ought not to appoint a Commissioner to

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conduct a survey of the aforesaid property in terms of the notification dated 08.1.2024.

24. Heard Sri Chandan, learned counsel for the Petitioners , Sri. Kiran Ron, learned AAG for the State. Perused papers.

25. The points that would arise for the consideration of this Court are:

    i. Whether once a notification has been issued under Section 17 of the Mysore Forest Regulation, 1900, notifying a particular land as a forest land, would that land be forest land in perpetuity or would grant of a portion of the land covered under the said notification exempt such granted land from the notification under the rigours of the said Regulations?

    ii. Whether the present Writ Petition is maintainable on account of the same, requiring this Court to consider a disputed question of fact?

    iii. Whether the respondents could have issued a fresh show cause notice in F.O.C.No. 7/2006-07, F.O.C. 8/2006-07, F.O.C. 9/2006-07, F.O.C. 13/2006-07 and F.O.C. 14/2006-07 after the said proceedings have been quashed in Crl.P.1852-57 OF 2012?

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iv. Whether the survey carried out in pursuance of the orders in Crl.Petitions No.1852-57 of 2012 indicating that there is no encroachment of forest land would enure to the benefit of the Petitioners, requiring the Writ Petitions to be allowed?

v. Whether the filing of the civil suit by the Forest Department and the orders passed therein would disentitle the Forest Department from initiating proceedings under Section 64A of the Karnataka Forest Act, 1963?

vi. Can the government, after notifying a land to be forest land under Mysore Forest Regulations, 1990 vide notification 08.01.2021 grant any land to defence personnel or otherwise, and what is the effect thereof?

vii. Whether there is any delay and if there is delay, would it disentitle the Forest Department from taking action under Section 64A?

viii. What order?

26. I answer the above points are as under;

27. **ANSWER TO POINT NO.1: Whether once a notification has been issued under Section 17 of the Mysore Forest Regulation, 1900, notifying a particular land as a forest land, would that land be forest land in perpetuity or would grant of a**

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portion of the land covered under the said notification exempt such granted land from the notification under the rigours of the said Regulations?

27.1. In terms of Section 3 of the MFR 1900, any land at the disposal of the government may be constituted as a State Forest in the manner provided thereunder. Section 3 is reproduced hereunder for easy reference:

> *3. Any land at the disposal of Government may be constituted a State Forest in the manner hereinafter provided.*

27.2. In terms of Section 4, whenever it is proposed to constitute any land as State forest, the government shall publish a notification in the Official Gazette specifying as nearly as possible the situation limits of such land, declare that it is proposed to constitute such land as forest land, and appoint an officer called the Forest Settlement Officer [FSO] to enquire into and determine the existence, nature and extent of

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any rights claimed by or at least to exist in favour of any person. Section 4 of the MFR 1900 is reproduced hereunder for easy reference:

> ***4.*** *Whenever it is proposed to constitute any land a State Forest the Government shall publish the notification in the official Gazette-*
>
> *(a) Specifying as nearly as possible the situation and limits of such land.*
>
> *(b) declaring that it is proposed to constitute such land a State Forest and;*
>
> *(c) appointing an officer (hereinafter called the "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 and land comprised within such limits or to any forest produce of such land, and to deal with the same as provided in the chapter*
>
> *The officer appointed under clause(e) of this section ordinarily be a person other than a Forest Officer; but a Forest Officer may be appointed by the Government to assist the Forest Settlement Officer in the enquiry prescribed by this Chapter.*

27.3. In terms of Section 5, where a notification has been published under Section 4, the FSO shall publish in the official Gazette and the headquarters of each Taluk in which any portion of land comprised in such notification is

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situate, and every town and village in the neighbourhood of such land proclamation, specifying as nearly as possible the situation limits of the proposed forest, setting forth the substance of the provision of Section 4, explaining the consequences that would ensue on such forest being constituted by fixing a period of not less than three months from the date of publication of such proclamation, and requiring every person claiming any right or making any claim 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 by producing document in support thereof. Section 5 of the MFR 1900 is reproduced hereunder for easy reference:

> ***5.*** *When a notification has been published under section 4, the Forest Settlement Officer shall publish, in Kanarese, in the official Gazette and at the headquarters of each taluk in which any portion of the*

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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 State 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, and in either case to produce all documents in support thereof.

27.4. In terms of Section 7 the FSO shall take into consideration all the statements and contention and thereafter, enquire into all claims duly preferred as regards the rights mentioned under Section 4(c) as also under Section 5(d), so far as they may be ascertainable from the Government records and the evidence of every person likely to be acquainted with the same in

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such a manner as to assist in ascertaining the existence and extent of any right or claim.

27.5. In terms of Section 13, after recording all the claims and considering the same, the FSO is empowered to pass such an order which, as far as possible, shall ensure the continued exercise of admitted rights. Section 13 of MFR 1900 is reproduced hereunder for easy reference;

> ***13.*** *After making such record, the Forest Settlement Officer shall pass such order as will as far as possible, a ensure the continued exercise of admitted rights. For this purpose the Forest Settlement Officer may-*
>
> *(a) provide some other reasonably convenient right of way; or*
>
> *(b) set out some other forest tract of sufficient extent, and in a locality reasonably convenient, for the exercise of rights to pasturage or other forest produce, and record an order conferring such rights on claimants to the admitted extent; or*
>
> *(c) so alter the limits of the proposed State Forest as to exclude the tract over which rights of way or water extend or to exclude forest land of sufficient extent and in a locality reasonably convenient for the purposes of the claimants with regard to pasturage or other forest produce. Land so excluded may be either outside the boundaries of the forest as finally settled*

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or within them, in which latter case it shall be demarcated and notified as an enclosure within which the rules relating to State Forest shall not apply; or

(d) record an order, continuing to claimants the right of way or to pasturage or other forest produce or water (as the case may be) to the admitted extent, at such seasons, within such portions of the pro-posed State Forests, and under such rules, as may from time to time be prescribed by Government to ensure the continuance but non-abuse of such rights.

27.6. Any person who is aggrieved by the order of the FSO can file an appeal under Section 15 of the MFR 1900. On consideration of the appeal and orders being passed in terms of Section 16, thereafter under Section 17, the government may publish a notification in the Official Gazette specifying the limits of the forest, which is intended to constitute a State forest and declaring the same to be a State forest from the date fixed by such notification.

27.7. In the present case, the preliminary notification under Section 4 having been published, after

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following the due procedure, the final notification under Section 17 was published on 08.01.1921 declaring the lands as indicated therein to be forest land. Thus, it is after an exhaustive procedure, which is intended to address the rights of all concerned, that a Final notification was published, which has attained finality, the same not having been challenged by anyone till date.

27.8. It is the above provisions and the above notification, which are required to be considered by this court to ascertain the rights of the parties.

27.9. The submission of Sri.Chandan K., learned counsel for the petitioners, is that even if the land were said to be covered under the final notification of Section 17, the said land had been granted in favour of Sri Manik Raj, a

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defence personnel on 17.11.1932 by Darkast No.807/3233 as entered in the Kethwar register. The grant having been made in favour of Sri.Manik Raj, who had not paid the due taxes, the property was brought to auction in the year 1936 with respect to survey No.69, when the same was purchased by Sri.Subbaraya, Mudaliyaar, who subsequently sold the property to various persons.

27.10. The grant having been made in favour of Sri.Manik Raj, the State cannot contend otherwise by now claiming that there is no such grant. In terms of Section 20 of the MFR 1900, the restriction in obtaining any right is only otherwise than through succession or grant or contract in writing made on behalf of the government. In the present case, there being a grant in favour of Mr. Manikaraj, the restriction under Section 20 would not be applicable. The

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right obtained by Manikaraj is in accordance with the MFR 1900, which cannot be disturbed. The grant having been made for and on behalf of the government, the same is found mentioned in the Kethwa Register, pursuant to which taxes have been paid by Sri.Manikaraj and thereafter by Sri.Subramanya Mudaliyar and as such, irrespective of whether a notification has been issued under Section 17 or not, the requirement of Section 20 of the MFR 1900 being satisfied, the respondent-State cannot agitate any claim over the property.

27.11. His submission is also that, insofar as survey No.68 is concerned, this land had been granted in favour of Sri Muniyappa Devanahalli, which also complies with the requirement of Section 20 of the MFR 1900. A mortgage had been created on the said land, due to default in payment of the monies, the Assistant Registrar

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of Co-operative Societies had initiated proceedings, conducted an auction of the property when Smt.Sajeeda Begum, participated in the auction and was declared the successful bidder. As such, his submission in respect of survey No.68 is that the lands initially granted in favour of Muniyappa Devanahalli were later on auctioned by a government officer, which also stands the test of section 20 of MFR 1900, and no claim can be made by the State in relation thereto.

27.12. As regards the proceedings which have been initiated on Section 64 of the FCA 1980, he submits that those proceedings could be initiated only as regards a reserved forest, district forest, village forest, or protected forest, if found to be unauthorisedly occupied by any person. Contending that the requirement of Section 20 has been satisfied,

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his submission is that once the grant has been made, the land will no longer be forest land but would be private land belonging to the grantee and as such Section 64A would not be applicable. It is on that basis a submission is made that if a grant of land is made under Section 20, the said land cannot be subjected to a proceedings under Section 64A.

27.13. Reliance has been placed on the decision in **B.S. Sandhu's** case to contend that the word 'forest' must be understood according to dictionary meaning and for the same to be so done, the particular land is required to be recorded as forest land in government records.

27.14. In the present case, survey Nos.68 and 69 not being shown as forest land or government land in the revenue records, the government cannot make any claim to initiate proceedings under Section 64.

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27.15. By relying on ***Anand Arya's*** case, it has been contended that the contents of the revenue records have to be looked into and when the revenue records do not indicate the land to be shown as forest land, the claim of the State that it is forest land is unsustainable.

27.16. Reliance is placed on ***Elizabeth Jacob's*** case to contend that when a common man on the basis of the government documents is led to believe that the land is not forest land, the notification even if issued under Section 17 of the MFR 1900 would not be applicable thereto, entitling the Respondent-State from invoking the powers under Section 64A of the KFA.

27.17. *Per Contra*, the submission of Sri.Kiran Ron, learned Additional Advocate General is that, the notification issued on 8.01.1921 refers to Survey Nos.66 and 67 of Chikkasane and

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survey No. 14 of Bhuvanahalli, these survey numbers underwent a change with survey No.66 being renumbered as survey No.68 and survey No.67 being renumbered as survey No.69 and survey No.14 being renumbered as survey No.30 and as such, it is both the old numbers and the new numbers which are to be taken into consideration together. His submission is that the notification being in respect of old survey Nos.66 and 67, new survey No.68 and 69, it is those survey numbers which will be covered under the Section 17 notification.

27.18. The reference made by the petitioners to survey Nos.68 and 69 are as regard the old survey Nos.68 and 69 and not new survey Nos.68 and 69, therefore by referring to lands in old survey Nos.68 and 69, the petitioners are seeking to assert the title on new survey Nos.68 and 69

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which is impermissible since new survey No.68 was earlier survey No.66 and new survey No.69 was earlier survey No.67 which were declared to be Bhuvanahalli State forest vide notification dated 8.01.1921. On that basis, he submits that there is a very basic issue as regards the identity of the property. There is no grant of land made in old survey Nos.66 and 67.

27.19. His submission is that it is not the survey number which is required to be considered, but it is the identification and boundaries of the property which are required to be considered.

27.20. In this regard, by relying on various judgments cited supra, namely ***Narasimha Sastry's case, Sheodhyan Singh's case, Y. Subbarao's case and Mallaiah's*** case that it is the boundaries which would prevail over the measurement or, the identification of a land by

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way of survey number or the like and as such in so far as the boundaries forming part of the notification in Section 17 of the MFR 1900, the said notification in Section 17 would operate perpetually.

27.21. Alternatively, by relying on ***Nirvana Gowda's*** case, he submits that when a land is included as a reserved forest, the revenue records and the contents thereof are irrelevant. Issuance of saguvali chits and/or the like would not confer any title on the said land. Once the land is declared to be forest land, the revenue authorities have no power to deal with the forest land and by relying on Section 30 of MFR 1900, he submits that until and unless a notification is issued categorically stating that a land ceases to be a State forest or a portion of a State forest, the land would continue to be a State forest.

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27.22. His submission is also that the notification dated 8.01.1921 not having been challenged, the same continuing to be in force, the Petitioners cannot allege contrary to the said notification and in this regard, he relies upon the decision in ***Brijesh Reddy*** and ***Surjan Singh***. On that basis he submits that a land once reserved as a forest or reserved forest cannot be de-reserved without a notification having been issued under section 30 in that regard.

27.23. It is in the background of the above submission that the above point framed would have to be considered and answered. The relevant provisions have been extracted hereinabove, as also the submissions made by both the Counsels.

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27.24. What has been challenged is only a Show Cause notice and this court would have normally relegated the petitioners to reply to the show cause notice, however, there being an insistence on part of the counsel for Petitioners that all issues have to be considered by this court and the petitioners having submitted to the jurisdiction of this court for such consideration that the same have been taken up for consideration.

27.25. There is substance in the submission of Learned Additional Advocate General Sri. Kiran Rhon, learned counsel appearing for the State, Section 20 cannot be considered to be an exception to Section 17 of the MFR 1900 in all circumstances. Section 20 is reproduced hereunder for easy reference:

> ***20.*** *No right of any description shall be acquired in or over a State Forest, except by succession or under grant or contract in writing made by or on behalf of the Government or of some person in whom such right or the*

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power to create such right was vested when the notification under section 17 was published.

27.26. Section 20 would indicate that no right of any description be acquired in or over a state forest except by succession or under a grant or contract in writing, made by or on behalf of the government or of some person in whom such right or the power to create such right was vested when the notification under Section 17 was published. For Section 20 to be applicable it is required that a grant or contract in writing is made by or on behalf of the Government or of some person in whom such right or the power to create such right was vested when the notification under section 17 was published, i.e., to say the time period for consideration of such grant is at the time when the section 17 notification was issued and not subsequently.

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27.27. Section 17 provides for the land declared as forest to be deemed as a State forest, and Section 20 provides an exception for a private person to acquire the land declared to be a State forest, subject to the conditions being satisfied. By an *ex facie* reading of Section 20, it is clear that though Section 17 is one which will operate in perpetuity but is however subject to the rights exercised by the State under Section 20, those conditions are required to be satisfied for Section 20 to be made applicable.

27.28. Section 20 is worded in the negative, categorically indicating that "no right of any description shall be acquired" in or over a State Forest and qualifies the same by exceptions namely (i) by succession or (ii) under grant or contract in writing made by or on behalf of the Government or of some person in whom such

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right or the power to create such right was vested when the notification under section 17 was published. The Petitioners seek to rely not on the general law but on the exception, hence it is required for the petitioners to satisfy the requirement/s of the exception/s.

27.29. In so far as the First Exception is concerned, if a person had a right over the forest land, which had not been considered before the issuance of the Section 17 notification, such rights could be passed on by way of succession, which the person claiming to have acquired would have to prove, be that as it may, this aspect is not being considered in detail in the present case since no claim has been made under this exception.

27.30. As regards the second exception, a right over forest land can be acquired under a grant or

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contract in writing made by or on behalf of the Government or of some person in whom such right or the power to create such right was vested when the notification under section 17 was published. Thus, the grant or contract has to be firstly in writing and secondly made by or on behalf of the Government and cannot be by way of any agreement with a private party.

27.31. Insofar as survey No.69 is concerned, by relying on the Khetwar register, it is sought to be contended that the said land has been granted in favour of Sri. Manik Raj on 17.11.1932, who was a defence personnel in terms of dharkast No.807/32-33 as entered in the Khetwa register, which has been placed on record. Thus, what has been placed on record is only the Khetwar register to indicate the alleged acquisition of title by Sri. Manikaraj was by way of a grant/dharkast made in the year

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1932. The dharkast No.807/32-33 is not placed on record, and there are no other documents other than the Khetwar register placed on record. Thus, the Khetwar register cannot be regarded as establishing the grant by or on behalf of the Government. The report of the Thasildar indicates that there is no such grant made and despite a search having been made no documents have been traced in that regards, thus categorically establishing that there is no such grant, the petitioners themselves have not placed on record any such grant order.

27.32. The alleged grant/ Dharkast is admittedly subsequent to the notification issued under Section 17, which was issued on 8.1.1921. It has not been established that the grant is in accordance with law, the subsequent event of the said Sri. Manik Raj not having made

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payment of the land revenue in relation to the said land, which had been granted to him, the said land was brought for auction in the year 1936, and in the said auction, Sri. Subbaraya Mudilyar is stated to have purchased the said property, is a private transaction and not one which can be said to be a grant in terms of Section 20. The auction having been conducted on account off non-payment of land revenue, Sri. Subbaraya Mudaliyar being successful in the said auction, a sale deed is stated to have been executed in favour of Sri.Subbaraya Mudaliyar, which would not satisfy the requirement of Section 20, since the acquisition of title by Sri. Subbaraya Mudaliyar is under contract, in writing, in furtherance of an auction and not a grant made by the government, or on behalf of the government. Subsequent thereto, there have been various private sales in respect

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of survey No.69, which would not satisfy the strict requirement of Section 20. Section 20 being an exception it is required that the same is strictly construed and no liberal interpretation can be given to the same as contended by Shri K. Chandan.

27.33. Insofar as survey No.68 is concerned, the said land had been allegedly granted to Sri. Muniyappa Devanahalli in the year 1945, again, no document of grant has been placed on record. Sri. Muniyappa of Devanalli had borrowed money by mortgaging the property. A dispute had been initiated under the Karnataka Co-operative Societies Act. The Assistant Registrar Co-operative Societies had bought the property for auction, where the same was purchased by Smt. Sajeeda Begum. insofar as the grant is concerned in favour of Sri. Muniyappa Devanahalli, the same would again

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would not satisfy the requirement of Section 20 of the MFR 1900, insofar as the sale in favour of Smt.Sajeeda Begum is concerned, it is on account of the mortgage dues that the property, which was mortgaged as security for a private loan, was brought for sale and the sale, though having been conducted by an officer of the government, and a sale deed came to be executed in favour of Smt.Sajeeda Begum, the transaction was essentially a private transaction and would not satisfy the strict requirement of a Grant under section 20 of the Act. Thus, even insofar as the land in survey No.68 is concerned, the manner of acquisition of title would not satisfy the requirement of Section 20, which is an exception to Section 17, as indicated *supra*.

27.34. As regards the aspect of boundaries prevailing over the measurements and the confusion

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regarding survey numbers, many arguments have been advanced on this aspect. The submission of the counsel for the petitioners is on the basis of the Survey Number and not as per the boundaries in the notification of the year 1921.

27.35. On enquiry with the counsels if they are agreeable for a fresh joint survey in terms of the notification 08.01.2021, though Sri.Kiran Ron, learned AAG submits that the State is ready for another such joint survey to be carried out, Sri. Chandan submits that there is no fresh survey which needs to be carried out; a survey has already been carried out, and a report has been placed on record, which could be considered by this Court.

27.36. On further enquiry, as to whether the claim of the Petitioners is that the lands subject matter

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of the present petition were the forest lands mentioned in the notification dated 08.09.2021, but only on account of grant they were not forest land or is the case of the Petitioners that the land in Sy.No.68 and 69 belonging to the Petitioners were never forest land; the submission of Sri.Chandan, learned counsel, is that the land which is owned and possessed by the Petitioners is not forest land as per the joint survey report, and as such, there is no requirement of a fresh survey to be carried out. In that background, it would be required to be considered if the Survey report can be accepted as is.

27.37. A joint survey was conducted on 28.01.2015 and 29.01.2015 by the Tahsildar Bhuvanahalli, in pursuance of the Order Dated 13.06.2012 in Criminal Petition No. 1852-1857 of 2012. The old survey No. 66 of Chikkasane village has

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now been renumbered as survey No. 68, Survey No. 67 of Chikkasane village is now renumbered as survey No. 69.

27.38. The Tahsildar has submitted a survey report in respect of old survey No. 66 and old survey No. 67, and not with reference to new survey No. 68 and 69 is the contention of Shri Kiran Rohn, and in that backround the survey report was not accepted and fresh survey was directed to be conducted since the survey was not conducted in accordance with the Gazette notification dated 08.01.1921.

27.39. Thereafter, the Technical Assistant and Deputy Director of Land Records, Bangalore Rural District, were directed by the Tahsildar, Devanahalli Taluk to conduct a joint survey, according to the notification dated 08.01.1921, vide their correspondence dated 21.04.2017.

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27.40. On 10.07.2017, the ADLR, Devanahalli Taluk, issued a notice to attend the joint survey to be conducted on 25.07.2017. Though Petitioner No.1 received the notice, the other Petitioners refused to receive the notice. A survey was conducted in the presence of Petitioner No. 3- Sri. M. A. Mohammad Amanullah, who refused to sign the Mahazar, which is apparent from the report of the Assistant Conservator of Forests dated 16.09.2017 addressed to the Deputy Conservator of Forests. The new Survey report it is claimed indicates that the land of the petitioners comes within the boundaries of the notification dated 08.01.1921 and as held in ***Narasimha Sastry's case, Sheodhyan Singh's case, Y. Subbarao's case and Mallaiah's*** case irrespective of the change in Survey numbers, if the land falls within the

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boundaries of the notification of 1921, it would be a forest land.

27.41. Irrespective of the numbering of the survey numbers, what is required to be considered is the boundaries of the notification of 1921; if the land claimed by the Petitioners comes within the boundaries of the forest land, action has to be taken which cannot be faulted with.

27.42. Liberty having been reserved by this Court in an order dated 13.06.2012 in criminal petition No. 1852 to 1857 of 2012, the first survey was conducted of the Survey numbers and not as per the notification of the year 1921, as such a fresh survey has been conducted as per the notification of the year 1921 and proceeded therefrom in the very same proceedings, namely FOC No.7, 8, 9, 13 and 14 of 2006-07. A survey has now been conducted in terms of

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the notification dated 08-01-1921, encroachment having been found, the authorities are well within their rights to initiate proceedings.

27.43. ***Hence I answer point No.1 by holding that once a notification has been issued under Section 17 of the MFR 1900 notifying a particular land as a forest land, the said notification would apply in respect of the said land in perpetuity, subject to denotification in terms of Section 30 and or the exceptions detailed under Section 20, which would have to be strictly established by the person/s claiming such benefit of the exception/s.***

28. ANSWER TO POINT No.2: Whether the present Writ Petition is maintainable on account of the same, requiring this Court to consider a disputed question of fact?

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28.1. Much has been sought to be made out by Sri.Kiran Ron, learned Additional Advocate General, that the present writ petition is not maintainable since the same relates to the consideration of disputed questions of fact and in this regard, reliance has been placed by him on the decision of the Hon'ble Apex Court in **Kunishetty Satyanarayana's** case to contend that firstly, the disputed questions of fact. Secondly, that what has been challenged is only a show cause notice under Section 64, which is required to be replied to by the petitioners.

28.2. *Per contra*, Sri.K.Chandan., learned counsel appearing for the petitioners relied on **Anand Arya's** case to contend that when land has never been shown as forest land and those lands have been granted by the government, the land loses the character of a forest land and even if it was a forest land and as such, no

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notice under Section 64A could be issued. Reliance has also been placed on **Elizabeth Jacobs'** case to contend that when the official document itself indicated that the property was not government land, private rights in respect thereto could not be granted.

28.3. By relying on **Godrej and Boyce** case, it has been submitted that when citizens acted for several decades on the basis of what has been held out by State, the State cannot belatedly take action contrary thereto. These, he submits, are points of law which are required to be considered. It is not disputed questions of fact which would be considered by this Court. Even as regards that aspect, by relying on ***Chandavarkar Sita Ratna Rao's*** case, his submission is that a constitutional Court exercising jurisdiction under Article 227 could go into the question of facts on the basis of a

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question of law to render justice where so required. The petitioners, having been harassed by the respondent-State, this Court ought to come to the rescue of the petitioners.

28.4. Reliance has been placed on the decision of the Hon'ble Apex Court in **Shamshad Ahmad's** case, indicating that the powers of the High Court under Article 226 and 227 are very wide and extensive, and this Court can exercise such writ jurisdiction to render justice as may be required. On that basis he submits that in law, the action taken by the respondent being illegal, the enquiry to be conducted by this Court limited to whether there was a grant made under Section 20 bringing out the exception under Section 20 to the notification of Section 17 thereby confirming right on the grantee and his successors, his submission is that this Court ought to excise its powers under

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Article 226 and 227, in the background of the above submission that the above point is required to be answered.

28.5. Normally, though this Court has wide powers under Articles 226 and 227, which cannot be fettered by any particular provision of law, this Court would refrain from entering into a deep enquiry as regards disputed questions of facts and leave the same to be decided by a Court/authority exercising appropriate jurisdiction.

28.6. A Judge of the High Court functions in various capacities depending on the roster allocated by the Hon'ble Chief Justice as the Master of Rolls. It is not that a Judge of the High Court cannot enquire into a disputed question of fact, which is normally done in the case of a first appeal, where the entire evidence is re-appreciated,

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thereby requiring an enquiry into all the facts relating thereto. In a second appeal, a Judge of the High Court would restrain himself to consider the point of law, which is termed as a substantial question of law to be determined. In exercise of powers in different rosters like a writ petition under Article 227, a Judge of the High Court would exercise supervisory powers to ascertain if the orders passed by the trial Court are proper and correct. While exercising revision jurisdiction, a Judge of the High Court would consider if there is an error of jurisdiction or an error in the exercise of powers, and so on and so forth.

28.7. Insofar as the writ petition is concerned, the same being as summary proceedings whereunder the reliefs in the nature of issuance of writ is sought for, a Judge of the High Court exercising summary jurisdiction would normally

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refrain from enquiring into disputed questions of facts unless they are *ex facie* evident.

28.8. Thus, the restriction imposed is a self-induced restriction and not a restriction on the basis of the Judge not having the power or ability to do so. This restriction is also self-imposed to protect the interest of the parties, inasmuch as if there are disputed questions of fact, the parties are required to be provided an opportunity of adducing evidence, placing the documents on record and also permitting them to cross-examine each other to ascertain the veracity thereof so as to arrive at the truth in the matter.

28.9. Insofar as the present case is concerned, essentially what has been contended is that a grant made in favour of the petitioners is one which would constitute an exception under

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Section 20 of the MFR 1900 and as such is an exception to the restriction imposed by a notification under Section 17 of MFR 1900.

28.10. *Ex facie w*hat has been placed on record is the khetwa register on which basis it is alleged that there is a grant made in respect of land in survey No.69 in favour of Sri.Manik Raj, way back in the year 1932, and of the subsequent auction of the said property in the year 1936. However, no order of grant has been placed on record.

28.11. Similar, is the case as regards survey No.68, which is alleged to be granted to Sri. Muniyappa Devanahalli in the year 1945, again, no document of grant has been placed on record.

28.12. The actual grant orders in writing made by or on behalf of the Government have not been

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placed on record, more so when the location of the property has been ascertained to be located within the boundaries of the notification of the year 1921. The report of the Thasildhar indicates that there is no such order of grant available in respect of both the above survey numbers.

28.13. Once the land is within the boundaries of the notification as held by the Hon'ble Apex Court in the celebrated judgment in **Godavarman's case,** in which case, on account of continuous mandamuses which have been issued and the constant monitoring by the Hon'ble Apex Court, has resulted in saving of numerous forests and removal of encroachments, all encroachers in a forest area being required to be evicted.

28.14. A show-cause notice under Section 64-A is issued only with a view to enable the person to whom the notice is issued to show that his land

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does not fall within the boundaries of the forest as drawn up by the Survey of India and as contained in the notification issued in regard thereto, in the present case the notification of the year 1921. If the land is identified as falling within the Survey of India boundary and/or the notification, then there could be no other defence open to the person concerned, namely the encroacher, and the State would be under an obligation and duty to evict the encroacher, by force if necessary. The facts being ex-facie clear that, as per the second survey carried out, the subject land is within the forest boundaries, the Petitioners or anyone claiming through or under them cannot have any defence.

28.15. These aspects being explicitly clear from the documents on record, I am of the considered opinion that there is no in-depth enquiry which

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is required to be conducted by this Court to ascertain if there are any *exfacie* rights vested with the petitioners.

28.16. ***Thus, I answer point No.2 by holding that, insofar as the present case is concerned, as regards the challenge to the notice under section 64A, firstly, they do not involve any disputed question of fact requiring in-depth enquiry. Secondly, the survey report indicating that the subject property lies within the boundaries of the forest notified in the year 1921, the petitioners have no defence to any eviction order to be passed against them, however they have to be given an opportunity to place any mitigating circumstances on record for the purpose of consideration of the time to be granted for such eviction.***

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29. <u>ANSWER TO POINT NO.3.</u> Whether the respondents could have issued a fresh show cause notice in F.O.C. No.7/2006-07, F.O.C. No.8/2006-07, F.O.C. No.9/2006-07, F.O.C. No.13/2006-07 and F.O.C. No.14/2006-07 after the said proceedings have been quashed in Crl.P.1852-57 OF 2012?

29.1. The submission of Sri K. Chandan, learned counsel for the petitioners, is that a similar notice under Section 64 was issued earlier in the year 2006-07, and in furtherance thereof, criminal FOC Nos. 7, 8, 9, 13, and 14 of 2006-07 were registered. Challenging the same, the petitioners had filed criminal petitions under Section 482 of the Code of Criminal Procedure in Criminal Petition No. 1852 to 1857 of 2012 and this court, vide order dated 13.06.2012 had quashed those proceedings, reserving liberty to the Forest Department to conduct a survey. The said orders having attained finality, the FOC proceedings having been quashed, the question of issuance of one more set of notices

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as done now in the very same FOC proceedings, *albeit* after a unilateral survey carried out by the Forest Department, is untenable.

29.2. The submission of Sri.Kiran Ron, Additional Advocate General, notes that although the proceedings were quashed, liberty was reserved to the Forest Department to conduct a survey. A survey having been carried out by the Forest Department, where encroachment was found, proceedings have been continued in the said FOC matters. As such, he submits that the continuation of the said proceedings is proper and correct and no fault was committed.

29.3. Having heard the arguments of both the counsels and having perused the papers, there is no dispute as regards the earlier proceedings having been initiated in the year 2006-07 and

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the same having been quashed. The allegations made in those proceedings are the very same allegations which are made in the present proceedings. The orders passed in criminal petition No.1852 to 1857 of 2012 are categorical inasmuch as those FOC proceedings initiated in the year 2006-07 have been quashed only on the ground that there was no survey conducted and in that background liberty was reserved to the forest department to carry out a survey in the presence of the petitioners to ascertain if there was any encroachment. In furtherance thereof, a survey has been carried out in the presence of the petitioners as regards the aforesaid survey numbers and a categorical remark made in the said survey by the surveyor that there is no encroachment by the petitioners of any forest land.

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29.4. Liberty having been reserved by this Court in an order dated 13.06.2012 in criminal petition No. 1852 to 1857 of 2012, the first survey which was conducted of the Survey numbers not being as per the notification of the year 1921, as such a fresh survey has been conducted as per the notification of the year 1921 and proceeded therefrom in the very same proceedings, namely FOC 7. The quashing of FOC No.7, 8, 9, 13 and 14 of 2006-07 was only with reference to the joint survey not having been conducted and liberty having been reserved to conduct such a survey. A survey has now been conducted in terms of the notification dated 08-01-1921, encroachment having been found, the authorities are well within their rights to initiate proceedings.

29.5. The subsequent survey, in my considered opinion, is not a unilateral survey conducted by

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the forest department. On 10.07.2017, the ADLR, Devanahalli Taluk, issued a notice to the Petitioners to attend the joint survey to be conducted on 25.07.2017. Though Petitioner No.1 received the notice, the other Petitioners refused to receive the notice. A survey was conducted in the presence of Petitioner No. 3-Sri. M. A. Mohammad Amanullah, who refused to sign the Mahazar, which is apparent from the report of the Assistant Conservator of Forests dated 16.09.2017 addressed to the Deputy Conservator of Forests. The new Survey report indicates that the land of the petitioners comes within the boundaries of the notification dated 08.01.1921.

29.6. As indicated *supra*, the orders passed in Crl.Petitions No.1852 to 1857 of 2012 are categorical. The entire order thereof is reproduced hereunder for easy reference:

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ORDER

Learned Government Pleader has filed statement of objections.

2. In these petitions, petitioners have sought for quashing of the proceedings in FOC Nos.7/06-07, 8/06-07, 9/06-07, 13/06-07, 14/06-07 pending on the file of CJ (Jr. Dn.) and JMFC, Devanahalli.

3. The allegation in the complaint is that, the petitioners have encroached upon the forest land and accordingly case was registered in FOC Nos.7/06-07, 8/06-07, 9/06-07, 13/06-07, 14/06-07 for the offences punishable under Sections 24(g), (gg), 73(d) of Karnataka Forest Act and Rule 41 of Rules made there under and Section 41(2) of Karnataka Conservative of Forest Act and Section 2 of Central Forest Protection Act. As against the registration of the cases, the petitioners are before this court.

4. The facts, which are not in dispute are that, in the year 1936 itself it appears that public auction conducted in court proceedings for non payment of the revenue. In the court proceedings, one Subbaraya Mudaliyar purchased the properties. Thereafter, these petitioners each have purchased portion of the properties in 1977. It is also not in dispute that, the Forest and State had filed a suit against one of the purchasers in O.S.No.1424/2006 seeking declaration that the land in possession of the said properties, land encroached upon by the petitioners. It is also not in dispute that the said suit has been dismissed.

5. If, really the forest department finds that there is any encroachment which the petitioners or their predecessor were in possession for more than half century, it is open to the forest department to conduct survey of the land in the presence of the occupier/owner/purchaser of the said property and based on the survey, if they find there

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> *is any encroachment they can proceed against the occupier in accordance with law.*
>
> *6. Further, considering that the even before the purchase of the properties by the petitioners, the title deeds were in the name of the vendor, these petitioners have been in possession for over complaint ought not have been filed without proper verification. Hence, I find complaints filed by the forest authority are perverse and liable to be quashed.*
>
> *Accordingly, these petitions are allowed. Proceedings in FOC Nos.7/06-07, 8/06-07, 9/06-07, 13/06-07, 14/06-07 pending on the file of CJ (Jr. Dn.) and JMFC, Devanahalli stand quashed.*
>
> *Liberty is reserved to the Forest Department, if there is any encroachment, it may conduct the survey and proceed with the matter in accordance with law.*

29.7. Though the FOC proceedings initiated in furtherance of the notices issued under section 64A of the FC Act had been quashed, the said proceedings did not come to an end. Liberty was reserved to the Forest Department, if there is any encroachment, it may conduct the survey and proceed with the matter in accordance with law.

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29.8. If a survey were to be carried out and encroachment found, matter could be proceeded with in accordance with law, it is in view thereof that fresh notices under Section 64A would be required to be issued and have been so issued, the petitioner would be heard on the same, which is what has been done. The petitioners will be given an opportunity to reply to the same, and thereafter, action to be taken.

29.9. In the present matter, a joint survey was conducted on 28.01.2015 and 29.01.2015 by the Tahsildar Bhuvanahalli, in pursuance of the Order dated 13.06.2012 in Criminal Petition No. 1852-1857 of 2012. The old survey No. 66 of Chikkasane village has now been renumbered as survey No. 68, Survey No. 67 of Chikkasane village is now renumbered as survey No. 69.

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29.10. The Tahsildar has submitted a survey report in respect of old survey No. 66 and old survey No. 67, and not with reference to new survey No. 68 and 69, it is in that backround that the survey report was not accepted and fresh survey was directed to be conducted since the survey was not conducted in accordance with the Gazette notification dated 08.01.1921.

29.11. Liberty having been reserved by this Court in an order dated 13.06.2012 in criminal petition No. 1852 to 1857 of 2012, the first survey which was conducted of the Survey numbers and not as per the notification of the year 1921, as such a fresh survey has been conducted as per the notification of the year 1921 and proceeded therefrom in the very same proceedings, namely FOC No.7, 8, 9, 13 and 14 of 2006-07. The proceedings were quashed only with reference to the joint survey not having been

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conducted and liberty having been reserved to conduct such a survey. A survey has now been conducted in terms of the notification dated 08-01-1921, encroachment having been found, the authorities are well within their rights to initiate proceedings.

29.12. **I answer point No.3 by holding that the Respondents have rightly issued fresh show cause notices dated 13.11.2020 in FOC No.7, 8, 9, 13 and 14 of 2006-07.**

30. <u>ANSWER TO POINT No.4:</u> Whether the first survey carried out in pursuance of the orders in Crl.Petitions No.1852-57 of 2012, indicating that there is no encroachment of forest land, would enure to the benefit of the Petitioners requiring the Writ Petitions to be allowed?

30.1. Some of the contentions relating to this point have been considered in answer to point No.3 above. Suffice it to say that in the first survey, which had been carried out, the petitioners had

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participated, and in the second survey, which had been carried out, the petitioners had chosen not to participate, as indicated supra.

30.2. In my considered opinion, the Petitioners cannot choose not to participate when it had been pointed out that there was an error in the earlier survey on account of the earlier survey having been done of the Survey Numbers and not as per the boundaries of the notification of the year 1921. The First Survey, which had been carried out, was contrary to the orders passed by this court; it would be for the Principal Chief Conservator of Forests and the Principal Secretary, Revenue Department to ascertain if there was any mischief in the carrying out of such a survey with reference to the survey numbers rather than the boundaries of the notification of the year 1921 and take necessary action against the errant officials.

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30.3. Respondent-Forest Department was well within its authority to conduct a fresh survey when such an error was found, more so, when in furtherance of the orders passed in Criminal Petition No.1852 to 1857 of 2012, the Forest Department was granted liberty to carry out a survey of the land as per the notification of the year 1921, in the presence of the petitioners. The liberty which has been granted by this court in its order passed in criminal petition No.1852 to 1857 of 2012 did not come to an end once the first survey was carried out. When the aforestated error was found, it was required for any responsible officer of the Forest Department, who is obliged and duty-bound to protect all forest lands, to conduct a fresh survey as per the notification of the year 1921. It is if the survey report of the survey numbers were to be accepted by the forest department

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that the officers could have been said to have abdicated their duties. An action taken to protect forest land cannot be said to be outside the powers of the Officials of the Forest Department, the same being to correct the mistake committed by the surveyor carrying out the survey activity without reference to change in the survey numbers and or the boundaries of the notification of the year 1921.

30.4. **As such I answer point number 4 by holding that when a survey was carried out in pursuance of the orders in criminal petition No. 1852 to 1857 of 2012 indicating that there is no encroachment of forest land, the same would not enure to the benefit of the petitioners if the survey was not properly carried out. A subsequent survey after the issuance of notice to the petitioners carried out as per**

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the boundaries of the notification of the year 1921 is perfectly valid and binding on the petitioners, more so when they chose not to particiapate in the said arrvey, the Petitioners or anyone claiming through or under them cannot seek to take advantage of their own wrongs by not participating in the survey despite notice having been issued in that regard.

31. <u>ANSWER TO POINT No.5:</u> Whether the filing of the civil suit by the Forest Department and the orders passed therein would disentitle the Forest Department from initiating proceedings under Section 64A of the Karnataka Forest Act, 1963?

31.1. The submission of Sri Chandan, learned counsel for the petitioners, is that a suit having been filed by the Forest Department, the Forest Department failed in the same, and the matter is now pending before the first appellate court,

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proceeding under section 64A of the KFA, 1963 could not have been initiated.

31.2. Per contra, the submission of Kiran Ron, learned the Additional Advocate General, is that the proceedings in OS No.1424 of 2006 were not required to be initiated. They have been so initiated on ill-advise. The jurisdiction of the Civil Court is excluded insofar as Forest lands are concerned. A survey has been conducted on 28-01-2015 and 29-01-2015 in pursuance of the Order dated 13.06.2012, passed in Criminal Petition No.1852-1857 of 2012, the Assistant Conservator of Forest having received the said survey report on 12.06.2015 being of the opinion that the said survey was not conducted in accordance with the gazette notification dated 8-01-1921, had requested the Range Forest Officer, the Assistant Conservator Forest and the Deputy Conservator of Forest for a

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fresh survey in terms of the notification dated 8.01.1921. Thereafter on 10-07-2017, notice was issued by the ADLR to the petitioners for conducting a joint survey on 25-07-2017, the petitioners refused to receive the notice and as such, a survey was carried out. Though petitioner No. 3 was present at the time of the survey, he refused to sign the mahazar. It is in furtherance of the same that the survey report has been submitted by the Assistant Conservator of Forest on 16-09-2017 to the Deputy Conservator of Forest. Thus, he submits that this is a survey which has not been carried out unilaterally by the Forest Department but through the ADLR and the officials of the respondent. Notice having been issued to the petitioners, the petitioners had not participated in the said survey. It is on that basis that notices had been issued under section 64A on

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account of encroachment being found during the course of the said survey.

31.3. His submission, therefore, is that irrespective of a civil suit having been filed by the Forest Department, the statutory remedies available to the Forest Department could have been and have in fact been invoked. It is in the background of the aforesaid submission that this issue would have to be answered.

31.4. Though it is not in dispute that a civil suit in OS No.1424/2006 has been filed by the Forest Department, the said suit is only in respect of a portion of the subject property. The title, as observed supra, in that suit and in the present proceedings can be traced to either the grant made in the year 1932 in respect of survey number 69 or the grant made in respect of survey number 68 made in the year 1945.

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31.5. Irrespective of the title to the property what would have to be looked into in these kind of matters relating the Forest lands, is whether the land claimed by a private party like the petitioners comes within the boundaries of the Forest notification, if it does, then it would be a forest land, and the Petitioners or anyone claiming through or under them would not have any defence from being evicted in order to clear the encroachment over forest land.

31.6. The filing of the suit, though only reflects the ineptitude on part of the forest officials who had then filed the suit, would not deprive the forest department from exercising its powers in accordance with law. It would, however, be for the Principal Chief Conservator of Forests to take such action as may be permissible, in accordance with law, against such delinquent

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officials, who had, instead of taking up proceedings by exercising powers in accordance with the applicable law, filed a suit and subsequently an Appeal which is still pending.

31.7. **As such, I answer point number 5 by holding that proceeding under Section 64A of the Karnataka Forest Act 1963 can be initiated and continued irrespective of the Forest Department having filed a civil suit relating to the title of the property, since what is required to be decided is whether the property falls within the boundaries of the notification of the year 2021.**

32. **<u>ANSWER TO POINT No.6:</u> Can the government after notifying a land to be forest land under Mysore Forest Regulations 1990 vide notification 08.01.2021 grant any land to defence personnel or otherwise and what is the effect thereof?**

32.1. The submission of Sri. K.Chandan, learned counsel for the petitioners, is that even if the

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land had been notified as a forest land vide notification date 8.01.1921, the land in survey number 69 had been granted to Sri.Manik Raj, a defence personnel in the year 1932 and the land in survey no. 68 was granted to Muniyappa Devanahalli in the year 1945. It is in that background that Section 20 of the KFR 1900 has been brought into service to contend that the grantees Manik Raj and Muniyappa Devanahalli acquired ownership rights in terms of the grant, and there is no prohibition in terms of Section 20 in relation thereto.

32.2. Reliance is also placed on Rule 99 of the Mysore Land Revenue Rules and Section 187 of the Mysore Land Revenue Code, which have been reproduced hereinabove. On that basis, it is contended that if a sale has been executed by an officer of the State representing the State, more particularly when the auction has been

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conducted, on confirmation of the sale, the purchaser is required to be put in possession by the State and a certificate of purchase is required to be issued.

32.3. Reference is also made to Section 24G, 24GG, 24H, 73D of the KFA 1963 and Rule 41(2) of the KFR 1969 and Section 2(2) of the FCA 1980, on which basis it is submitted that it is only after the FCA 1980 came into force that the restriction in respect of forest land came to be introduced and therefore the grant made in the year 1932 and 1945 would be outside the mischief of the FCA 1980.

32.4. *Per contra*, the submission of Sri.Kiran Ron, learned Additional Advocate General is that once a land has been declared as forest land, it will continue to forest land and by relying on the decision of the Hob'ble Apex Court in

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Godaverman's case, his submission is that no defence is available to any person who is found to be in occupation of forest land once the said land is admitted/found to be forest land. It is in the background of the aforesaid submission that this issue would have to be answered.

32.5. There cannot be any dispute as regards 24G, which provides that clearance of any land for cultivation is prohibited in forest land. 24GG, which prohibits the occupation of forest land for any purpose. Section 24H, prohibits damaging, altering or removing any cairn, wall, ditch, embankment, fence, hedge, or railing in forest land, etc. There can be no dispute as regards Section 73D, which provides for a penalty for any person altering, destroying or defacing any boundary mark of forest land. All these provisions would be attracted in the present case since, as admitted by the Petitioners

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themselves, they have formed a layout and are selling the same to third parties, some of whom are putting up construction of houses on those plots. Once the land has been found to be within the boundaries of the notification of the year 1921, none of these actions could have been undertaken by the petitioners or anyone claiming through or under them. The petitioners took this risk knowing fully well that the Forest Department had laid a claim over this land, in fact the first suit was filed by one of the petitioners contending that there is interference with his possession by the Forest Department, Petitioner No. 2-Mohammad Sanaullah, had filed a suit in O.S. No. 600/1981 seeking a permanent injunction against the Forest Department, restraining the Forest Department from interfering with the peaceful possession of Petitioner No.2 in Survey No. 69/2. The said

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suit came to be dismissed on 13.12.1985 with costs.

32.6. Section 2(2) of the Forest Conservation Act which came into effect from the year 1980 has imposed a restriction on the de-reservation of forest which came into effect in the year 1980 in terms of Subsection (2) of Section 2 thereof.

32.7. Even according to the learned counsel of the Petitioners, de-reservation can only be made with the prior approval of the Central government. This is for the simple reason that the lands in question continue to be part of the Notification of the year 1921, which has not been challenged. No de-reservation having been made and the hon'ble Apex Court in **Godavarman's case** having prohibited any such dereservation, the petitioners cannot now claim that there is any such dereservation

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without placing any document in regard thereto on record.

32.8. In that view of the matter there could not be any grant made of the subject land, once it was notified to be forest land, there cannot be an estoppel against statute, there being a clear bar under the statute for using a forest land for non forestry purpose, the petitioners are fully aware of such embargo and the claim of the Forest department, this I say so for the simple reason that no action had been taken to develop the property or the like until the turn of the century, by which time action had been taken by the forest department, and the dispute was pending before the court, the first suit having been filed by Petitioner No. 2-Mohammad Sanaullah, in O.S. No. 600/1981 seeking a permanent injunction against the Forest Department, restraining the Forest Department

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from interfering with the peaceful possession of Petitioner No.2 in Survey No. 69/2. The execution of the joint development agreement, obtaining of plan sanction, and agreements of sale having been entered into in that regard are all after the forest department had initiated action and the suit had been filed. Hence, all these acts having been committed by the Petitioners or by persons claiming through or under them, would not entitle them to any equitable consideration. Insofar as third-party purchasers are concerned, they would always have recourse against the petitioners.

32.9. **Thus, I answer point number 6 by holding that after the Government notifying the land to be forest land under the Mysore Forest Regulation 1990 vide notification dated 8-01-1921, the alleged grant of land in survey number 69 in the year 1932 and**

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the grant of land in survey number 68 in the year 1945 is contrary and violative of the Mysore Forest Regulation 1900 (though no such grant order/s have been placed on record), the further actions taken in entering into a joint Development Agreement, formation of a Lay out, sale thereof and proposed construction houses is violative of the Karnataka Forest Rules, 1969 and Forest (Conservation) Act 1980.

33. **<u>ANSWER TO POINT No. 7</u>: Whether there is any delay and if there is delay, would it disentitle the Forest Department from taking action under Section 64A?**

33.1. Much has been argued by Sri.Chandan, learned counsel for the petitioners as regards the alleged delay. His submissions have been detailed out hereinabove. The sum and substance of his submission is that the grant having been made in the year 1932 in respect

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of survey number 69, in the year 1945 in respect of survey number 68, for the first time interference was sought to be made by the Forest department in the year 1979, as regards which the first suit having been filed by Petitioner No. 2-Mohammad Sanaullah, in O.S. No. 600/1981 seeking a permanent injunction against the Forest Department, restraining the Forest Department from interfering with the peaceful possession of Petitioner No.2 in Survey No. 69/2. Thereafter, the forest department filed a suit in OS No.1424/2006 in the year 2006. Simultaneously, FOC proceedings were initiated in the year 2006-07. The suit in OS No. 1424 of 2006 came to be dismissed on 8.03.2012, as regards which RFA 1287 of 2012 has been filed, which also came to be dismissed. An appeal having been filed before the Hon'ble Supreme Court in Civil Appeal No.

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5801 of 2022, the said appeal had been remanded to the trial Court vide order dated 20.09.2022. The trial court once again dismissed the suit on 15.12.2023, which is pending in appeal in RFA No. 160 of 2024.

33.2. In reply, Sri Kiran Ron, Additional Advocate General would submit that once a land has been declared to be Forest land, it will always continue to be Forest land and any encroachment thereof in violation of a notification would provide a continuing cause of action to the Forest department to initiate action. It is on the basis of the above submission that this point would have to be answered.

33.3. It is not in dispute that the Forest Department sought to take action in the year 1979, as regards which the first suit having been filed by

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Petitioner No. 2-Mohammad Sanaullah, in O.S. No. 600/1981 seeking a permanent injunction against the Forest Department, restraining the Forest Department from interfering with the peaceful possession of Petitioner No.2 in Survey No. 69/2, which came to be dismissed, it is on an appeal being filed that the said appeal was allowed, challenging which the Forest Department filed the second Appeal, which was withdrawn to file a comprehensive suit which was so done in the year 2006 as indicated supra, simultaneously the FOC proceeding in FOC 7, 8, 9, 13 and 14 of 2006-07, were taken up which were challenged after 5 years by the Petitioners in Criminal Petitions No. 1852 to 1857 of 2012, the said criminal petition came to be allowed, reserving liberty to the Forest Department to conduct a joint survey as per the notification of the year 1921.

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33.4. These facts would indicate that at best till the year 1981 it could be said that no action had been taken by the Forest Department in respect of the aforesaid lands. From 1981, the parties have been battling each other in one fora or the other. Thus, at this stage, having initiated action more than 40 years ago, it cannot be said that there is a delay on the part of the forest department or that no such action can be taken. All the citations relied upon by the learned counsel for the Petitioners would not therefore apply the litigation going on the in present matter for more that 40 years.

33.5. On facts, it is clear that the lands are within the boundaries of the notification of the year 1921.

33.6. **Thus, I answer point number 7 by holding that there is no gross delay on the part of the Forest department; the proceedings**

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pending for more that 40 years, the aspect of alleged delay does not arise.

34. General Directions/recommendations:

34.1. Forests are more than just collections of trees; they are complex, dynamic ecosystems that provide essential ecological services and significant economic and social benefits. From a global perspective, forests are considered "carbon sinks," absorbing vast amounts of carbon dioxide and other greenhouse gases, which helps to mitigate climate change. The loss of these forests, however, turns them from carbon sinks into carbon sources, contributing to rising global temperatures and more frequent extreme weather events.

34.2. The ecological health of forests is critical for the stability of the entire planet and for all living things more particularly the Human Race to

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survive. They harbour a vast majority of the world's land-based biodiversity, providing homes for countless species. Deforestation leads to habitat loss, forcing species into fragmented areas where they are more vulnerable to hunting, poaching, and extinction. Furthermore, forests play a vital role in local water cycles, helping to generate rainfall, and their removal can disrupt precipitation and river flow patterns, leading to soil erosion. This erosion can, in turn, degrade arable land, compelling agricultural producers to clear more forest land and perpetuate a destructive cycle, which also results in global warming, change in seasons, net result of which is the suffering of all living organisms, more so the human species. In Cities like Bangalore it can result in reduced water table, increased pollution, dust and the like which are not conducive, there is

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therefore a need for maintaining green spaces as lung spaces to have better environmental balance in cities

34.3. Forests and lung spaces in and around a city offers valuable respite from nature's vagaries, ground water protection, protection from pollution etc.,

34.4. Despite their importance, forests face constant threats from deforestation and diversion for non-forest purposes. While laws like the Forest Conservation Act of 1980 mandate that any diversion of forest land for non-forest use requires prior approval from the central government, illegal diversion still occurs in some areas, leading to degradation and loss of forest cover. The cumulative effect of these activities is not only a loss of forest land but a profound destabilisation of the entire ecosystem

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that is vital for the survival of wildlife, flora, and the communities that depend on them, which today also includes humans.

34.5. The current case demonstrates that the traditional, paper-based, and siloed administrative systems are inadequate to resolve complex land title conflicts. While Karnataka has made significant strides in land records modernisation, the current situation proves that digitisation alone is insufficient. The critical failure is the lack of a single, unified source of truth.

34.6. The Digital India Land Records Modernisation Programme (DILRMP) has been a significant initiative, succeeding in computerising land records and integrating Sub-Registrar Offices with land records. Karnataka's Bhoomi portal,

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for instance, has enabled online access to Records of Rights (RTCs) and mutation details.

34.7. The current dispute demonstrates the program's fundamental limitation: while records are digitised, they are not necessarily integrated. The Tahsildar's 2015 survey, which failed to identify the land as forest property, was likely based solely on the Revenue Department's records, which had not been reconciled with the Forest Department's historical gazette notifications. This lack of interoperability between different departmental databases means that a seemingly "clean" title in one system (e.g., Revenue) can conceal a fatal legal defect in another system (e.g., Forest). The problem is not the absence of digital records but the absence of a single, authoritative, and consolidated database that

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all government departments must mandatorily reference.

34.8. The solution lies in a radical transformation from siloed digitisation to a unified, integrated technological platform that serves as a single source of verifiable and credentialised truth for all land-related information.

34.9. **Geographic Information System (GIS)-based platform:** The foundational component must be a Geographic Information System (GIS)-based platform. This system would function as a digital, unified, and immutable map of all land parcels in the state. Leveraging high-resolution satellite imagery from agencies like the Forest Survey of India (FSI) and the Indian Space Research Organisation (ISRO), this platform is digitally demarcating and geo-tagging all notified forest boundaries as per

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historical gazette notifications, as also conducting forest cover mapping using remote sensing data to monitor the status of forests at the state level. This unified map would then have to be integrated with all other land-related data, including the Revenue Department's cadastral maps, the Urban Planning Authority's master plans, and all other public and private land records. The platform is assigning a Unique Land Parcel Identification Number (ULPIN), or "Bhu-Aadhar," to every land parcel, linking all textual, spatial, and legal records to a single, immutable digital identity, which is to be incorporated in all land records, which are required to be QR code enabled as also date and time stampted in order to enable public verification.

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34.10. **Automated System:** An automated system must be built on top of the integrated geospatial platform to streamline all land-related applications. This system would ensure that no land-related action is taken without mandatory, real-time verification against the unified database. For instance, the Deputy Commissioner and planning authorities like BIAPPA would have to be legally barred from processing any land conversion or layout sanction application until the automated system performs a check against the integrated forest map.

34.11. **Conflict Alert:** If a parcel falls within a notified forest boundary, the system must automatically reject the application and generate a "Conflict Alert" for all concerned departments. Similarly, the Sub-Registrar's Office must be linked to this system to prevent the registration of any sale

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deed for a parcel with a "Conflict Alert," as the existence of litigation or dispute over a property makes it difficult to legally transfer. The online portal for building plan approvals would also be required to integrate with this system to automatically verify that the land is legally converted and free from disputes.

34.12. **Publicly Accessible Portal:** To empower citizens and foster public trust, the unified platform must include a publicly accessible portal. Through this portal, any individual, including prospective buyers, can enter a ULPIN, a survey number or such other identifiable details to view a comprehensive, colour-coded report of the land parcel. This report would display the land-use classification, ownership history (mutation records), details of any litigation or encumbrances, and a clear, explicit warning if the land falls within a notified

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forest boundary and or reserved for any public purpose or a no development zone. This transparency mechanism would serve as a powerful deterrent to fraud, enabling citizens to perform their own due diligence and effectively acting as a "fraud alert" for every future buyer. By allowing the public to easily verify land status, it would address the core issue of a lack of information, which results in misinformation that leads to fraudulent transactions.

34.13. **Reconciliation of Historical Records:** The Department of Land and Revenue is directed to immediately undertake a time-bound, state-wide project to reconcile all historical records, including Record of Tenancy and Crops, Form 10, Form 11, Mutation Register, Grant registers, Saguvali Chits, Kethwar registers, Darkast registers, Conversion orders, and any other land revenue records which may be

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maintained as regards that particular land or any other register where the details of that particular property are available, with the digitised forest and revenue maps. The outcome of this reconciliation must be a single, authenticated, and immutable record for each land parcel. The power to rectify errors in revenue records is limited to clerical and typographical mistakes and cannot be used to alter fundamental land rights or ownership without a proper legal process.

34.14. **ULPIN Implementation:** The department shall ensure the mandatory adoption and use of the Unique Land Parcel Identification Number (ULPIN) for all land parcels. The ULPIN shall serve as the primary key for linking all textual, spatial, and legal data for each parcel, ensuring data integrity and preventing future discrepancies.

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34.15. **Establishment of an Inter-Departmental Land Dispute Resolution Cell (IDLDRC):** A dedicated, high-level cell, comprising representatives from the Revenue Department, the Forest Department, and Urban Planning Authorities, shall be established under the direct supervision of the Chief Secretary. This cell shall be the sole body authorised to mediate and issue binding, inter-departmental rectification orders for conflicting records. The Regional Commissioners shall head this cell, as they are tasked with coordinating the work of all departments at the regional level to resolve inter-departmental problems.

34.16. **Digital Demarcation of Boundaries:** The Forest Department is directed to complete the mandatory geo-tagging and digital demarcation of all notified forest land boundaries, based on

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historical gazette notifications. This geo-referenced data must be integrated into the central geospatial platform established under these directions. The Forest Survey of India, through its use of remote sensing and satellite data, can create digital maps of forest boundaries with a high degree of precision, which is essential for this task.

34.17. **Mandatory Geo-Verification:** The department shall be legally barred from issuing any notice or initiating prosecution for alleged encroachments without first verifying the land parcel's location against the unified, geo-referenced database. Once the system is set up all future notices must explicitly include the land parcel's ULPIN and a geo-referenced map. The Hon'ble Supreme Court has also noted that the only defense open to an encroacher is to

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prove that their land does not fall within the notified forest boundaries.

34.18. **Alerts:** This court also recognises that there may be cases where diversion of forest land is made without seeking for necessary permissions or in excess of permissions granted, in such situations, an alert mechanism to be incorporated in the digital maps, to monitor any changes, which alert would be sent to all the concerned officers of the Forest and Revenue department to enable them to take immediate action. The obligation to take action always resting with such officials, the Alert system will aid in the discharge of their obligations/duties.

34.19. **Mandatory Automated Conflict Checks:** All urban planning authorities and local bodies, including BIAPPA and the Deputy

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Commissioner, shall be under a legal obligation to perform a mandatory automated conflict check against the unified land database before sanctioning any layout plan, land conversion, or building permit. Any application related to a land parcel identified as forest land shall be automatically and immediately rejected by the system.

34.20. **Accountability of Officials:** Any official who issues any order/licence/permission/no-objection, like a land conversion order or a plan sanction, etc., on a land parcel with a conflicting title, after the implementation of the automated verification system, shall be held personally accountable for his actions.

34.21. **Use of Geo-Referenced Data as Primary Evidence:** The Department of Land Resources is to link e-Courts with land records and

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registration databases, providing courts with firsthand, substantive evidence, including geo-referenced maps and digital records from the unified geospatial platform.

34.22. **Green Watch Platform:** A unified mobile app and web portal where any citizen can report an environmental violation with geotagged photos, videos, and documents.

34.23. **Aforestation and Carbon Credits:** The Government will have to consider the issuance of Carbon credits for persons or organisations which contribute to afforestation and other projects with measurable conservation outcomes (e.g., restoring a wetland, reforesting a degraded corridor segment, achieving a verifiable positive outcome), which would create a direct financial flow from development to conservation.

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34.24. **High-Level Committee:** To ensure these directions are not merely pronouncements but are effectively implemented, a robust monitoring mechanism is essential. A joint, high-level committee shall be convened, comprising representatives from the Chief Secretary's office, and the heads of the Land and Revenue, Forest, and Urban Development Departments, the Law Department, a law officer like an Additional Advocate General and such other departments that the Chief Secretary, in her wisdom, may decide. The HLC's mandate will be to oversee the phased implementation of these directions, resolve inter-departmental conflicts as they arise, and provide a quarterly compliance report to the court. Such a committee, with its multi-sectoral expertise, can bridge the gap between departments and prevent the "abdication of

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responsibilities" that has historically plagued environmental administration.

34.25. The implementation of these directions is to be done in a time-bound, phase-wise manner:

34.26. **Phase I (Immediate - 3 months):** The IDLDRC and HLC are to be established. Mandatory data sharing protocols for all new land transactions must be put into place, ensuring no new contradictory records are created. These protocols would function like "data contracts," ensuring a common understanding and quality of data exchanged between departments. Blockchain methodology could also be considered to be used.

34.27. **Phase II (Mid-term – 3 months to 1 year):** The unified geospatial platform and the automated verification system must be completed and made operational. The ULPIN

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shall be implemented for all new land parcels, and a public-facing portal shall be launched to enable transparency and citizen due diligence.

34.28. **Phase III (Long-term - 1-2 years):** The full integration of all legacy records will be completed. A significant number of pending disputes will be resolved through the IDLDRC and the system will achieve its full potential for transparent, secure, and definitive land governance.

34.29. The recommendations and suggestions above are based on the consideration of a few of the aspects which have arisen in the matter, the HLC will be free to consider any other aspect/s relevant to formulate a comprehensive methodology for bringing about transparency and efficiency while protecting the most

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revered and vulnerable forest areas as also other no development zones in the state.

35. **ANSWER TO POINT NO.8: What Order?**

35.1. In view of my findings in respect to point Nos.1 to 7, I am of the considered opinion that the writ petitions are required to be dismissed. Hence, I pass the following:

ORDER

i. Writ Petitions are ***dismissed.***

ii. The petitioners, within 15 days of the receipt of the certified copy of this order, are permitted to place on record before the respondents such mitigating factors as are available for the purposes of consideration of the time for eviction of the petitioners and anyone claiming through or under them from the lands coming with in the boundaries of the Gazette Notification No.R7807-FT-126-20-8, dated 08.01.1921.

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iii. Respondents are directed to consider the said mitigating factors and pass such orders as required within 30 days thereafter.

iv. Respondents are permitted to take such action as is permissible under the applicable law.

v. Though the above matter is disposed for reporting progress in compliance with the general directions above, **relist on 27.10.2025.** Learned AGA is directed to communicate the above order to the Chief Secretary to the Government of Karnataka.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

Ln/-

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