

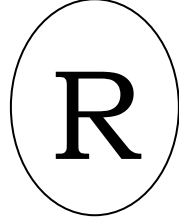
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF OCTOBER 2018

BEFORE

THE HON'BLE MR. JUSTICE H.G.RAMESH

WRIT PETITION NO.35369/2018 (GM-CPC)



BETWEEN:

1. SRI GANGADHARA
S/O LATE MALAPPA
AGED ABOUT 73 YEARS
R/AT KAJUR VILLAGE
SHANIVARSANTHE HOBLI
SOMWARPET TALUK
KODAGU DISTRICT - 571 235
2. SRI K.M.CHANDRASHEKAR
@ CHANDRASHEKARAI AH
S/O LATE K.MALLAPPA
AGED ABOUT 68 YEARS
R/AT KAJUR VILLAGE
SHANIVARSANTHE HOBLI
SOMWARPETE TALUK
KODAGU DISTRICT - 571 235
3. SRI VIJAYA KUMAR
S/O LATE MALLAPPA
AGED ABOUT 63 YEARS
R/AT KAJUR VILLAGE
SHANIVARSANTHE HOBLI
SOMWARPETE TALUK
KODAGU DISTRICT - 571 235
4. SMT. SARVAMANGALA
D/O LATE MALLAPPA
W/O HOOVAIAH
AGED ABOUT 72 YEARS
R/AT SUNTIMAGALURU
SOMAWARPETE TALUK
KODAGU DISTRICT - 571 235
5. SMT. NAGAMMA
D/O LATE MALLAPPA

W/O SRI APPASWAMY
AGED ABOUT 54 YEARS
R/AT KAJUR VILLAGE
SHANIVARSANTHE HOBLI
SOMWARPETE TALUK
KODAGU DISTRICT - 571 235

6. SMT. CHANDRAMATHI
W/O LATE K.M.RAJASHEKAR
AGED ABOUT 54 YEARS
R/AT KAJUR VILLAGE
SHANIVARSANTHE HOBLI
SOMWARPETE TALUK
KODAGU DISTRICT - 571 235
7. SRI MOHANENDRA
S/O LATE K.M.RAJASHEKAR
AGED ABOUT 34 YEARS
R/AT KAJUR VILLAGE
SHANIVARSANTHE HOBLI
SOMWARPETE TALUK
KODAGU DISTRICT - 571 235
8. SRI PAVAN KUMAR
S/O LATE K.M.RAJASHEKAR
AGED ABOUT 32 YEARS
R/AT KAJUR VILLAGE
SHANIVARSANTHE HOBLI
SOMWARPETE TALUK
KODAGU DISTRICT - 571 235
9. SRI PUNEETH
S/O LATE K.M.RAJASHEKAR
AGED ABOUT 29 YEARS
R/AT KAJUR VILLAGE
SHANIVARSANTHE HOBLI
SOMWARPETE TALUK
KODAGU DISTRICT - 571 235
10. SRI SURESH
S/O LATE THAMMAIAH SHETTY
AGED ABOUT 63 YEARS
R/AT KAJUR VILLAGE
SHANIVARSANTHE HOBLI
SOMWARPETE TALUK
KODAGU DISTRICT - 571 235

11. SMT. SUSHEELAMMA
D/O LATE THAMMAIAH SHETTY
AGED ABOUT 68 YEARS
R/AT KAJUR VILLAGE
SHANIVARSANTHE HOBLI
SOMWARPETE TALUK
KODAGU DISTRICT - 571 235

12. SMT. JAYAMMA
D/O LATE THAMMAIAH SHETTY
AGED ABOUT 68 YEARS
R/AT KAJUR VILLAGE
SHANIVARSANTHE HOBLI
SOMWARPETE TALUK
KODAGU DISTRICT - 571 235

P1 TO P5 AND P7 TO P12 ARE
REPRESENTED BY THEIR GPA HOLDER
PETITIONER NO.6
SMT. CHANDRAMATHI

...PETITIONERS

(BY SRI PRASANNA V.R., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS CHIEF SECRETARY
VIDHANA SOUDHA
DR. AMBEDKAR ROAD
BENGALURU - 560 001
2. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF REVENUE
VIDHANA SOUDHA
DR. AMBEDKAR ROAD
BENGALURU - 560 001
3. THE DEPUTY COMMISSIONER
KODAGU DISTRICT, FORT
MADIKERI - 571 201
4. THE TAHSILDAR
SOMWARPET TALUK
KODAGU DISTRICT - 571 201

5. THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
ARANYA BHAVAN
18TH CROSS, MALLESHWARAM
BENGALURU – 560 003
6. THE DEPUTY CONSERVATOR OF FOREST
ARANYA BHAVAN
MYSURU ROAD
KODAGU DISTRICT
MADIKERI – 571 201
7. THE ASSISTANT CONSERVATOR OF FOREST
SOMWARPETE TALUK
KODAGU DISTRICT – 571 201
8. THE RANGE FOREST OFFICER
KUSHALNAGAR RANGE
KODAGU DISTRICT – 571 234 ... RESPONDENTS

(BY SRI A.S.PONNANNA, AAG along with
SRI B.S.BUDIHAL, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 30.07.2018 (ANNEXURE-A) PASSED BY THE COURT OF THE SENIOR CIVIL JUDGE AND CJM, MADIKERI, ON THE MEMO DATED 30.10.2017 IN O.S.NO.98/2015.

THIS WRIT PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

H.G.RAMESH, J. (Oral):

1. *When a case shall be transferred under Section 20 of the Karnataka Land Grabbing Prohibition Act, 2011 ('the Act') to the Special Court constituted under the Act?*

This is the question that requires determination in this case.

2. This writ petition under Article 227 of the Constitution of India is by the plaintiffs in the suit in OS.No.98/2015 which was pending before the Court of the Senior Civil Judge, Madikeri (the trial Court) and is directed against the order dated 30.07.2018 passed by the aforesaid Court whereby the suit has been transferred to the Special Court constituted under the Act. The relief sought for in the suit is to declare that the petitioners are the owners of the suit land and for its possession.

3. I have heard Sri Prasanna V.R., learned Counsel for the petitioners and Sri A.S.Ponnanna, learned Additional Advocate General for the respondents. Perused the record.

4. The question that arises for determination in this case is as to whether transfer of the suit to the Special Court is in accordance with Section 20 of the Act?

5. Before proceeding to examine the question raised, it is relevant to notice certain provisions of the Act. The object of the Act is to curb land grabbing. The Act came into force on October 20, 2014. It has received the assent of the President on October 9, 2014. As per sub-section (2) of Section 1 of the Act, the Act applies to land belonging to

the Government, Wakf or the Hindu Religious Institutions and Charitable Endowments, local authority or any statutory or non-statutory body owned, controlled or managed by the Government in the State of Karnataka. In the context of the question raised, it is relevant to notice Sections 2(d), (e) & (f), 7(1), 9(1), (2) & (3), 13 and 20 of the Act; they read as follows:

"2(d) **"Land"** includes,-

- (i) land belonging to the Government, Wakf or the Hindu Religious Institutions and Charitable Endowments, a local authority, a statutory or non statutory body owned, controlled or managed by the Government;
- (ii) rights in or over land, benefits to arise out of land, and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth;

(e) **"land grabber"** means a person or group of persons or a Society, who commits or has committed land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts; and also includes the successors in interest;

(f) **"land grabbing"** means every activity of grabbing of any land, without any lawful entitlement and with a view to illegally taking possession of such land, or enter into or create illegal tenancies or lease and licences agreements construct unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and license basis for construction, or use and occupation, of unauthorised structures; and the term "to grab land" shall be construed accordingly;

.....
7. Constitution of Special Courts.- (1) The Government may, for the purpose of providing speedy enquiry into any alleged act of land grabbing, and trial of cases in respect of the ownership and title to, or lawful

possession of, the land grabbed and those offences specified in Chapter XIV-A of the Karnataka Land Revenue Act, 1964, by notification, constitute a Special Court.

(2)

9. Procedure and powers of the Special Courts.-

(1) The Special Court may, either suo-moto or on application made by any person, officer or authority take cognizance of and try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed or offences specified in Chapter XIV-A of the Karnataka Land Revenue Act, 1964 whether before or after the commencement of this Act, and pass such orders including orders by way of interim directions as it deems fit.

(2) The Special Court shall for the purpose of taking cognizance of the case, consider the location, or extent or value of the land alleged to have been grabbed or of the substantial nature of the evil involved or in the interest of justice required or any other relevant matter.

(3) In respect of an alleged act of land grabbing or the determination of questions of title and ownership to, or lawful possession of any land grabbed under this Act and offences specified in Chapter XIV-A of the Karnataka Land Revenue Act, 1964, shall be tried only in a Special Court constituted for the area in which the land grabbed is situated; and the decision of the Special Court shall be final:

Provided that if, in the opinion of the Special Court, any application filed before it, is prima facie frivolous or vexatious, it shall reject the same without any further enquiry.

(4)

13. Power to try offences.- All offences punishable under this Act shall be cognizable. Every offence punishable under this Act shall be tried by a magistrate of the first class specially empowered by the Government in this behalf by notification in the official gazette wherever Special Court is not constituted.

20. Transfer of pending cases.- Any case, pending before any court or other authority immediately before the constitution of a Special Court, as would have been within the jurisdiction of such Special Court, shall stand transferred to the Special Court as if the cause of action on which such suit or proceeding is based had arisen after the constitution of the Special Court."

6. As per Sections 7 and 9 of the Act, a Special Court has jurisdiction to try any alleged act of land grabbing,

cases in respect of the ownership and title to, or lawful possession of, the land grabbed and offences specified in Chapter XIV-A of the Karnataka Land Revenue Act, 1964. The matters specified in Section 7(1) of the Act will fall within the jurisdiction of a Special Court.

7. As per Section 20 of the Act, the trial Court, before directing transfer of any suit to the Special Court, has to examine as to whether the suit would fall within the jurisdiction of the Special Court. Therefore, the trial court will have to examine as to whether the suit relates to any of the matters specified in Section 7(1) of the Act or as to whether any issue relating to those matters would fall for determination in the suit. If the suit involves any of those matters or any issue relating to those matters, then only the suit shall be transferred to the Special Court. In the absence of any such matter or issue, transferring the suit to the Special Court will be contrary to Section 20 of the Act.

8. In the case on hand, the trial Court has directed transfer of the suit to the Special Court without examining as to whether the suit would fall within the jurisdiction of the Special Court. Nowhere in the impugned order, the trial

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court has stated that the suit involves adjudication of any of the matters specified in Section 7(1) of the Act or any issue relating to those matters to warrant its transfer to the Special Court. Hence, the impugned order dated 30.07.2018 is set aside. The matter is remitted to the trial Court for reconsideration in accordance with law in the light of the observations made in this order. All contentions of both the parties are kept open.

Petition disposed of.

**Sd/-
JUDGE**

LB