

IN THE COURT OF THE SENIOR CIVIL JUDGE,
VIRAJPET.

Present: Sri Lokesh M.G., B.A.L.,LL.B.,
Senior Civil Judge, Virajpet.

O.S.No.34/2013

Dated this the 3rd day of December, 2021.

PLAINTIFF: TATA COFFEE LTD., a Company
Registered under the Indian
Companies Act, 1913, Having its
Registered Office at Pollibetta,
Kodagu- 571 215.

(Represented by Mr.Vijay Karnad,
S/o late K.Shashidhar Rao,
Manager – IR, aged 50 years, Tata
Coffee Ltd., Pollibetta, Kodagu as
per SPA dated 4th April, 2013)

(By Advocate Sri.S.R.J.)

Vs

DEFENDANTS: 1. The State of Karnataka,
Represented by the Chief
Secretary, Government of
Karnataka, Vidhana Soudha,
Ambedkar Veedhi, Bengaluru-
560001.

2. The Secretary, Government of
Karnataka, Department of
Revenue, M.S.Buildings, Ambedkar
Veedhi, Bengaluru – 560 001.

3. The Principal Secretary to the
Government of Karnataka,
Department of Forest and Ecology,

M.S.Building, Ambedkar Veedhi,
Bengaluru.

4. The Deputy Commissioner of
Kodagu, Madikeri, Kodagu.

5. The Tahasildar, Virajpet Taluk,
Virajpet, Kodagu.

6. The Revenue Inspector,
Hudikeri Virajpet, Kodagu.

7. The Revenue Inspector,
Srimangala Hobli, Kodagu.

(By Asst. Govt. Pleader)

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Nature of the Suit	: Suit for Declaration & Direction.
Date of filing	: 22.4.2013
Date of Commencement of record of evidence	: 17.1.2014
Date on which the Judgment is pronounced	: 03.12.2021
Duration of suit	:Year/s Month/s day/s 07 03 6

Senior Civil Judge,
Virajpet.

JUDGMENT

The plaintiff/Company has filed this suit for
declaration, declaring that the change made by the

defendants in the revenue records from Redeemed Sagu to Reserve forest land is illegal and also the lands shown in schedule B have become Redeemed Land subsequent to lease grant and payment of timber value and cultivated with tea plants.

2. The brief facts of the plaintiff's case are that the plaintiff is a Company, registered under the Indian Companies Act, 1913. The plaintiff which was formerly known as Consolidated Coffee Ltd., cultivated with coffee, Tea, Cardamom, Pepper etc. The name of the Company which was originally Consolidated Coffee Ltd., was changed to TATA Coffee Ltd. The Company got assigned and purchased Glenlorna Tea Estate from M/s Coorg Tea Company Ltd as per Registered Assignment Deed dated 5.6.1985. The properties are situated at West Nemmale, T.Shettigeri, Poradu and Hysodluru Viilages of Srimangala Nad, Virajpet Taluk, Kodagu District within the jurisdiction of this court and extent of land is 942.56 acres. The extent shown in the "B" schedule is slightly less, since a part of the extent of land shown as 'Pot Karab" as per the latest RTC extracts. Erstwhile Coorg District was formerly governed by the provisions of the Coorg land and Revenue Regulations 1899 for the purpose of Revenue administration and any contractual obligations under the said Regulations entered into by the Government with any individual or is valid and binding on all the parties and their assignees.

Under Section 42 and 143(1) (f) of the Regulation, the Chief Commissioner of Coorg, who was head of the State was empowered to frame Rules, under which reserved and Paisari Forest Land could be granted on lease for rubber Cultivation and later on, the said lands were granted on lease for Tea cultivation also. The rules who are also revised as per the notification dated 31.12.1912 and they provided for lease of abandoned coffee land for cultivation.

3. One Mr.D.Mac Dougall of Glenlorna Estate of Hudikeri village was granted lease of abandoned coffee land of an extent of 1039.51 acres for a period of 999 years for cultivation of Tea by the then Secretary of State for India in Council. The lease is a Registered deed No.527 dated 29.5.1914. Subsequently, by lease deed No.531 dated 3.7.1915 a further extent of 184.00 acres situated at Hysodlur village of Kiggatnad taluk was also similarly leased to the Glenlorna Tea Company Ltd., for a period of 999 years by the then Secretary of State for India in Council. The said fact of lease is accepted by the defendants who represent the State government. The properties leased were not included in Kerti, Pattighat or Kadamakal Reserve Forest and they were outside the limits of the Reserve Forest. Prior to the grant of lease, paisary land had been granted on lease for coffee cultivation. Since coffee cultivation did not require full shade, the standing trees have been cut and the timber value estimated by the Forest Department as provided in the Rules of 1909 and 1912. Therefore, on

change of the nature of the lands and removal of standing timber, the tenure in these cases in the Jamabandi registers was also changed from paisary to Redeemed Sagu and it is the revenue procedure. It is further stated that, the sanction of the Chief Commissioner was not required as per Provisions of Sec.29 of the Regulations and it is clear from the gazette notification of Commissioner No.35 of 29.40.1909. The changes of entries made in the regular and normal course were perfectly valid and have the acceptance and the force of law. Hence, it is binding to both the lessor and the Lessee and their assignees.

4. By an agreement dated 15th October, 1928 between Glenlorna Tea Company Ltd and Arnakal Tea Company Ltd, the said Arnakal Tea Company Ltd agreed to purchase from first January 1928, all the lands in India belonging to and held by Glenlorna Tea Company. By an indenture dated 8th December, 1943 between Arnaka Tea Company Ltd on one part and Coorg Tea Company Ltd on the other, the said Arnakal Tea Company Ltd. Assigned all the lease hold rights in favour of Coorg Tea Company. Thereafter an extent of 942.56 acres, situated at Hysodlur, T.Shettigeri, West Nemmale of Virajpet Taluk, was transferred by Coorg Tea Company Ltd to Consolidated Coffee Ltd as per deed of assignment of lease dated 5.6.1985 registered as document No.212/85-86. After the transfer, except for a small patch kept for ancillary needs, was cultivated with tea. At present, up to the date, the plaintiff has paid rent, which is accepted

by the defendants, the plaintiff has been in peaceful possession of the lands with all the buildings and appurtenances thereon. It is to be noted that the original lease deed did not bar further transfer or assignment of the lease and all those acts are legally valid and accepted by the lessor, who are represented by the defendants.

5. The plaintiff is the successor in title of the original lessees under the lease deeds dated 29.5.1914 and 3.7.1915 and the plaintiff is only claiming the possessory title as per original lease terms and not absolute title. Hence the plaintiff is entitled to enjoy the properties since 1914-15 for the period specified of 999 years, same is not denied by the defendants. The third defendant is purported to have addressed a letter to second defendant dated 7.4.2006, wherein the lands leased in Coorg are reserved forest lands and not been de-reserved that the entries made in the Jamabandi registers are null and void and it should be changed as forest lands. Thereafter, the second defendant purported to have addressed a letter to fourth defendant dated 26.12.2006, wherein a direction was given to them to change the entries in the Jamabandi and RTC as forest lands instead of Redeemed Sagu. In pursuance of the direction, the fourth defendant is purported to have addressed a letter to fifth defendant dated 13.8.2007, to effect the changes in the RTC immediately.

6. Thereafter, the sixth and seventh defendants without any notice to the plaintiff/Company, changed the entries in Column No.6, 9 and 11 of the RTC, as per their internal proceedings dated 1.4.2008 and 9.4.2008. All these acts were done against all the basic norms, which is mandatory in law. The plaintiff/Company further submits that, they were not notified about any mutation proceedings by the fifth, sixth and seventh defendants, they came to know the fact, when the revenue officials were approached the plaintiff for obtaining copies of RTC extracts in respect of the properties for their other needs, during the second week of June 2011 and after obtaining the certified copies, the plaintiff shocked to note of such an unilateral act of the defendants, had filed W.P.No.27577-275878 and 27589/2011 before the Hon'ble High Court of Karnataka, challenging the unilateral change of entries in the RTC. Considering the right of the lessee, the Hon'ble High Court has given liberty to the plaintiff to approach this court to establish its right.

7. It is further submitted that, the Mutation proceedings dated 21.6.1914, in column No.3, 6 and 9, the leased land was shown as Paisari Sagu redeemed land and the indenture No.527 dated 29.5.1914 and 531 dated 3.7.1915 state what was leased is an abandoned coffee land. In the Jamabandi extract for the period 1912-1918, in column No.3, the tenure is shown as Redeemed Sagu and all these entries have been

made in pursuance of the order of the Commissioner, it cannot be dismissed by an inter-departmental correspondence as done in this case. The value of the tree extracted has been paid to the Government. The tenure of the lease granted is for 999 years and the plaintiff is entitled to enjoy the top soil rights till the end of the lease period. The entry redeemed sagu continued in the Jamabandi and RTC issued by the sixth and seventh defendant for the year 1914 till 2008. Thereafter, the entries therein were changed abruptly without any cause or notice to the plaintiff. Hence, the subsequent entries made are illegal and cannot be sustainable. The entries found in Jamabandi for the year 1914 and thereafter in the RTC have a presumptive value under Sec.39 of the Regulations and u/S 133 of the Karnataka Land Revenue Act 1964, it cannot be erased by any official. Therefore, the law on the said matter equally applies to both plaintiff and the defendants.

8. The plaintiff has further averred in the plaint that by such change of entries, the rights of the plaintiff have been severely infringed, as such the plaintiff suffers irreparable loss and injury. The entry of Reserve Forest has made unilaterally in column No.6 of the RTC has a far reaching and harmful effect, hence the plaintiff will have to face many restrictions even for cultivating tea in a scientific way. The entries made in the RTC cannot be changed without following the procedure under law. The entries

which stood for a period of more than 90 years, cannot be unilaterally changed by the defendants without notice or issuing an order. Therefore, any of the changes made in the RTC by the defendant, without notice in the year 2008 cannot be valid for the entries, which stood earlier. More over such changes of entries in the RTC are improper, invalid and have no legal basis, are not binding on the plaintiff. The third defendant wrote a letter to second defendant dated 7.4.2006, it has been stated that, the lands leased to the plaintiff are district forests. The defendants manipulated to show that the leased lands fall within Kerti Reserve Forest, the lands once leased for a period of 999 years and cultivated with tea, it loses the characteristics of the reserve forest. The provisions of Sec.22 of Indian Forest Act 1878 also has permitted the lease of reserve forest lands. Since the lands leased were once abandoned coffee lands, there cannot be any other distinction. The trees found in the land were soft wood species and since there was no road connectivity at that time, the extracted timber had very nominal value. In pursuance to the changes of the RTC entries, there is a heavy cloud cast upon the possessory title of the plaintiff. There is also an unequivocal threat to infringe and invade the right by the defendants. The plaintiff was not aware of the mutation orders effected by the sixth and seventh defendants, since no notice was given to the plaintiff before the orders were passed for changing the entries and it was only during the second week of June

2011, when the plaintiff/Company approached the Village Accountant. Therefore, the plaintiff has filed this suit.

9. After service of summons, the defendants have appeared through AGP. The sixth defendant has filed written statement. The defendant No.1 to 5 and 7 have adopted the written statement filed by defendant No.6.

10. The defendant No.6 has stated that one Air Marshal K.C.Cariappa (Retd) filed an application before the Central Empowered Committee, New Delhi, constituted by the Hon'ble supreme Court of India regarding irregularities in the lease of Forest lands. The Central Empowered Committee, New Delhi raised certain questions regarding the leases which include: by whom, when and on what basis the mutation entries were made in the revenue records showing the lands under cultivation as non forest lands?. It was noticed that the Revenue department has alienated leased forest lands as non forest land. The RTC of leased forest lands are recorded in the name of Companies. The nature of leased reserved forest land is shown as redeemed sagu.

11. Further it is averred that as per the findings of Karnataka Government Secretariats, the original lessees have acquired the forest lands on lease from the government. Original Lessees have transferred lease hold rights of the lands in favour of the companies. Presently, the

plaintiff company is the lessee. The present holder has stepped in to the shoes of the original lessee. Besides, the leased reserve forest land is not de-reserved under the statutory provisions, most of the leased area was notified as reserved forest much before the leasing of the land to the original lessees under the relevant Rules. The land continues to be reserved forest under the Provisions of Sec. 23 of Karnataka Forest Act 1963. Karnataka Government has observed that the Glenlorna Tea Estate (plaintiff) is a district forest. The rules were made for leasing government reserved and paisary forest land for Rubber/Tea cultivation. There is no statutory provision to convert the forest land in to sagu land without following the statutory procedure prescribed under the Forest Act. It is further stated that the entry redeemed sagu in RTC shows that the companies are the title holders and not lessees. Therefore, the nature of the land should be shown in the RTC as 'forest'. The present holder have not produced notification issued by the chief commissioner or the government regarding the change of tenure. Hence, said mutation entries made in favour of the companies must be held to be unauthorized in law. It is the finding of the government of Karnataka. The lease itself does not change the nature of tenure of the land. The companies are only the lessees and the government is the lessor and title holder. In view of the same, the government has to take necessary action to get the entries corrected in the land records in respect of the lease forest lands as per the letter

dated 07-04-2006. Accordingly, as per the direction, verification and proper survey, these defendants have carried out necessary changes in the revenue records. The changes made by the defendants are correct. The plaintiff has filed false suit. This court has no jurisdiction. There is no cause of action to the suit. The suit is not properly valued. The plaintiff is not entitled to the relief. Therefore, it is prayed to dismiss the suit.

12. On the basis of rival pleadings of the parties, my predecessor in office has framed the following Issues;

ISSUES

1. Whether the plaintiff Company proves that the change made by the defendants in the revenue records from "Redeemed Sagu" to Reserve forest land" is illegal ?
2. Whether the plaintiff Company proves that the Lands shown in schedule "B" have become "Redeemed Land" subsequent to the Lease grant and payment of timber value and cultivated with Tea plants as per the Rules framed under the Rules prevailing when the Lease was granted ?
3. Whether the defendants prove that this court has no jurisdiction to try this suit ?
4. What order or decree?

13. In order to prove the case of the plaintiff, the Manager of the the TATA Coffee Ltd., is examined as PW.1 and got

marked documents at Ex.P.1 to Ex.P.95. On the other hand, the Tahasildar of Virajpet is examined as DW.1 and got marked document at Ex.D.1.

14. Heard and perused the materials on record. Upon appreciation of evidence on record in the background of arguments advanced by learned counsel for the plaintiff and defendants, my findings on the above issues are as follows:

Issue No.1: In the *Negative*
Issue No.2: In the *Negative*
Issue No.3: In the *Affirmative*
Issue No.4: As per the final order
for the following:

REASONS

15. **ISSUE No.1 and 2:** As these issues require discussion on same set of facts, I have taken up these issues together for consideration to avoid repeated discussion.

16. It is the burden of the plaintiff to prove that the changes made in the revenue records by the defendants from Redeemed Sagu to reserve forest land is illegal and it is also the burden to prove that the lands shown in schedule "B" have become redeemed land subsequent to the lease grant and payment of timber value and cultivated with tea plants as per the rules framed under the rules prevailing when the lease was granted.

17. To prove the same, the Officer of the plaintiff/Company has been examined as PW.1 and he has reiterated the plaint averments. He has stated in the cross-examination that there is a condition in the lease agreement to obtain permission from the Forest Department to cut the trees in the suit property and they have obtained permission from the Government. He has stated that, after getting suit property, they did not cut the trees. He has denied the suggestion that before granting lease, suit property was belonging to the Forest Department. He has stated that while obtaining RTC in the year 2009, they observed the entry of reserved forest in the said documents for the first time. To get deleted the said reference as reserve forest in the revenue records, they have filed Writ Petition before the Hon'ble High Court. Apart from that, they have not filed any appeal against the said entry in the RTC. He has denied the suggestion that to misuse the property, they have got the documents corrected as Redeemed Sagu.

18. PW.1 has also got marked Ex.P.1 to 95. Ex.P.1 is the endorsement issued by the Public Information Officer in the name of Officer of plaintiff/Company on 19.10.2012. It shows that the certified true copy of deed of Indenture No.527, dated 29.5.1914, certified by the District Commissioner on 14.8.1928 is not available in the District Record Room, Kodagu. Ex.P.2 to 7 are the Jamabandis pertaining to the year 1912-1918, 1923, 1996-97 and

13.9.96. They are pertaining to the suit properties bearing Sy.No.1/1, 2/4, 98/4, 160/2, 198/1, 79/1, 4/4, 4/8, 1/2. It is appearing as redeemed Sagu land in column No.2 of the said documents. It is also reflecting that the suit properties were given for the cultivation of tea. In column No.5, the name of Glenlorna Estate is appearing. In Ex.P.6, it is appearing as paisary land. It is also appearing as Consolidated Coffee Company in column No.3. Ex.P.8 to 12 are the RTCs pertaining to the year 2010-11. In column No.9, it is mentioned as Government and in column No.12, it is mentioned as TATA Coffee Ltd., in column No.11, it is mentioned as TATA Coffee Ltd., as per lease. In column No.6, it is mentioned as Reserve forest. In the crop column, it is appearing as coffee plantation. Ex.P.13 to 19 are the RTCs pertaining to the year 2010-11. They are same as Ex.P.8 to 12. In column No.12, it is mentioned as Consolidated Coffee Company and in the Crop column, it is appearing as tea. In Ex.P.8 RTC, the crop is shown as plantation coffee. Ex.P.8 to 19 are belonging to the suit properties. In all the said documents, it is mentioned as Reserve forest in column No.6.

19. Ex.P.20 is the legal notice. Ex.P.21 is the postal envelope, Ex.P.21(a) and (b) are the Postal details. They show that the plaintiff has issued legal notice to the defendants. Ex.P.21(c) to (o) are the postal acknowledgements dated 12.9.2012 and 11.9.2012. They

show that notices were issued before filing of suit and hence Sec.80 of CPC has been complied with.

20. Ex.P.22 is the Special Power of Attorney, dated 4.4.2013 executed by Hameed Huq, Managing Director of Tata Company Ltd., in favour of M.A.Sampath and Vijay Karnad. Ex.P.23 and 24 are the Jamabandis pertaining to the year 1911-12. It is shown as Redeemed Sagu in the nature of land column and in crop column, there is tea cultivation and in the cultivator column, the Glenlorna Estate is appearing in respect of Sy.No.1/1, 2/4 and 79. Ex.P.25 and 26 are also Jamabandis belonging to the year 1916 pertaining to Sy.No.79/1, 1/1 and 2/4. They are same as Ex.P.23.

21. Ex.P.27 is the Jamabandi for the year 1922. It shows that European tea was being cultivated in Sy.No. 4/4. It also shows that for the year 1922-48, European tea was cultivated. In column No.2, it is appearing as Redeemed Sagu and in column No.5 it is appearing as paisary land.

22. Ex.P.28 is the Jamabandi pertaining to Sy.No.1/1 and 2/4. It is same as Ex.P.27. Ex.P.29 is the Jamabandi. It shows that for the year 1922-38, tea was cultivated in respect of suit Sy.No. 98/4, 160/2 and 198/1. Ex.P.30 to 36 are the Jamabandis and they are same as Ex.P.29. But they are with respect to Sy.No. 79/1, 1/1, 1/2 and 2/4. Ex.P.37 is the Mutation Register. It shows that the name of

Ernakulam Tea Company is appearing in cultivator column and the said Company transferred the rights for five and a half lakhs in favour of Coorg Tea Company on 25.3.1944 in respect of suit survey numbers. The nature of tenure is appearing as Redeemed Sagu. Ex.P.38 is the Mutation Register dated 15.3.1930. Ex.P.39 to 41 are the Jamabandis for the year 1947 in respect of suit properties. The crop is shown as tea and orange, cultivator is shown as Coorg Tea Company. Ex.P.42 is the Jamabandi for the year 1911-17, the crop is shown as tea. The nature of tenure is shown as Redeemed Sagu. The cultivator is shown as Glenlorna Estate.

23. Ex.P.43 is the Mutation Register dated 21.6.1914. In column No.2, it is appearing as paisary land, in column No.3 also, it is appearing as paisary land. In column No.4 also, it is appearing as Government and in column No.10 also, it is appearing as Government and Dr.Mac Dougall. It is pertaining to the suit survey numbers. Ex.P.44 is the Jamabandi in respect of Sy.No.1/18 for tea cultivation. Ex.P.45 is the Mutation register dated 7.11.1914. It is pertaining to the suit properties. It shows that D.Mac Dougall was granted lease hold rights for tea cultivation for 999 years in respect of suit properties. In column No.3, it is shown as paisary land, in column No.4, it is shown as Government, in column No.10, it is shown as Government and D.Mac Dougall. On perusal of Ex.P.43 and 45, it is

clear that, before granting lease, the suit properties were the paisary lands and they were pertaining to the Government, who was having proprietary rights in respect of suit properties.

24. Ex.P.46 to 51 are the record of rights for the year 2012-13. In column No.6, it is shown as Reserve Forest. In column No.9, it is shown as Government and in column No.11, it is shown as Consolidated Coffee Company as per lease and in column No.10, it is mentioned as per the order No.70/2004-2005, dated 17.12.2007. These documents are belonging to properties situated in Hysodlur which are suit properties. Ex.P.52 and 53 are the records of rights for the year 2012-13. The nature of land is shown as paisary, in column No.9 and 12, title is shown as Government, in column No.11, it is shown as property is transferred to the land bank. In column No.10, it is shown as per the order No.150/2006-2007, Government condition dated 5.4.2007. They are pertaining to Sy.No. 1/1 of suit property. Ex.P.54 to 58 are the record of rights for the year 2012-13. They are pertaining to Sy.No.79/1, 4/8, 4/4, 2/4, 1/2 of suit properties. The nature of land is shown as reserve forest in column No.6, title is shown as Government in column No.9 and the occupant is shown as Consolidated Coffee Company as lessee in column No.11 and in column No.10, the Government Order No.70/04-05 dated 17.12.2007 is appearing.

25. Ex.P.59 to 62 are the Mutation Registers dated 17.12.2007 pertaining to suit properties, they show that the name of Consolidated Coffee Company, TATA Coffee Company has been removed and the name of Government has been inserted as per the Government order in column No.9 of records of rights. They also show that as per the direction of the D.C. and Forest, Ecology and Environment department, the said entries have been done.

26. Ex.P.63 is the endorsement dated 19.10.12. It shows that the document dated 3.7.1915, certified by the Coorg District Commissioner is not available in the District Record Room. Ex.P.64 is the deed of conveyance for lease dated 12.11.1914 executed by secretary for Indian State in favour of Glenlorna Tea Company in respect of suit property for the year 999 years. The possession was also transferred under the said document. In Page No.4 of the said document, it is clearly mentioned as paisary land and Redeemed Sagu pertaining to suit properties. Ex.P.65 is the deed of assignment of lease dated 5.6.1985 between Coorg Tea Company Ltd., and Consolidated Coffee Company. It shows the period for 999 years. But, the tenure of land as paisary is not being shown. It is not mentioned as to why paisary is removed.

27. Ex.P.66 Power of Attorney executed by TATA Company Ltd., in favour of Hameed Huq, as he is managing Director.

Ex.P.67 is the Order in Writ Petition No.27577/11 passed by the Hon'ble High Court of Karnataka, Bengaluru.

28. Ex.P.68 is the Government Order, dated 7.4.2006. It is the important document in this case. In the said document, it has been mentioned in respect of nature of the leased land that the leased lands are notified as part of the Pattighat and Kadamakal Ghat and Kerti Reserve Forest notified in the Coorg District Gazette under the Indian Forest Act as per the details mentioned in the notification of Chief Commissioner of Coorg dated 3.5.1904 published in the Coorg District Gazette on 1.6.1904. Coorg Notification dated 5.5.1904 published in the Coorg District Gazette dated 1.6.1904 and Notification dated 24.6.1908 published in the Coorg District Gazette on 1.7.1908 with effect from 30.6.1904 and 15.8.1908 respectively. According to this notification and publication, the leased lands are notified as Reserve Forest from the year 1904 itself. Annexure 2 is there along with this Government order in which details of leased forest lands alienated by revenue department in Kodagu District are shown. The suit properties are also shown in the said annexure in Virajpet Taluk, they are Sy.No.1/18, 4/4, 4/8 in West Nemmale village and Sy.No.1/1, 1/2 and 2/4 in Shettigeri village and Sy.No.98/4, 98/38, 160/2, 160/19, 160/20 and 198/1 in Hysodlur village and Sy.No. 79/1 in Poradu village. They are the suit properties shown in the said annexure. It is also mentioned

in Ex.P.68 that revenue records have to be corrected in respect of the leased forest lands in Kodagu District. It is also observed in the order that leased reserve forest land is not de-reserved under the statutory provisions. Most of the leased area was notified as reserved forest much before leasing of the land to the original lessee under the relevant rules. The land continues to be reserve forest under the Provision of Sec.23 of Karnataka Forest Act. There is no statutory provision to convert the forest land into Sagu land without following the statutory procedure prescribed under the Forest Act. The Glenlorna Tea Estate is a District Forest. The very rules under which the lands were leased, were made for leasing Government reserved and paisary forest land for rubber or tea cultivation. The entry Redeemed Sagu in RTC is indicating that the companies are title holders and not lessees. Hence, the nature of the land should be shown as forest in the RTC. It is also observed in the said order that the present holders of the leased land did not produce a notification issued by the Chief Commissioner or the Government regarding change of tenure. Hence, the said mutation entries made in favour of the Companies must be held to be unauthorised in law, void and of no legal effect. It is also mentioned in the said document about the order of Hon'ble High Court in State of Mysore Vs. K.Thimmanna Bhat(1996(2) Mys LJ 227) with regard to change of tenure in land records in Kodagu District. It is held that U/s 39 of Regulation, presumption as regards the truth of the entries

arises only when the entries in the record of rights have been made in accordance with law for the time being in force. In the absence of notification issued by the Chief Commissioner and order made by the Commissioner, on the basis of which those entries had been made, it was not possible to predicate whether the procedure enjoined by the rules had been followed at the time of effecting the change. Therefore, if no such order or the direction or notification to that effect is produced, the said change in the records must be held to be unauthorised in law. It is also confirmed by the Hon'ble High Court in State of Karnataka and others Vs. K.V.Khader reported in AIR 1990 SC 1225. It is also mentioned in the said order that revenue department was requested to correct the entries, since the Conservator of Forest, Kodagu addressed to the Deputy Commissioner to know whether the mutations regarding the change of tenure of the lease lands to redeemed Sagu was done by sufficient and competent authority as per law. Therefore, it has come to the conclusion that forest lands were leased as per the provisions in the statutory rules for specific purpose for rubber or tea cultivation. The lease itself does not change the nature or tenure of the land. The companies are only the lessees and the Government is the lessor and the title holder. Therefore, necessary action has to be taken to get the entries corrected in the land records in respect of the leased forest land and accordingly, the nature of land has to be corrected from Redeemed Sagu into forest in column No.6

of the RTC, the title has to be corrected from Company to Government in column No.9 of RTC and occupant has to be corrected from Company to Company as lessee in column No.11 of RTC. Accordingly, the revenue entry has been corrected by the defendants in this case in respect of suit properties.

29. In Annexure-1 along with Government order at Ex.P.68, it is observed that, available records do not indicate that these reserve forest lands have been dereserved after following the procedure as per Section 26 of Indian Forest Act, 1878 and change of cultivation of the forest land into Redeemed Sagu does not appear as correct. According to the available evidence, the lands continued to be forest land. Because, very recently, the forest department tried to collect lease amount for these lands. Lease rents were revised during 1994-97 by the forest department. Ex,P.69 is the letter written to the Tahasildar by Deputy Commissioner on 13.8.2007 intimating him to take necessary action in the records of rights. Ex.P.70 is the letter issued to the Deputy Commissioner from Secretary Revenue Department, Bengaluru to take action according to the Government order. It was issued on 26.12.2006. It is mentioned that it has to be changed in column No.6 from Redeemed Sagu into forest and in column No.9 from Company to Government and in column No.11 from Company to Company as lessee. Ex.P.71 to 73 are the

Mutation Registers dated 9.10.2002 in respect of Sy.No.4/4, 4/8 and 1/1, they show that the leased rights have been transferred to TATA Coffee Ltd. from Consolidated Coffee Ltd. Ex.P.74 to 76 are the receipts dated 18.3.2013 and 25.3.2013, they show that plaintiff/Company has paid the tax. But plaintiff/Company has not produced tax paid receipts prior to 2013. Ex.P.77 and 78 are marked through DW.1 during his cross-examination. They are agricultural pass book and receipt of Patta Book in respect of suit property. They show that, land revenue has been paid. But they do not show that rents for the crops have been paid. DW.1 in the cross-examination has stated that land revenue has been paid and the plaintiff/Company has not paid rent for the crop. PW-2 who is Power of Attorney Holder has produced documents at ExP-80 to 95, which are Photographs, CD and Receipt pertaining to suit properties. They are not in dispute as defendants also admit the possession given to the plaintiff company.

30. On perusal of Ex.P.43, 45, 68 to 70, it is clear that the leased lands were the forest lands and they were leased for the tea cultivation as per the lease agreement, which is mentioned in Ex.P.43 and 45. It is also clear that without order of Chief Commissioner of Coorg, the revenue entry has been made as Redeemed Sagu in column No.6 in RTC. There is also no notification in respect of this change of tenure. Without due procedure and without order of chief

Commissioner or Government, the tenure of land cannot be changed as it is clearly mentioned in Ex.P.68 and Ex.D.1. Ex.D.1 is the proceedings of the Karnataka Government. In Ex.D.1, it is clearly mentioned that the leased forest lands period has to be curtailed to 99 years and reserve forest land is to be taken to the Government. The said proceedings was done on 19.12.2012. In the said document, it is clearly mentioned about the declaration of forest land as reserve forest by the Chief Commissioner, Coorg as per Sec.19 of Indian Forest Act 1878. Accordingly, as per Sec.23 of Karnataka Forest Act, the forest lands in Pattighat, Kadamakal Ghat in Coorg District and Kerti forest land in Coorg have been designated as reserved forest. The said notification was published in Coorg District Gazette prior to July 1908. It is also mentioned that for paisary land in Coorg District, it is to be treated as forest land as per Coorg revenue hand book and Coorge District Gazette. The said explanation has been given in many Government records. It is also mentioned in the said document that, Deputy Conservator of Forest had given notice to the concerned Company, stating that lessees have violated the laws and accordingly, notice was issued stating that the period of lease was only for 99 years and hence due rent has to be paid to the Government. Thereafter, the Company has filed an appeal and appeal was dismissed and hence the action has been initiated. It is also mentioned about the period of lease has been limited to 99 years from 999 years as per the

lease rules of 1940. It is also mentioned that the Government reserved right to change the rules from time to time and to recall the rules from time to time according to the necessity. It is also mentioned about the condition of the said rules in 1940 publication and also in the Coorg District Special Notification. It is also mentioned that the principles of natural justice are not applicable to the lessees, who have taken Government land for lease and lessees are not entitled to notice before cancellation. It is also observed in Page No.13 of the said document at Ex.D.1 that, Sec.107 of T.P. Act is not applicable to the lease granted by the Government as it is held in state of Madhyapradeesh Vs. Jankar Singh reported in AIR 1973 MP 274. It is also mentioned that the conditions laid down in Sec.2 of T.P.Act are excluded in respect of Government land. It is also mentioned in the said document that, lease land includes rubber, agev, tea and Cyncona as per rule 144 of Coorg land and revenue regulation 1899. The principles and directions laid down in T.N.Godavarman Thirumulkpad Vs. Union of India of the Hon'ble Apex Court have been mentioned. It is also mentioned that as per the Judgment of Hon'ble Superme Court, all parts of lease lands are forest lands. As per Sec.2 of Forest Conservation Act 1980, the forest land or part of forest cannot be given for the cultivation of rubber, tea or coffee and if it is given and forest land is cut, it is to be treated as non forest purpose. Therefore, without previous permission of the

Central Government, non forest activities should be stopped.

31. To execute Indian Forest Policy, it is the duty of every citizen to protect forest land in all manner. Therefore, the forest land has to be taken back to the Government. Non forest activities are permissible only with regard to construction of bridges, forest gate and for protection of animals in the forest as per explanation to Sec.2 of the Forest Conservation Act 1980. Apart from this, all other activities which are not for the use of forest animals, they shall be treated as non forest activities. It is social obligation on the part of everybody to protect forest land and hence we have to take precautionary steps also to prevent forest as it is the state policy under Article 48A of Constitution and fundamental duty under Article 51A-g of Constitution.

32. In view of Ex.D.1, Ex.P.43, 45, 68 to 70, I am of the opinion that, the suit properties are paisary forest lands. Therefore, the defendants revenue officials have corrected the entries in revenue records and changed into reserve forest from Redeemed Sagu. It cannot be questioned by anybody. It is the domain power of the revenue officers and it is internal administration of the revenue authority. Therefore, I am of the opinion that the entries in Ex.P.8 to 19 and 46 to 58 record of rights with regard to column No.6,

9, 10 and 11 are proper in view of the Government orders at Ex.P.68 to 70 and Ex.D.1. The Mutation is also effected in this regard as per Ex.P.59 to 62. The period is also reduced. The period reduced cannot be questioned by the plaintiff/Company. Because, as per Ex.D.1, Government reserved right to change the rules framed. Only on the basis of recent documents, which are tax paid receipts, the plaintiff/Company cannot claim right in respect of column No.9 and 11 in the RTC. Because, it is already changed into Government and Company as lessee. If further change is required from forest land or from reserve forest, there is provision under Section 2 of Forest Conservation Act 1980, which says that, prior approval from Central Government has to be obtained for any non forest purpose and non forest activities except the activities mentioned in the explanation to Sec.2 of the said Act.

33. In the chief examination, DW.1 has stated that, original lessees have acquired the forest land for lease from the Government and they have transferred the lease hold rights in favour of many Companies through assignment deeds. The present holder has stepped into the shoes of the original lessee. As per the lease rules and stipulated regulation, the present holder is holding the lease. Apart from this, leased reserve forest land is not de-reserved as per the statutory provisions. The present holders of the leased land did not produce notification issued by the Chief Commissioner of

Coorg or the Government regarding the nature of land and hence Mutation entries made in favour of the Company are unauthorised in law. Therefore, as per the Government order dated 7.4.2006 and on verification and proper survey, the leased forest land was identified and as per the directions of Senior Officials, these defendants have carried out necessary changes in the revenue records.

34. In the cross-examination, DW.1 has stated that, as per the Coorg Land Revenue and Revenue Regulations, forest paisary and revenue matters were being looked after by the Chief Commissioner. He has stated that the Chief Commissioner gave 923 acres for lease in favour of Dr. Mac Dougall for the cultivation of coffee crop. He has also stated about the lease transferred in favour of other companies and presently the lease is in the name of plaintiff/Company. He has stated about the Circular issued by the Government and it says that the lease period cannot be given more than 99 years and it is retrospective effect and the suit property was given for tea cultivation. As per the order of Government in 2006, they have effected entry in RTC as reserve forest. He has stated that at that time of lease in the year 1914, there was an entry as paisary in the Jamabandis. He has not given any fruitful answers to the advocate for plaintiff.

35. DW.1 has also stated that the officials of revenue department have mentioned in the record of rights or Jamabandis as Redeemed Sagu illegally instead of paisary. He has further stated that, he does not know, who have done this entry and when it was done. He has also stated that, Government has given direction to investigate the same and notice has also been given in this regard. He has also deposed that, after completion of lease period, the entry should be paisary in the Jamabandi. If the entry is changed without Government order, it is illegal. After the paisary land is given for lease, it cannot be changed in any manner without order of the Government. But the record shows that somebody made correction in the revenue record without the order of the Government or without the order of Chief Commissioner of Coorg. There is also no notification, order or any publication to change the entry in the revenue records. The act of the revenue officials concerned has to be condemned in this regard. Because, there is a doctrine of public trust. The Government has duty and responsibility to protect the forest land, environment and natural resources. The revenue officials being the members of executive at the local level, they cannot do the acts like this. It has to be investigated and truth has to come out. **Therefore, it is necessary to intimate the Government pleader appearing in this case to send the copy of the Judgment to the Tahasildar and Deputy Commissioner to take necessary action against the erring revenue**

officials and submit the report to the State Government. Because, as per Article 48-A of Indian Constitution, the state shall make every endeavor to protect and improve the environment and to safeguard the forest and Wild Life of the country. It is one of the directive principles of state policy mentioned in part IV of Indian Constitution. As per Article 51A(g), it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lake, rivers, wild life and to have compassion for living creatures. Therefore, the entry of forest has been changed from state list to concurrent list as per the 42 amendment to the constitution with a view to strengthen the law.

36. Government Pleader has also produced the Coorg District Gazette and Coorg Gazette. As per Section 81 of Indian Evidence Act, there is presumption as to the genuineness of the said document. The court shall presume as to the genuineness of the said document. As per Section 57 of the said Act, the court must take judicial notice of the same. In the Gazette, it is mentioned that the Government reserves to itself the right to withdraw or alter the above rules from time to time as may be necessary. It is also mentioned that Paisary land is all waste and forest lands which are declared by Sec.42 of Coorg Land and Revenue Regulations to be property of the Government, and which have not been notified in the Coorg Gazette as protected

forest U/Sec.28 of the Indian Forest Act or as forests reserved U/sec.3 of the said Act. Hence, the changes have been made by the defendants to safeguard legitimate rights of the Government. Therefore, the arguments of the advocate for plaintiff that paisary land is not forest land does not hold good. The suit properties are the properties of the Government who can change the nature or tenure of the land and it can not be questioned by anybody. The advocate for plaintiff has produced the judgment of Hon'ble Apex Court in Civil Appeal.5798/2008 in between Bachhaj Nahar V/s Nilima Mandal. I have perused with due respect. It is held that the court can not make out a case not pleaded and court can not grant relief which is not claimed. This ruling is not helpful to the plaintiff. Because, the facts and circumstances of the case on hand are different from that case. The suit property is the Government land. The record also shows the same. The plaintiff also admits the same.

37. The advocate for plaintiff has also argued that no notice has been issued to the plaintiff before effecting the revenue entries in the record of rights. As per Ex.D1, it is clear that Sec.107 of Transfer of Property Act is not applicable in the case of leases granted by the Government. Apart from this, lease has not been canceled. It is only the revenue entry has been changed as per the order of the Government which includes the various principles and guidelines issued by the Hon'ble Apex Court and Hon'ble High Court of Karnataka.

Therefore, all the contentions raised by the advocate for plaintiff are not sustainable. The advocate for plaintiff has also pointed out the points mentioned in the Ex.D1 as defects with respect to period of lease and with respect to the nature of crop cultivation stating that Ex.D1 is applicable only to the lands given for Rubber cultivation and the period of lease for 99 years is applicable only to the land given for rubber cultivation. But, in the said Ex.D1, in page No.16, it is mentioned as Rubber, agev, Tea and Cinchona as per Rule No.144 of Coorg Land and Revenue Regulation Act. Therefore, the contentions raised by the advocate for plaintiff during arguments and in return arguments are not sustainable in view of above discussion made according to the rules, regulations, directions, guidelines and principles thereof.

38. In the plaint, it is stated that, tenure is shown as Redeemed Sagu and all the entries have been made pursuant to the order of Commissioner. The entries are made after due procedure. But, no document is produced to that effect. In the plaint, it is also stated that, change of entry is normal and sanction of Chief Commissioner is not required. This is not correct. The plaintiff has stated contrarily in the pleading.

39. As per the order of Deputy Commissioner and state Government, revenue officers have made entry as reserved forest in Ex.P.46 to 58. This cannot be altered in anyway. If

the land is to be given from forest land to any non forest purpose, prior approval of the Central Government has to be obtained as per Sec.2 of Forest Conservation Act 1980.

40. Preservation of forest is of national importance and it is natural resource. It has to be protected. Everyone is bound to assist the state in protecting it in all manner. If it is not preserved and protected, public in general will be the affected. Since deforestation would result in ecological imbalance, there should be natural resources as it is essential for the future generation also. There are various Judgments of Hon'ble Supreme Court and Hon'ble High Court of Karnataka in this regard. It is held in RSA 1855/15 by the Hon'ble High Court of Karnataka in B.V.Srikumar V/s Chief Conservator of Forest and another that as per the provisions of Section 2 of the Forest (Conservation) Act, 1980, there is a restriction to use the forest land for non-forest purpose, which reads as under:

“2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

(i) that any reserved forest (within the meaning of the

expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

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

(iii) ***that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;***

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-forestation.

Explanation- For the purpose of this Section, “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for-

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

(b) any purpose other than re-forestation;

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

41. A plain perusal of the said Section makes it clear that no land or any portion thereof can be assigned by way of lease or otherwise to any private person or any authority, Corporation, Agency or any other Organization not owned, managed or controlled by the Government, except with the prior approval of the Central Government. The provisions of Sub- Section (iii) of Section 2 of the Act are applicable to all forest land irrespective of the fact that such forest land has been declared as a reserved forest or not.

42. It is also observed that the Hon'ble Supreme Court while considering Section 2 of the Forest Conservation Act, 1980 in the case of T.N.Godavarman Thirumulkpad Vs. Union of India reported in (AIR [1997] Supreme Court 1228) has held as under:

“In view of the meaning of the word “forest” in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any “forest”. In accordance with Section 2

of the Act, ***all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith.*** It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima-facie violation of the provisions of the Forest Conservation Act, 1980. ***Every State Government must promptly ensure total cessation of all such activities forthwith.***

The Hon'ble Supreme Court in the said case also held as under:

“The forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognized forest, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act.

The term “forest land” occurring in Section 2 will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government, record irrespective of the ownership. This is how it is to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forest and the matters connected therewith must apply clearly to all forests so understood irrespective of ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this court in Ambica’s case, supra, Rural Litigation and Entitlement Kendra Vs. State of Uttar Pradesh, 1989 Supp. (1) SCC 504 and recently in the order dated 29th November, 1996 in W.P.(C) No.749 of 1995 (Supreme Court Minority Committee Vs. Mussori Dehradum Development Authority)”.

43 At this stage, it is appropriate to ascertain the meaning of expression “assigned by way of lease or otherwise”. In the context of the statutory provisions, the word “assign” would mean “to make over a right or interest to another” (See Mozley’s and Whiteley’s Law Dictionary). According to Black’s Law Dictionary as well, the word has the same meaning for the present purposes. **Therefore, the restrictive Section 2 of the 1980 Act will apply to making over of a right or interest by the State**

Government or other authority, by way of lease or otherwise to any private person including a company in or over any forest land or in portion thereof. In the said sense, interest in an immovable property can be assigned by way of conveyance by way of modes recognized under the Transfer of Property Act, 1882 namely, sale, lease, mortgage, charge, ascent, gift, disclaimer, release or any other assertion of property or any interest therein by an instrument except a will. The other two types of assignment of rights in an immovable property have been recognized under the Easements Act, 1882.

44. From the above, it is clear that in view of the provisions of Section 2 (iii) of the Forest (Conservation) Act, 1980 restricts right of the State Government to transfer or create any right in or over a forest land or a portion thereof either by a lease or otherwise. The expression otherwise “will include the assessment of rights even by way of easement or license”. There is an absolute prohibition on the grant of such rights under Section 20 r/w Section 35(3) of Wild Life (Protection) Act, 1972. The provisions of Section 2 of Forest (Conservation) Act, 1980 starts with non-obstante clause that notwithstanding anything contained in any other law for time being in force in a State, no State Government or other Authority shall make except with the prior approval of the Central Government, the forest area into non-forest area includes right of easement. Therefore, Section 2 of the Forest

(Conservation) Act, 1980 has overriding effect on the provisions of the Indian Easement Act.

45. It is also held in M/s Siddeshwara International V/s State of Karnataka represented by its Secretary, Department of Forest Ecology and Environment and others reported in ILR 2009 KAR 1356 that the Forest Conservation Act, 1980 was enacted with a view to check furtherer deforestation which ultimately resulted in Ecological imbalance and therefore, the provisions made therein for the conservation of forest and for matters connected therewith must apply to all forests irrespective of nature of ownership. It is unfortunate that in spite of clear enunciation of law by the Apex Court, still the authorities who are responsible for protecting and preserving these forests are yet to understand what forest means. They are making recommendations contrary to law as well as the law declared by the Supreme Court. However, it is heartening to note that when error is pointed out, the higher authorities without sticking on to formality or ego have retraced their steps and withdrawn the permission granted for good and justifiable reasons and ultimately, in public interest. It is held in WP.No.43037/2019 (G.M.- FOR - PIL) by the Hon'ble High Court of Karnataka in Gireesh Achar V/s Government of India and others that the Karnataka Forest Act of 1963 is a State Legislation and the Forest Conservation Act of 1980 is a subsequent Central Legislation. In fact, Section 2 of the

said Act of 1980 starts with a non-obstante clause and it overrides the state laws. It lays down that no State Government is empowered to make an order directing that any reserved forest or a portion thereof shall cease to be reserved without seeking prior approval of the Central Government. We must note here that Section 28 of the said Act of 1963 has conferred a power on the State Government of declaring that a reserved forest or a part thereof shall cease to be a reserved forest. In view of clause (I) of Section 2 of the said Act of 1980, the power under Section 28 of the said Act of 1963 cannot be exercised without prior approval of the Central Government.

46. Notwithstanding the said decision, which is binding on the State Government, without even applying for prior approval under Section 2 of the said Act of 1980, it undertook the exercise of issuing the impugned notification dated 23rd February 2017 of de-reservation of reserved forest in purported exercise of the powers under Section 28 of the said Act of 1963. Though the notification refers to Section 2 of the said Act of 1980, it ignores that prior approval of the Central Government was required as a condition precedent for exercise of the power under Section 28 of the said Act of 1963. The stand of the State Government is that the lands included in the impugned notification were earlier released but specific notifications were not published in official gazette. However, under Section 30 of the said Regulation, the power to release a State Forest could be exercised only

by a notification in official gazette. Admittedly, that was not done. Hence, the status of the forest subject matter of the impugned notification as a reserved forest being a State Forest continued till the date of the impugned notification.

47. On a conjoint reading of Section 28 of the said Act of 1963 and Section 2 of the said Act of 1980, it is crystal clear that the power under Section 28 of the said Act of 1963 can be exercised only with the prior approval of the Central Government granted in accordance with Section 2 of the said Act of 1980. Thus, unless there is a prior approval of the Central Government to an order made under Section 28 of the said Act of 1963, the order under Section 28 of the said Act of 1963 cannot be lawful at all. In fact, any such order made in exercise of the power under Section 28 of the said Act of 1963 without seeking prior approval of the Central Government will not only be illegal but will also attract penal consequences under Section 3A and/or under Section 3B of the said Act of 1980, as the case may be. While issuing the impugned notification, not only that the State Government has completely glossed over the requirement of Section 2 of the said Act of 1980, but the State Government has violated the directions contained in the case of T.N.Godavarman (supra) and the decision of the Apex Court in the case of Nature Lovers Movement (supra) rendered on 20th March, 2009. Paragraph 52 of the decision in the case of nature Lovers Movement (supra) reads thus;

“52. In the result, the appeal is disposed of in the following terms;

(1) The policy decision taken by the Government of Kerala to assign 28,588.159 ha of forest land to unauthorised occupants/encroachers after seeking approval from the Central Government does not suffer from any legal infirmity and the High Court rightly declined to interfere with the said decision.

(2) After the enforcement of the 1980 Act, neither the State Government nor any other authority can make an order or issue direction for dereservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or assign any forest land or any portion thereof by way of lease or otherwise to any private person or to any authority, corporation, agency or organisation not owned, managed or controlled by the Government except after obtaining prior approval of the Central Government.

(3) Conclusion D recoded by the High Court in para 103 of the impugned Judgment is legally unsustainable and is set aside.

(4) As and when the State Government decides to assign 10,000/- ha of forest land to unauthorised occupants/encroachers, it shall do so only after obtaining prior approval of the Central

Government and the latter shall take appropriate decision keeping in view the object of the 1980 Act and the guidelines framed for regulation of encroachments on forest land”.

48. Hence, the impugned notification at Annexure-N has been issued completely in violation of the direction of the Apex Court in clause (2) or paragraph 52 of the said decision. The power of the State Government under Section 28 of the said Act of 1963 has been circumscribed by Section 2 of the said Act of 1980. The power under Section 28 of the said Act of 1963 cannot be exercised without prior approval of the Central Government in view of express language used in clause (i) of Section 2 of the said Act of 1980. In fact, in view of clause (i) of Section 2 of the said Act of 1980, obtaining prior approval of the Central Government is a condition precedent for the exercise of the power under Section 28 of the said Act of 1963. It thus follows that the notification of Annexure-N which purports to make de-reservation of certain lands forming a part of a reserve forest is completely contrary to the mandate of the aforesaid decisions of the Supreme Court and Section 2 of the said Act of 1980. In view of the clear legal position that no order under Section 28 of the said Act of 1963 can be passed without making a compliance with Section 2 of the said Act of 1980, the issue of repugnancy will not arise between the State enactment and the Central enactment as what will prevail is the provision of Section 2 of the said Act of 1980 as

well the direction issued by the Apex Court in the aforesaid cases.

49. It is also observed in the said judgment by the Hon'ble High Court that it is necessary to remind the State Government of Article 48A of the Constitution of India which is a part of the Directive Principles of State Policy which enjoins the State to protect and improve the environment and to safeguard and forests and wild life. Under clause (g) of Article 51A of the Constitution, it is the fundamental duty of every citizen of India to protect and improve the forests. The officials of the State Government who did the exercise of initiating and completing the process under Section 28 of the said Act of 1963 were also duty bound to protect the forest. The minimum which was expected of them was that they will not indulge in de-reservation of forest in complete violation of Section 2 of the said Act of 1980. Apart from all this, there is a doctrine of Public Trust. The Apex Court has repeatedly held that the doctrine of Public Trust is applicable to India. The doctrine of Public Trust requires the State to ensure that forests are protected.

50. Therefore, as per the above said rulings, it is not legal to direct the defendants to change the revenue entries. Moreover, it is not the proper forum to direct to do so. Apart from this, even the defendants have no power to change the entry in the record of rights pertaining to the suit properties. The prayer sought in the plaint is misconceived and such

prayer cannot be sought for the above said discussion. Because, the change in the revenue records from Redeemed Sagu to reserved forest land made in accordance with the order of Government and hence, it is not illegal. There are various documents on the record to substantiate the change of entry in column No.6, 9, 10 and 11 of Ex.P.46 to 58. The plaintiff has not adduced cogent evidence to show that the change of entry is illegal. Therefore, I am of the opinion that, the entry made by the defendants in respect of suit properties in the revenue records is legal. It cannot be declared for the reasons assigned above that the suit properties have become redeemed land subsequent to the lease and after payment of timber value. Because, as per Ex.P.68 and Ex.D.1, the leased lands should be paisary even after completion of lease. Because, they were paisary land and forest land at the time of lease also. Therefore, the tenure of the land cannot be changed subsequent to the lease as per the materials on the record and as per the rules prevailing under the Coorg land and Revenue Regulation Act and the notifications of Chief Commissioner of Coorg and other regulations and publications. Therefore, I answer **Issue No.1 and 2 in the "NEGATIVE"**.

51. **ISSUE NO.3:-** The defendants have taken the contention that this court has no jurisdiction to try this suit. In this regard, AGP appearing for the defendants has produced the ruling reported in State of Karnataka Vs. Shakunthamma

and others, reported in 2008(1) KLJ 79. I have perused it with due respect. It is held that, when there is a specific bar under the Karnataka Land Revenue Act, in respect of the order passed by the revenue authorities, the Civil Court has no jurisdiction to entertain the suit. The plaintiff ought to have exhausted the remedies available under the Karnataka Land Revenue Act before approaching the Civil Court. The Civil Court should not have issued any direction to the revenue officers to restore the entry made in the revenue records. Sec.61 of Karnataka Land Revenue Act says that it is the exclusive jurisdiction of the revenue court to make any corrections in the revenue records. The jurisdiction of the Civil Court is barred. Sec.63 of Karnataka Land Revenue Act says that the plaintiff has to exhaust his right of appeal before instituting a suit or other proceedings against the Government on account of any act or omission of the state Government or any revenue officers. The plaintiff has to prove first, that he has presented all such appeals allowed by law for the time being in force within a period of limitation. It is also held that whenever a special statute bars the jurisdiction of the Civil Court by express provision or by implication and makes decision of such authority not liable to be questioned in any Civil Court, then the jurisdiction of the Civil Court would be excluded. If there is any express bar created by the Special Act or if the Special Act creates a Special Tribunal and makes its decision final and not liable to be questioned in any Civil Court, then the

jurisdiction of the Civil Court would stand barred. Sec.63 is express bar to the filing of suit and hence, Sec.9 of CPC will not come to the aid of the plaintiff in this case. It is also held that, when the Civil Court has no jurisdiction to hold that an entry made in any record of revenue, survey or settlement is wrong, it cannot proceed to grant the relief as prayed by the plaintiff. It is also held that the plaintiff is at liberty to approach the authority under the Land Revenue Act as per Sec.49 of the Land Revenue Act. Therefore, I am of the opinion that the plaintiff cannot bring the suit before the Civil Court. It is necessary to look into Sec.9 of Civil Procedure Code, which says about the jurisdiction of the Civil Court. It says that, the Civil Court shall have jurisdiction to try all suits of Civil nature except suits of which their cognizance is either expressly or impliedly barred. There is express bar U/S 63 of Karnataka Land Revenue Act and hence, this court has no jurisdiction to try this suit.

52. If the plaintiff is really aggrieved from the change of revenue entry as the reserve forest, he has to approach the appellate authority constituted under the Karnataka Land Revenue Act. Civil Court cannot direct the revenue authority to change the revenue entry. Because, to give direction, the plaintiff has to show the ingredients U/S 39 of Specific Relief Act. It says about the Mandatory Injunction. The Mandatory Injunction can be granted to prevent the

breach of complained act and also to compel performance of the requisite acts and to prevent the breach of obligation. In this case, the plaintiff has not shown the breach of obligation. It is not required to compel the performance of the requisite acts in this case. Because the defendants have performed their functions according to the order of the Government. Therefore, it cannot be said that, there is a breach of obligation. Therefore, the direction cannot be given as prayed. It is domain power of revenue authority to make entry in the revenue records and to change the same. It is an internal vires of the revenue authority. The rights infringed according to the plaintiff are not civil rights and hence, the Civil Court has no jurisdiction. Therefore, I hold that the defendants have proved this issue that this court has no jurisdiction to try this suit. Hence I answer this issue in the **"AFFIRMATIVE"**.

53. **ISSUE NO.4:** As per the above discussion and the reasons assigned therein, I pass the following:

ORDER

The suit of the plaintiff for declaration and direction is hereby dismissed with cost.

Office is hereby directed to send the copy of this Judgment to the Tahasildar and Deputy Commissioner concerned to take necessary action against the erring

revenue officials as observed and submit the report to the State Government with intimation to this court.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed and computerized by her, transcript revised, corrected and pronounced by me, in the Open Court, dated this the 3rd December, 2021).

Sd/-xxx
(LOKESHA M.G)
Senior Civil Judge,
Virajpet.

ANNEXURE

Witnesses examined for the plaintiffs:

PW-1 : Vijay Karnad
PW-2 : Nandan Kumar

Documents exhibited on behalf of the plaintiffs:

Ex.P.1 : Endorsement
Ex.P.2 to 7 : Jamabandis
Ex.P.8 to 19 : RTCs
Ex.P.20 : Legal notice
Ex.P.21 : Postal cover
Ex.P.21(a)&(b) : Postal details
Ex.P.22 : Special Power of Attorney
Ex.P.23 to 36},
39 to 42, 44 } : Jamabandis
Ex.P.37, 38,}
43 and 45 } : Mutation Registers

- Ex.P.46 to 58 : RTCs
Ex.P.59 to 62 : Mutations
Ex.P.63 : Endorsement
Ex.P.64 : Deed of Conveyance for lease
Ex.P.65 : Assignment Deed of lease
Ex.P.66 : GPA
Ex.P.67 : Order of Hon'ble High Court
of Karnataka, Bengaluru.
Ex.P.68 : Order from Government
Ex.P.69 : Letter of Deputy Commissioner
Ex.P.70 : Letter from Government
Ex.P.71 to 73 : Certified copy of Mutation
Register Extract
Ex.P.74 to 76 : Tax receipts
Ex.P.77 : Agricultural Pass book
Ex.P.78 : Patta Book
Ex.P.79 : Power of Attorney
Ex.P.80 to 93 : Photos
Ex.P.94 : C.D.
Ex.P.95 : Receipt

Witnesses examined for the defendants:

DW.1 : Sri.Yogananda R

Documents exhibited on behalf of defendants:

Ex.D.1 : Gazette Notification

Sd/- xxxx
(LOKESHA M.G)
Senior Civil Judge,
Virajpet.