

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WA.NO. 89 OF 2011 () IN OP.35736/2002

AGAINST THE JUDGMENT IN OP 35736/2002 DATED 11-08-2010

APPELLANT(S)/RESPONDENTS IN O.P.:

1. THE STATE OF KERALA REP.BY SECRETARY,
FORESTS & WILDLIFE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.

2. THE CHIEF CONSERVATOR OF FORESTS (P),
THIRUVANANTHAPURAM.

3. THE CONSERVATOR OF FORESTS,
OLAVAKKODE, PALAKKAD.

4. THE DIVISIONAL FOREST OFFICER,
NEMMARA DIVISION, NEMMARA, PALAKKAD.

5. THE FOREST RANGE OFFICER,
NELLIAMPATHY RANGE, PALAKKAD.

BY SPECIAL GOVERNMENT PLEADER SHRI M.P. MADHAVANKUTTY

RESPONDENT(S)/PETITIONER:

NEW WORLD INVESTMENT (P) LIMITED,
MALABAR DAIRY FARMS (P) LIMITED, NELLIYAMPATHY
PALAKKAD REPRESENTED BY ITS DIRECTOR, S.SUNILKUMAR.

R,R BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R, BY ADV. SRI.N.J.MATHEWS
R,R BY ADV. SRI.K.MOHANAKANNAN
R BY SRI.M.P.ASHOK KUMAR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30.10.2015
ALONG WITH W.P(C) NO.18339 OF 2011, THE COURT ON 19.11.2015
DELIVERED THE FOLLOWING:

“C.R”

**ASHOK BHUSHAN, C.J.
and
P.R. RAMACHANDRA MENON, J.**

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W.A. No.89 of 2011

&

W.P(C) No.18339 of 2011

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Dated this the 19th day of November, 2015

J U D G M E N T

Ashok Bhushan, C.J.

Writ Petition as well as the Writ Appeal have been heard together and are being decided by this common judgment.

2. Facts and pleadings in W.P(C) No.18339 of 2011 shall suffice in deciding the Writ Petition as well as the Writ Appeal. Parties shall be referred to as described in the Writ Petition.

3. The Cochin State had enacted “The Cochin Forest Act III of 1080 ME” (for short, “Regulation III of 1080”) for making better provision for protection and management of the forest in the Cochin State. Regulation III of 1080 was passed on 12.03.1905. As per the Regulation, the Diwan was

empowered to constitute any area as reserve forest. Section 8 contemplated that, whenever it is proposed to constitute any area as reserve forest, the Diwan shall publish a Notification in the Sirkar Gazette specifying the details as mentioned under Section 8 of the Regulation. A Notification is contemplated in Section 12 specifying the limit of forest which is intended to be reserved and declare the same to be reserve forest from a date to be fixed by the said Notification. Notification dated 08.05.1909 under Section 12 of Regulation III of 1080 declared the reserve forest including Nelliampathy block with details of boundaries mentioned therein. Several coffee estates were treated as enclosures within the State reserves and at serial No.18 of the coffee estate, Valvachan area of 507 Acres, 68 cents was also included. By a subsequent Notification dated 11.02.1933 issued under Section 12 of the Regulation III of 1080, reserve forest was declared, whereby block No.9 of Nelliampathy, as described in the schedule, included Valvachan area of 507.68 Acres as reserve forest. A lease deed dated 19.05.1933 was executed by the Diwan of Cochin

representing the Cochin Government in favour of one Cecil Ralpt Townshend Congreve Esq. of 82.45 Acres as Miraflores Estate. The lease deed contemplated that for purposes of lease, the Conservator of Forests shall be regarded as the superior authority in matters relating to the lease forest. Lease rent was also fixed. Lease was granted for purposes of cultivation of coffee, tea, cardamom and other products. Another area of 126.50 Acres was leased out on 04.09.1936 by the Conservator of Forests representing the Cochin Government in favour of persons as mentioned above on the premium and rent as fixed. The lease was again for purposes of cultivation of coffee, cardamom and other products except tea and rubber. Similarly by another lease dated 04.09.1936 93 Acres of Miraflores estate was leased out by the Conservator of Forests in favour of the persons named above on premium and rent for cultivation of coffee, cardamom and other products except tea and rubber. Another 27 Acres was leased out on 03.02.1941 by the Conservator of Forests on behalf of the Cochin Government in favour of Miraflores Estate Ltd., a company for cultivation of crops on the rent as

fixed in the deed. Another lease dated 24.09.1947 an area of 157.68 Acres, namely, Valvachan Estate was leased out by the Chief Secretary to the Government on behalf of the Government in favour of K.M.Velayudh Panicker for cultivation of crops on rent as fixed in the deed. By the aforesaid 5 leases a total extent of 507.68 Acres was leased out between the period from 1933 to 1947. The lessees transferred the leased land in favour of different persons from time to time. Petitioner purchased the entire area by sale deeds bearing Nos.494, 925 and 926 dated 26.04.1994 from Rajagiri Rubber and Produce Company Ltd. covered by the above five leases. Copy of the above lease deeds have been brought on record as Exts.P1, P1(a), P1(b), P1(c) and P1 (d) whereas sale deeds have been brought on record as Ext.P2, P2(a) and P2(b). In the sale deeds the vendors claimed to be absolute owners having perpetual leasehold right of coffee and cardamom estates.

4. Sale deeds were registered on the basis of directions issued by this Court in O.P. No.3953 of 1994. Petitioner paid lease rent and tax from time to time. The

Divisional Forest Officer by letter dated 21.11.1996 issued notice to the petitioner directing him to inform the willingness to conduct a comprehensive survey, demarcate boundaries and prepare sketches. Petitioner sent a reply that it is ready to bear the expenses of survey. Petitioner was informed that matter has been taken up with the higher authorities and petitioner shall be accordingly informed. Various cases were booked against the petitioner regarding removal of boundary stones, encroachment, etc. Petitioner filed O.P. No.35736 of 2002 seeking a direction to conduct survey and further restraining the respondents from attaching any portion of the plantation including the Bungalow and further to direct the respondents not to unnecessarily harass the petitioner before the final determination of the exact boundaries. Writ Petition was disposed of on 12.08.2000 directing the respondents to conduct a comprehensive survey. In the year 2002 the Forest Department having noticed that petitioner is using the estate for entertaining tourists informed that the petitioner is not entitled to undertake any activities in the

area other than those mentioned in the lease deed. Letter dated 25.11.2002 was issued by the Conservator of Forests in the above context. Challenging the letter dated 25.11.2002, petitioner has filed O.P. No.38847 of 2002 where a direction was sought to the Conservator of Forests or other Officers not to interfere in the conduct of plantation tourism by the petitioner in the Miraflores Estate. Initially an interim order was passed in favour of the petitioner which came to an end on 19.11.2004. Notice dated 04.01.2008 had been issued by the State Government to the petitioner asking it to show cause as to why the lease in respect of whole area of 486.63 Acres should not be terminated as contemplated in the aforesaid lease. Several grounds for taking action were mentioned in the show cause notice. Petitioner submitted explanation to the show cause notice dated 14.03.2008. On 04.12.2010 the petitioner was also personally heard by the Government. Order dated 24.06.2011, Ext.P10 was passed by the Government by which the Government decided to order resumption of an area of 486.63 of the leased forest. Challenging the order dated 24.06.2011 the Writ Petition

has been filed by the petitioner praying for the following reliefs:

(i) To issue a writ of certiorari or appropriate writ, order or direction calling for the records leading to Ext.P10 and quash the same;

(ii) To issue a writ of mandamus or any other appropriate writ or order or direction directing the respondents not to interfere in any manner in possession and enjoyment of the property covered by Exs.P1 to P1(d).

(iii) To issue a writ of mandamus or any other appropriate writ or order of direction permitting the petitioner to enjoy and maintain the Estate covered by Exts.P1 to P1(d) including the office store and bungalow without any interference or hindrance by the respondents and their men and orders may be passed accordingly.

(iv) To declare that the cancellation of lease by Ext.P10 order is non-est in the eye of law.

(v) To grant such other relief as this Honourable Court deem fit to grant in the interest of justice.”

5. Counter affidavit has been filed by the State Government opposing the Writ Petition. In the counter affidavit it has been pleaded that the lands purchased by the petitioner on 26.04.1994 were the lands comprised in reserve forest which were leased out between 1933 to 1947. Leased land could not have been sold to the petitioner. Provisions of the Forest Conservation Act, 1980 (hereinafter

referred to as “the 1980 Act”) are applicable and the petitioner was using the forest land, also for non-forest purpose, i.e., tourism resort. The original lessee had no right of alienation of the Estate. Government have rightly initiated action to cancel the lease conforming to the Kerala Forest Act, 1961 (hereinafter referred to as “the 1961 Act”) and the 1980 Act. An Order dated 10.01.2011 was issued by the Government stating for not accepting any tax from the estates as the State proposed to cancel the lease. Use of forest land for non-forest purpose is prohibited by the 1980 Act. Petitioner has converted the entire area into resorts, parks, dairy farms, etc., violating the provisions of the 1980 Act. The area was inspected and report was submitted mentioning that the property was used for non-forest purpose by running resorts, etc. Reply was also filed by the petitioner. It was pleaded by the petitioner that the 1980 Act has no retrospective operation and sale deed was registered in favour of the petitioner under orders of this Court. It was further pleaded that there being provisions for amending the lease deeds, application was

submitted to the Government.

6. Writ Appeal No.89 of 2011 has been filed by the State Government against the judgment of the learned Single Judge dated 11.08.2010 in O.P. No.35736 of 2002. O.P.No.35736 of 2002 was filed by New World Investments (P) Limited and Malabar Dairy Farms (P) Limited praying for the following reliefs:

“(i) to issue writ of mandamus or other appropriate order directing the respondents 2 to 5 or other concerned officers to conduct a survey under the Kerala Survey and Boundaries Act in the Forest Land to identify the Boundary of 486.63 acres of plantation in Nelliampathy Forest, Nenmara Division as described in Exts.P1 to P3 documents.

(ii) to issue a writ of prohibition or any other writ or order restraining the respondents 2 to 5 from attaching any portion of 486.63 acres of the plantation including the Bungalow No.N.P. VI 387 and two workmen quarters attached to it situated in the Nelliampathy Grama Panchayat owned by the petitioner company.

(iii) to issue a writ of mandamus or any other writ, order or direction directing the respondents 2 to 5 to supply copies of preliminary report in respect of 486.63 acres comprised in the Estate if any to the petitioner forthwith.

(iv) to issue a writ of mandamus or any other writ, order or direction directing the forest authorities or their subordinates not to unnecessarily harass the petitioner before the final determination of the exact boundaries of the 486.63 acres comprised in the Estate”

Writ Petition was disposed of by a learned Single Judge by judgment dated 11.08.2010 issuing direction to the respondents to conduct comprehensive survey. The learned Single Judge also directed the respondents to pay Rs.25,000/- as costs to the petitioner within one month. The State has filed by the appeal against the said judgment. A Division Bench of this Court by order dated 27.01.2011 stayed the said judgment in appeal.

7. We have heard Shri N.N. Sugunapalan, learned Senior Advocate for the petitioner and Shri M.P.Madhavankutty, learned Special Government Pleader on behalf of the State.

8. Learned Senior Advocate for the petitioner in support of the Writ Petition contended that there was no prohibition for alienation of leased land in favour of the petitioner as per the terms and conditions of the lease deeds. It is submitted that the original lessee had transferred the land comprised in the lease deeds from time to time which was purchased by the petitioner from a subsequent transferee of the original lessee. The sale deed in fact was got registered under an

order passed by this Court dated 17.03.1994 in O.P. No.3953 of 1994. Forest area was already cleared and plantation was undertaken before enforcement of the 1980 Act and hence provisions of the 1980 Act have no application. It is further contended by the learned Senior Advocate for the petitioner that leases were separate leases and hence, even if any violation was alleged regarding using portion of the area for tourism, the State could have cancelled only that portion of the lease, where allegation was made for use of the land for non-forest purpose and that the lease in respect of the entire area was not liable to be cancelled. The areas which were leased out originally between 1933 to 1947 were only 'enclosures' to reserve forest and could not have been regarded as 'reserve forest'. Terms and conditions of the lease clearly provided that the expression 'lessee' shall include heirs, administrators, and assignees and hence the lease deeds clearly contemplated assignment in favour of others. Thus there was no prohibition in transferring the leasehold rights. No objection has been raised by the Forest Department at the time of registration of sale deed in

the year 1994 in favour of the petitioner and further the deed having been registered under orders of this Court on 17.03.1994, it is not open to the respondents to contend that the sale deed is void or inoperative. Petitioner has been paying lease rent and taxes and hence the respondents cannot at this stage say that said sale was impermissible. For transfer of the estate, no restriction under the 1980 Act has been provided for.

9. Learned Special Government Pleader refuting the submissions made by the learned counsel for the petitioner contended that the area comprising 486.63 Acres which has been purchased by the petitioner in the year 1994 and which was leased between 1933 to 1947 is comprised in reserve forest constituted by the Diwan under the Regulation III of 1080 and by further Notification dated 11.02.1933 under Section 12 of Regulation III of 1080, the land in question is included in the forest area. Petitioner was put to notice by letter dated 25.11.2002 that it is using the land for non-forest purposes and why the lease be not cancelled. Petitioner immediately rushed to this Court by filing O.P.

No.38847 of 2002 challenging the notice where initially an interim order was obtained which came to an end on 19.11.2004. Petitioner throughout entertained tourists and used the land for non-forest purposes. Even after the interim order came to an end, they continued to use the land for entertaining tourists which was found on inspection and reported by the forest Officials. Section 22 of the 1961 Act contains a prohibition for transferring the land. Land could have been devolved only by succession and grant or contract is contemplated only by a person who was entitled for issuing such grant or contract at the time of declaration of the land as reserve forest. The 1980 Act prohibits use of forest land for non-forest purpose. Petitioner having violated the terms and conditions of the lease and the provisions of the 1961 Act and the 1980 Act, the lease has rightly been cancelled. The State had given valid reasons in the order impugned in the Writ Petition. Since no tenable grounds have been made out in the Writ Petition, the Writ Petition deserves to be dismissed.

10. Learned counsel for the parties have relied and

referred to various decisions of the Apex Court and this Court which we shall notice while considering the submissions in detail.

11. From the pleadings on record and submissions of the learned counsel for the parties, the following are the issues which arise for consideration.

I. Whether the land in question, i.e. 486.63 Acres leased out by five lease deeds between 1933 to 1947 and purchased by the petitioners by three sale deeds dated 26.04.1994 from the subsequent purchasers are part of reserve forest?

II. Whether the respondents are estopped from raising any objection regarding sale deeds dated 26.04.1994 as the sale deeds having been registered under the orders of High Court dated 17.03.1994 in O.P. No. 3953 of 1994 ?

III. Whether the transfer of leased area in favour of petitioners through sale deeds dated 26.04.1994 executed by subsequent purchasers from the original lessee is void in view of Section

22 of the Kerala Forest Act, 1961 ?

IV. Whether the order of the State Government, cancelling the leases, in the facts of the present case, could also be supported on the ground of violation of terms and conditions of the lease deed ?

V. Whether the petitioners violated the provisions of the Forest (Conservation) Act, 1980 by using the leased land comprised in reserve forest for running 'tourist resort' which is a non-forest activity ?

VI. Whether, on the contention of the petitioners that they were running a tourist resort only in a part of the leased property, the State was justified in cancelling the entire lease ?

ISSUE NO.I

12. In the Cochin State, the State exercised control over the Forest in accordance with the Cochin Forest Act, (Regulation III of 1080). The preamble of the Act indicates that the enactment was made to protect and manage the forest in the Cochin State. Under Section 7 the Diwan was

empowered to constitute any area as reserved forest in the manner provided. Section 8 dealt with procedure for constituting an area as reserved forest. Section 11 provided for the steps to be taken by the Forest Settlement Officer which included consideration of various claims in the area. Section 12 provided for issuance of notification declaring reserved forest. Section 12 of Regulation III of 1080 reads as follows:

“12. When all proceedings prescribed by section eleven have been taken, and all lands (if any) to be included in the proposed forest which the Forest Settlement Officer has elected to acquire under the Land Acquisition Act have become vested in the Government under section fifteen of that Act and all rights of way, or rights to water, pasture or forest produce have been adjudicated upon as provided in section eleven;

The Diwan may publish a notification in the Government Gazette, specifying the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date to be fixed by such notification. From the date so fixed, such forest shall be deemed to be a reserved forest.”

13. The State in the counter affidavit has brought on record two notifications issued under Section 12 of Regulation III of 1080. By notification dated 08.05.1909,

under Section 12, the Nilambur Reserved Forest was constituted. The notification also mentioned about various coffee estates which were to be treated as enclosures within the State reserves. An area of 507.60 Acres of Valvachan Coffee Estate was also mentioned therein. By a subsequent notification dated 11.02.1933 issued under Section 12 of the Regulation III of 1080 various estates were declared as reserve forests which also includes Valvachan Estate of 507.60 Acres. The original leases were executed by the Diwan of Travancore-Cochin/Conservator of Forests between the period 1933 to 1947. The terms and conditions of all 5 leases are similar. Clause 5 of the lease deed clearly indicates that what has been leased to the lessees was forest and Conservator of the Forest was regarded as the superior authority in matters relating to leased forest. Clause 5 of the lease deed is as follows:

“5. For purpose of this lease the Conservator of Forests shall be regarded by the Lessees as a Superior authority in matters relating to their leased forests and if in his opinion any injury of permanent nature is done to the land whereby the land becomes unfit for the growth of valuable timber, the Lessees shall be liable to pay a fine of Rs.10/ per acre.”

14. Learned counsel for the petitioner submitted that since the area in question was only an 'enclosure' of the reserve forest, as is clear from the Notification dated 08.05.1909, the area cannot be treated as reserve forest. The above submission has no substance. It is sufficient to refer to the subsequent notification dated 11.02.1933 (Ext.R2 (b)) which is to the following effect:

"THE COCHIN GOVERNMENT GAZETTE
PUBLISHED BY AUTHORITY

Vol.XVII
February

Ernakulam, Saturday, 29th Makaram 1108 (11th
1933) No.19

PART I

NOTIFICATION BY GOVERNMENT
Revenue Department
NOTIFICATION

No.65 : The Diwan hereby declares under the provisions of section 12 of the Cochin Forest Regulation III of 1080, as amended by Regulations VII of 1093 IV of 1096 and I of 1100, the areas, the boundaries of which are described in the schedule below "Reserved Forest" under the said Regulation.

No. and Name of Block	Names of the portions of the abandoned estates to be re- afforested	Extent		Remarks
		AC	C	
Block No.9 Nelliampathi es (Unsurveyed)	Alexandria	751	75	The surveyed, demarcated and mapped boundary of the relinquished area of Alexandria, Victoria, Monkwood, Beatrice, Pullala (E & W), Valuvachan, Polayampara, Pothupara, Manalaroo, Padagiri and Riffle Butts estates of the Nelliampathy
	Victoria	619	45	
	Monkwood	232	82	
	Beatrice	279	94	
	Pullala (East & West)	239	99	
	Valuvachan	507	68	
	Polayampara	794	63	
	Pothupara	185	72	
	Manalaroo	459	95	
	Padagiri	6	09	
	Riffle Butts	31	65	
		-----		Coffee estates
		4109	67	

Office of the Diwan of Cochin
Revenue Department
(Separate Revenue)

T.V. Kasthuri Ranga Ayyer
Ag. Diwan of Cochin.

5th February 1933
23rd Makaram 1108"

15. It is not the case of the parties that at any point of time the estate was taken out from the reserved forests. Shri N.N.Sugunapalan, learned Senior Advocate appearing for the petitioner submitted that the enclosures to the reserve forest cannot be treated as reserve forest. He submitted that Notification dated 08.05.1909 which has

been brought on record as Ext.R2(a) mentions coffee estates as enclosures within the State reserve. He submitted that the enclosures within the State reserve are not reserve forest. It is not necessary to dwell any further upon the above submission in view of the subsequent Notification dated 11.02.1933 issued under Section 12 of the Regulation III of 1080 filed as Ext.R2(b). The above Notification has already been extracted which clearly stated that the Diwan thereby declared under the provisions of section 12 of the Cochin Forest Regulation III of 1080, as amended by Regulations VII of 1093 IV of 1096 and I of 1100, the areas, the boundaries of which were described in the schedule given below as "Reserved Forest".

16. Notification dated 11.02.1933 thus clearly declared the area as reserve forest which no longer remains as enclosure in the State reserve. Thus in any view of the matter, by subsequent Notification dated 11.02.1933 the area in question has been declared as reserve forest under Regulation III of 1080 and at no point of time any Notification has been issued taking out the said area out of the reserve

forest. It is further relevant to note that in the original lease deeds from the year 1933 to 1947 the area in question was described as forest area. We thus conclude that the area in question which has been purchased by the petitioner by sale deeds dated 29.04.1994 is comprised in 'reserve forest'. The Issue is answered accordingly.

ISSUE NO.II

17. One the of the submissions raised by Shri N.N.Sugunapalan is that the sale deed dated 26.04.1994 was got registered under the direction of this Court dated 17.03.1994 in O.P. No. 3953 of 1994, hence the State cannot raise any objection regarding the validity of the sale deed on any ground. It is submitted that the State is now estopped from raising any objection against the sale deed dated 26.04.1994. The registering authority did not register the sale deed when it was presented by the petitioner and hence they had approached this Court by filing O.P. No.3953 of 1994, wherein a direction was issued by the High Court to register the sale deed. The mere issuance of direction by this Court to register a document under the Registration Act,

1908 does not mean that the High Court has pronounced about the validity or otherwise of the document which was directed to be registered. The registration of a document has a different consequence and mere direction of this Court to register the document and Registration of document on 26.04.1994 can in no manner estopped the State from raising the issues regarding violation of Section 22 of the 1961 Act in the present writ petition. The State is not raising any objection regarding the registration of the document; rather the submission of respondents in the present case is that there is prohibition in acquiring the right by transfer by the petitioners in the present case. We thus conclude that the State is not estopped from raising its objection on the ground of violation of Section 22 of the 1961 Act.

ISSUE NO.III

18. One of the submissions which has been pressed by learned Special Government Pleader (Forest) appearing for the State is that the sale deed dated 26.04.1994 was void and hit by Section 22 of the 1961 Act. Before we come to

Section 22 of the 1961 Act, it is necessary to look into the earlier two enactments regulating the reserved forests. The Cochin Forest Regulation III of 1080, as noted above, was the first enactment for control over the forest. Section 8 provided that whenever it is proposed to constitute any area as reserved forest, the Diwan shall publish a notification in the Government Gazette declaring that it is proposed to constitute such area as reserved forest. After verification of claims by Forest Settlement officer, under Section 11, a notification is contemplated to be issued and under Section 12, a notification is to be issued declaring the area as reserved forest. Section 13 of Regulation III of 1080 provides for consequence of declaration of reserve forest which was to the following effect:

“13. When any area is constituted a reserved forest under section twelve, all property in or over such area shall vest absolutely in the Government subject to any right of way, right to water, pasture or forest produce that may have been admitted under section eleven; and the management of such area shall vest in the Conservator, subject to the control of the Diwan. No right of any description shall be acquired in or over a reserved forest

except under a grant or contract in writing made by the Diwan on behalf of the Government.”

19. Section 13, as quoted above, thus provided that no right of any description shall be acquired in or over a reserved forest except under a grant or contract in writing made by the Diwan on behalf of the Government. Thus there was clear prohibition of creating any right in or over a reserved forest except under a grant or contract in writing made by the Diwan.

20. The provisions of Regulation III of 1080 were repealed by Act III of 1952 i.e., the Travancore-Cochin Forest Act, 1951 (hereinafter referred to as 'Forest Act 1951'). Chapter II of the Act contains the heading “Reserved Forest”. Section 4 provided for issuance of notification whenever it is proposed to constitute any land as reserved forest. After various proceedings and determination of right by Forest Settlement Officer, final notification is contemplated under Section 19 declaring a reserved forest. Section 19 is quoted as below:

"19. When the proceedings prescribed in the preceding sections

Notification declaring forests reserved.

have been taken, the Government may publish a notification in the Gazette specifying the limits of the forests which it is intended to reserve and declaring the same to

be reserved from a date to be fixed by such notification.

Copies of the notification shall also be published at the headquarters of each Taluk in which any portion of the land included in such notification is situate and in every town and village or pakuthy in the neighbourhood of such land.

From the date so fixed the forest shall be deemed to be a "Reserved Forest".

21. Section 22 of Forest Act, 1951 provided that no right of any description shall acquire in or over a Reserved Forest except as provided therein. Section 22 is quoted as below:

"22. No right of any description shall be acquired in or over a

No right acquired over Reserved Forests except as herein provided.

Reserved Forest except under a grant or contract in writing made by or on behalf of the Government or by or on behalf of some person in whom such right or the power to

create such right was vested when the notification under Section 19 was issued or by succession from such person."

22. Section 22 thus prohibited acquisition of any right in

or over the reserved forest except under the following two circumstances (i) under a grant or contract in writing made by or on behalf of the Government or (ii) by or on behalf of some person on whom such right or power to create such right was vested, when a notification under Section 19 was issued or by succession from such person. Thus apart from the right of Government by a grant or contract the right of person who at the time of issuance of final notification under Section 19 was entitled to create such right was saved. Section 101 of Forest Act, 1951 provided for repeal. Section 101 is quoted as below:

“101. (1) The Travancore Forest Act of 1068 (Act II of 1068) as

subsequently amended and the
Cochin Forest Act (Act III of
1080) as subsequently
amended are hereby repealed.

Repeal.

(2) All references made in any enactment to the enactments hereby repealed shall be read as if made to the corresponding provisions of this Act.

(3) All rules prescribed, appointments made, powers conferred and orders issued under the enactments hereby repealed shall, so far as they are consistent with this Act, be deemed to have been respectively prescribed, made, conferred and issued hereunder”.

23. The Forest Act, 1951 was repealed by the 1961 Act,

1961. The 1961 Act also contains similar provisions regarding reserved forest in Chapter II. Under Section 4 of 1961 Act a notification is to be issued by the Government whenever it is proposed to constitute any land as reserved Forest. Section 6 deals with proclamation by Forest Settlement Officer. Section 7 provides for Bar of accrual of forest right, prohibition of clearings, etc. Section 8 provides for inquiry by Forest Settlement Officer and final notification is contemplated under Section 19 of the 1961 Act which is to the following effect:

“19. When the proceedings prescribed in the preceding sections

Notification declaring forests reserved.

have been taken, the Government may publish a notification in the Gazette specifying the limits of the forests which it is intended to reserve and declaring the same to

be reserved from a date to be fixed by such notification.

Copies of the notification shall also be published at the headquarters of each Taluk in which any portion of the land included in such notification is situate and in every town and village or pakuthy in the neighbourhood of such land.

From the date so fixed the forest shall be deemed to be a “Reserved Forest”.

24. Section 22 of the 1961 Act is relevant for the

present case which provides as follows:

“22. No right of any description shall be acquired in or over a Reserved Forest except under a grant or contract in writing made by or on behalf of the Government or by or on behalf of some person in whom such right or the power to create such right was vested when the notification under Section 19 was issued or by succession from such person”.

25. The question to be answered is as to whether the sale deed dated 26.04.1994 is hit by Section 22. It is also relevant to note Section 85 of the 1961 Act which provides for repeal. Section 85 is *pari materia* to Section 101 of 1951 Act. Section 85 is quoted as below:

“85. Repeal.- (1) The Travancore-Cochin Forest Act, 1951 (III of 1952) and the Madras Forest Act, 1882 (V of 1882) and the Madras Wild Elephants Preservation Act, 1873 (Act I of 1873) as in force in the Malabar District referred to in sub-section (2) of Section 5 of the States Reorganisation Act, 1956, are hereby repealed.

(2) All references made in any enactment to any provision of the enactments hereby repealed shall be read as if made to the corresponding provisions of this Act.

(3) All rules prescribed, appointments made, powers conferred and orders issued under the enactments hereby repealed shall be deemed to have been respectively prescribed, made, conferred and issued hereunder till new rules and enactments are made under the various sections of this Act.”

26. A perusal of the aforesaid statutory provisions of Regulation III of 1080, 1951 Act and 1961 Act makes it clear that after an area is declared as reserved forest, there is prohibition of right of any description under the reserved forest and the statutory scheme admit only following two contingencies when acquisition of any right can be admitted. They are: (i) a grant or contract in writing made by or on behalf of the Government and (ii) by or on behalf of some person in whom such right or the power to create such right was vested when the notification under Section 19 was published or by succession for such person.

27. There is no issue regarding right of Government in issuing a grant or contract. What is the scope and content of right of a private person to create a right of any description in a reserve forest has to be examined. The statutory provision as contained in Section 22 indicates that a grant or contract can be issued only by a person in whom such right or the power to create such power was vested when notification under Section 19 was published. Notification under Section 19 is a final notification declaring the reserved

forest. By virtue of Section 101 of 1951 Act and Section 85 of 1961 Act, the date, on which final notification declaring the reserved forest is issued, is relevant for the aforesaid provision. For the present case the aforesaid date shall be the date i.e. 08.05.1909/11.02.1933 when notification under Section 12 of Regulation III of 1080 was issued. There is a purpose and object for saving the right of a person who had right to create a grant or contract on the date when declaration was issued on reserved forest. The statutory scheme when pins down a particular date, for exercise of right of grant or contract, the said statutory scheme has a purpose and object. Further more Section 22 provides for acquisition of a right by succession from such person. The word 'such person' is a person who has right to create a grant or contract on the date of declaration of reserved forest. Thus the right in reserved forest could acquire only by succession from the person who has such right on the date of declaration of reserved forest. Petitioners in the writ petition do not claim any right of succession from any person who has right to issue any grant or contract on the date on which the

area was declared as reserved forest. Petitioners also did not claim any such right of succession from the original lessees of the area. The word “succession” has been defined in P.Ramanatha Aiyar's Advanced Law Lexicon (4th Edition) which is to the following effect:

“**SUCCESSION**” includes both intestate and testamentary succession.

The process by which one person succeeds another in the occupation or possession of any estate or the like; the act or process of following in order of time or place.

The act or right of legal or official investment with a predecessor's officer, dignity, possessions, or functions; a series of persons following one another; a lineage; an order of descendants. In the law of descent, the coming in of another to take the property of one who dies without disposing of it by will.

The word “succession” is a word of technical meaning, and refers to those who by descent or will take the property of a decedent. It is a word which clearly excludes those who take by deed, grant, gift, or any form of purchase or contract.

The word “succession” is often used synonymously with the word “descent”.

“Succession” is the transmission of the rights and obligations of a deceased to his heirs.”

Similarly the Black's Law Dictionary (9th Edition) defines the word “Succession” has defined as follows:

“**Succession. 1.** The act or right of legally or officially taking

over a predecessor's office, rank, or duties. 2. The acquisition of rights or property by inheritance under the laws of descent and distribution.”

28. The word 'Succession' used in Section 22 thus contemplates testamentary or intestate succession from the deceased. Learned counsel for the petitioners submits that the lease deed did not contain any type of restriction in transfer of the leasehold rights. It is true that in the lease deed dated 09.05.1933, the word 'lessee' was referred to as “hereinafter called the lessee which expression shall include were applicable their heirs, administrators and assigns.” When the statutory provision as contained in Section 13 of Regulation III of 1080, Section 22 of 1951 Act, Section 85 of the 1961 Act permits acquisition of right only by succession, the said expression used in lease deed does not advance the case of the petitioners. The expression defining the lessee as quoted above used the word “were applicable”. Thus for the interpretation of Section 22 it cannot be said that the lessee shall have a right of transferring the land or right can be acquired in a reserved forest by alienation contrary to Section 22.

29. Shri N.N. Sugunapalan, learned Senior Counsel appearing for the petitioners contended that the word 'succession' has a wide meaning and it may include acquisition of right by transfer also. In support of his submission he has placed reliance on the judgment of Apex Court reported in **Sambudamurthi Mudaliar v. The State of Madras and another** [1970 (1) SCC 4]. In the above case the Apex Court was considering the provisions of Madras Hindu Religious and Charitable Endowments Act, 1951. Section 6(9) which defined the term Hereditary Trustee noted in paragraph 2 of the judgment reads as follows:

“2. The appellant brought the suit in O. S. No. 3 of 1961 in the Court of Subordinate Judge, Nagapattinam for setting aside the order dated May 10, 1960 of respondent No. 1 the Commissioner of Hindu Religious and Charitable Endowments, Madras who had affirmed earlier the order of the second respondent, the Deputy Commissioner, holding that the trusteeship of the Kumaran Koil in Manjakollai village was not hereditary. The appellant was elected as a trustee by the Sengunatha Mudaliars of Manjakollai village at a meeting held on June 27, 1957. According to the appellant the temple was founded two hundred years ago by the members of his community and since then the management of the temple and its affairs was always vested in the community of the Sengunatha

Mudaliars and no person other than the elected trustee had at any time the right of management and control of the temple. The appellant said that the temple was declared as an "exempted" temple under the provisions of Madras Act 1 of 1925. The case of the appellant was that the trusteeship of the temple was "hereditary." The respondents, however, took a different view and proceeded on the basis that trusteeship of the Kumaran Koil was not hereditary. The Subordinate Judge held that the appellant was a hereditary trustee and the suit was not barred by limitation. The respondents took the matter in appeal to the Madras High Court which by its judgment dated March 31, 1965 allowed the appeal and set aside the judgment of the Subordinate Judge. Nagapattinam. S.6, sub-section (9) of Madras Act 19 of 1951 states:

"In this Act, unless there is anything repugnant in the subject or context--

xxxx

xxxx

xxxx (9) 'hereditary trustee' means the trustee of a religious institution succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force;"

This Act has been substituted by Madras Act 22 of 1959 but the definition of the trustee is identical in both the Acts."

30. In the above case the Apex Court was considering the word 'succession' in the context of hereditary trustee and following was laid down in paragraph 3 of the judgment which reads as follows:

"3. The question to be considered in this appeal is whether the appellant is a hereditary trustee within the meaning of the

section. The definition includes three types of cases: (1) succession to the office of trusteeship devolving by hereditary right; (2) succession to such office being regulated by usage; and (3) succession being specifically provided for by the founder on condition that the scheme of such succession is still in force. It is not the case of the appellant that the trustees of the temple of the Kumaran Koil are hereditary trustees because their office devolves by hereditary right or because succession to that office is specifically provided for by the founder. The contention on behalf of the appellant is that the succession is "regulated by usage." It was said that according to the usage of the temple the trustees were elected for a period of one year each at a meeting of the members of the Sengunatha Mudaliar Community and so the appellant must be held to be a trustee within the meaning of S.6(9) of Act 19 of 1951. In our opinion, there is no warrant for this argument. The phrase "regulated by usage" in S.6(9) of the Act must be construed along with the phrase "succession to this office" and when so construed that part of the definition would only apply where the ordinary rules of succession under the Hindu Law are modified by usage and succession has to be determined in accordance with the modified rules. The word "succession" in relation to property and rights and interests in property generally implies "passing of an interest from one person to another" (vide in *Re. Hindu Women's Right to Property Act, 1937*, (1941 FCR 12 : AIR 1941 FC 72). It is now well established that the office of a hereditary trustee is in the nature of property. This is so whether the trustee has a beneficial interest of some sort or not. (see *Ganesh Chunder Dhur v. Lal Behary*, (63 Ind App 448 : AIR 1936 PC 318) and *Bhabatarini v. Ashalata*, (70 Ind App 57 : AIR 1943 PC 89). Ordinarily a shebaitship or the office of dharmakarta is vested in the heirs of the founder unless the founder has laid down a special scheme of succession or except when usage

or custom to the contrary is proved to exist Mukherjea J., in Angurbala Mullick v. Debabrata Mullick, (1951 SCR 1125 : AIR 1951 SC 293) delivering the judgment of this Court observed:

"Unless, therefore the founder has disposed of the shebaitship in any particular manner -- and this right of disposition is inherent in the founder -- or except when usage or custom of a different nature is proved to exist, shebaitship like any other species of heritable property follows the line of inheritance from the founder."

In the case of mutts, whose heads are often celibates and sometimes sanyasins, special rules of succession obtain by custom and usage. In Sital Das v. Sort Ram, AIR 1954 SC 606 the law was taken as well settled that succession to mahantship of a mutt or religious institution is regulated by custom or usage of the particular institution except where the rule of succession is laid down by the founder himself who created the endowment. In that case the custom in matters of succession to mahantship was that the assembly of Bairagis and worshippers of the temple appointed the successor; but the appointment had to be made from the disciples of the deceased mahant if he left any, and failing disciples, any of his spiritual kindred. Such a succession was described as not hereditary in the sense that on the death of an existing mahant, his chela does not succeed to the office as a matter of course, because the successor acquires a right only by appointment and the authority to appoint is vested in the assembly of the Bairagis and the worshippers. In Sri Mahant Paramananda Das Goswami v. Radhakrishna Das, (51 MLJ 258 : AIR 1926 Mad. 1012), the Madras High Court took the view that where succession to the mahantship is by nomination by the holder in office, it is not a hereditary succession. In that case Venkatasubba Rao, J., said:

"If the successor owes his title to nomination or appointment, that is, his succession depends on the volition of the last incumbent and does not rest upon independent title. I am inclined to the view

that the office cannot be said to be hereditary."

Krishnan, J., stated as follows:

"Where succession is by nomination by the holder in office of his successor it seems to be impossible to contend that it is a hereditary succession. Hereditary succession is succession by the heir to the deceased under the law, the office must be transmitted to the successor according to some definite rules of descent which by their own force designate the person to succeed. There need be no blood relationship between the deceased and his successor but the right of the latter should not depend upon the choice of any individual."

It is true that the artificial definition of hereditary trustee in S.6(9) of the Act would include even such cases."

31. The above case has thus no application in the present case where the question is succession to property. Present is not a case of succession to any office. It is true that the word succession is also used in the context of an office but present is not a case of succession to office. We thus are of the view that the above judgment of the Apex Court does not help the petitioners in the present case.

32. The Constitution of India contains several provisions for protection of forests. Article 48A provides for protection and improvement of environment and safeguarding of forests and wild life. Article 51A sub-clause (g) provides that it shall be the duty of every citizens of India to protect and improve

the natural environment including forests, lakes, rivers and wild life.

33. The State Legislature, even more than a century ago, have passed legislation for protection of forests. An area when declared as reserved forests, it has to be maintained as such and it is the obligation of the forest department of the State to maintain reserved forests. The provisions of Section 22 of 1961 Act has been enacted with the object of creating restrictions of acquisition of right in a reserved forest which has been imposed with an object and the provisions of Section 22 has to be interpreted keeping in mind the very object and purpose of the Act. We thus conclude that the petitioner could not have acquired any right in the reserved forest contrary to the provisions of Section 22 of the Act, it is also relevant to note that as per the proviso to Section 22, no Patta without previous sanction of the Government can be granted for any land included within the reserve forests. When the grant of patta is prohibited without sanction of the Government, we fail to see any reason in permitting a private owner to grant right by

transfer in a leased area without sanction from the State Government. Thus the restriction under Section 22 prohibited the vendor, from whom the petitioners acquired the leased area by sale deed dated 26.04.1994. We thus hold that sale deed dated 26.04.1994 was hit by Section 22 and no valid right could be claimed by the petitioners in the leased area. We however leave it open for the petitioners to take such remedy against the vendor as permissible under law.

ISSUE NO.IV

34. One of the submissions pressed by learned Special Government Pleader (Forests) is that the order of the State Government dated 24.06.2011 cancelling the lease deed is also supportable on the ground that petitioner has violated the terms and conditions of the lease. It is submitted that both in the show cause notice issued to the petitioner as well as in the order cancelling the lease, violation of the terms and conditions of the lease was found. For appreciating the aforesaid submission, the terms and conditions of the lease deed are to be noted. Clauses 4, 5 and 10 in the lease deed

dated 09.05.1933 are relevant and are extracted below:

“4. 82.45 acres of land thus leased out shall be used by the lessees for raising catchcrops at their option provided the nature of the crops is not in the opinion of the Conservator of Forests injurious to the soil. The Lessees shall develop 16 and odd acres each year so that the whole area is developed by the end of the 5th year.

5. For purpose of this lease the Conservator of Forests shall be regarded by the Lessees as a Superior authority in matters relating to their leased forests and if in his opinion any injury of permanent nature is done to the land whereby the land becomes unfit for the growth of valuable timber, the Lessees shall be liable to pay a fine of Rs.10/ per acre.

10. In the event of the Lessees making default in the observance or fulfillment of any of the terms and conditions herein contained and failing to remedy such default for six months after notice so to do shall have been given to them by the Conservator of Forests the Lessor shall be at liberty at any time thereafter after notice to the Lessees and hearing them in person or through their agent or vakil duly appointed about the failure of the Lessees to remedy such defaults they may be reported to the Lessor from time to time by the Conservator of Forests to determine this lease and the Lessees shall forthwith vacate the land hereby leased and demised and notwithstanding such determination of this lease be liable for any loss which the Lessor may sustain by reason of such default and all such improvements made by the Lessees on the land hereby leased and demised as exist at the time of vacating the same must be left in tact and no compensation therefore can be claimed.”

35. The forest land was leased to the original lessee for

the purpose of cultivation of coffee, cardamom and other products. Clauses 4, 5 and 10 are the terms and conditions of the lease. Under Clause 4 the leased land was required to be used by lessee for catchcrops. The Conservator of Forest was the superior authority in the matter relating to lease of forest land and under Clause 10, lease was liable to be determined on committing any default. The petitioner has started using leased area for running a resort. The Conservator of Forest has issued a letter dated 25.11.2002 informing the petitioner that they are not allowed to take up any activities in the leased area, other than those permitted. The letter further mentioned that it had come to the notice of the department that the Estate Authorities had already started entertaining the tourists in the area. Petitioners were put to notice that the lease was liable to be prematurely terminated. It is useful to refer to the following extract from letter dated 25.11.2002 issued by the Conservator of Forest :

“The Government has leased out the land for the limited purpose of raising catchcrops under tree cover. The tourism activity now proposed by the Estate Management amounts to non-forestry

activity and hence clearance of Government of India is also required under the provisions of Forest Conservation Act, 1980. Further, Government of Kerala have not taken any policy decision in promoting tourism activities within the leased out forest areas and hence the Department cannot permit you to conduct tourism within the forest area leased for the purpose of cultivation of coffee, cardamom etc. Further you are not allowed to take up any other activity in the leased area other than those permitted in the lease deed. Under these circumstances the application for permission submitted by the estate authorities as per letters cited is rejected. It has come to the notice of the department that the Estate authorities have already started entertaining tourists in the area. You may also take note that the violation of lease conditions and conduct of non-forestry activity within the leased area without clearance of Government of India under the Forest Conservation Act, 1980, may force the department to initiate action for premature termination of the lease. Hence you are advised not to resort to any activity not permitted under the agreement.

xx xx xx .”

36. On receipt of the letter dated 25.11.2002 the petitioner rushed to this Court by filing O.P. No.38847 of 2002. The petitioners also prayed for an interim order directing the respondent not to interfere in their running of tourist activities. An interim order was passed by this Court in the aforesaid writ petition, which, however, came to an end on 19.11.2004. The petitioner even after the expiry of the

interim order continued to carry on the tourist activities in the leased area as has been reported by the Divisional Forest officer in its letter dated 21.08.2006 Ext.R2(d). The Flying Squad of Divisional Forest Officer inspected the estate on 16.08.2006. It was reported that the petitioner was running a resort namely "Tropical Hill Resort" at Nelliampathy Hills. Inspection team took various registers, bill etc from the Resort. The Divisional Forest Officer in his letter dated 21.08.2006 has reported that the last stay of the tourist was on 01.08.2006. It is thus clear that even after vacation of the interim order obtained by the petitioner in O.P. No.38847 of 2002, they continued with the tourist activities in the said area for more than 1½ years. As noted above, the terms and conditions of lease deed oblige the petitioner to use the estate for growing catchcrops. Use of the estate for any other purpose by the petitioner was also a clear violation of the terms and conditions of the lease and we do not find any error in the finding of the State Government that the petitioner had violated the terms and conditions of the lease and hence the leased area was liable to be resumed by the

State. The State has also recorded a finding that the application of the petitioner for amendment of the conditions of lease to include the tourist activities was rejected by the Forest Officer, Nenmara. Since the tourist activity is a non-forestry activity, starting of resort activity could not have been permitted. We thus hold that cancellation of lease for violation of the lease conditions was fully justified. Issue No.IV is answered accordingly.

ISSUE NO.V

37. The 1980 Act has been enacted by the Parliament for the conservation of forests and for matters connected therewith or ancillary or incidental thereto. The Statement of objects and reasons for the enactment of the 1980 Act states “deforestation causes ecological imbalance and leads to environmental deterioration. De-forestation had been taking place on a large scale in the country and it had caused widespread concern....”. Section 2 of the 1980 Act contained a restriction on the de-reservation of forests or use of forest land for non-forest purpose. Section 2 as amended by Amendment Act 1988 is as follows:

“2. Restriction on the de-reservation 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 organisation 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 reafforestation.

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 reafforestation;
- but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment 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.”

Preservation and conservation of forests have always weighed with the Legislature in the State of Kerala as well as Central Legislature while enacting laws even before the enforcement of the Constitution of India. The Apex Court in **M.C. Mehta v. Kamal Nath and Others** ([1997] 1 SCC 388) had occasion to consider the principle of 'public trust doctrine' which enjoins the State to protect the natural resources such as rivers, forests, seas shores, etc., for the purpose of protecting the eco system. The following was laid down by the Apex Court in paragraphs 25 and 34:

“25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature. They should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority.

Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but

it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third, the property must be maintained for particular types of uses.

34. Our legal system based on English Common Law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is beneficiary of the sea shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.”

The Apex Court again in **Samatha v. State of A.P** ([1997] 8 SCC 191) has occasion to consider the provisions of the 1980 Act. Noticing Section 2 of the 1980 Act, the Apex Court held that Section 2 prohibits de-reservation of forest or use of any forest land for non-forest purpose or assignment by way of lease or any portion thereof by way of lease or otherwise to any private person or to any authority or corporation, agency or any other organization not owned, managed or controlled by the Government. In paragraph 121, the following was laid down by the Supreme Court:

“121. It would thus be seen that 'forest' bears extended

meaning of a tract of land covered with trees, shrubs, vegetation and undergrowth inter mingled with trees with pastures, be it of natural growth or man made forestation. The FC Act, as amended by 1988 Act was enacted to check deforestation and conservation of forest. Sub-s.(2) with a non obstante clause on deforestation of forest or use of forest land for non forest purposes; regulates the forest and provides that notwithstanding any other law for the time being in force in the State, no State Government or other authority shall make, except with prior approval of the Central Government, (i) any order directing that any reserved forest or any portion thereof shall cease to be a reserved forest, (ii) that any forest land or 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 or corporation, agency or any other organisation, not owned, managed or controlled by the Government, (iv) that any forest land or any portion thereof may be cleared or trees which have grown natural in the land or portion for the purpose of using it for reforestation. Clauses (iii) and (iv) were added by Amendment Act 69 of 1988 w.e.f. December 19, 1988. The explanation thereto of non forest purpose was defined to mean the breaking up or clearing of any forest land or portion thereof for the cultivation of but does not include any work relating to ancillary to conservation development and management of forest and wild life, namely, establishment of check posts, fire lines or other like purposes. S.2, therefore, prohibits de - reservation of the forest or use of any forest land for and non forest purpose or assignment by way of lease or otherwise of any portion of land to any private person other than Government controlled or owned, organised or managed by the State Government agency; it prohibits clearance of trees or natural growth in the forest land or any portion thereof

to use it for reforestation, except for preservation. Breaking up or clearance of forest land or a portion thereof is amplified to be of non forest purpose. The object of the F.C. Act is to prevent any further deforestation which causes ecological imbalance and leads to environmental degradation. It is, therefore, necessary for the State Government to obtain prior permission of the Central Government for (1) de - reservation of forest; and (2) the use of forest land for non forest purpose. The prior approval of the Central Government, therefore, is a condition precedent for such permission. The State Governments are enjoined by FC Act, with power coupled with duty, to obtain prior approval of the Central Government. The leases/renewal of leases otherwise are good.

38. In **T.N. Godavarman Thirumulpadu v. Union of India** [AIR 1997 SC 1228] the Apex Court had occasion to consider Section 2 of the 1980 Act. It was held that Section 2 shall apply clearly to all forests irrespective of the ownership or classification thereto. In paragraph 4 of the judgment, following was held:

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

the Forest Conservation Act. The term "forest land", occurring in Section [2](#), will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section [2](#) of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica quarry Works and Ors. v. [State of Gujarat and Ors.](#)*: AIR1986SC1620, *Rural Litigation and Entitlement Kendra v. [State of U.P.](#)*: AIR1988SC2187 , and recently in the order dated 29th November, 1996 in W.P.(C) No. 749/95 (*Supreme Court Monitoring Committee v. Mussorie Dehradun Development Authority and Ors.*). The earlier decision of this Court in *State of Bihar v. [Banshi Ram Modi and Ors.](#)*: AIR1985SC814 , has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

39. Shri M.P. Madhavankutty, learned Special

Government Pleader has referred to and relied on a judgment of the Division Bench of this Court in **Jairaj A.P. v. Chief Conservator of Forests (Wild life) and Others** (ILR 1996 [2] Kerala 270). In the above case, the State Government proposed a construction of forest lodge in the buffer zone of Parambikulam Wild Life Sanctuary. The proposed construction was challenged on the ground that it violates Section 2 of the 1980 Act since prior approval of the Central Government has not been obtained. The Apex Court upheld the challenge and issued a writ of mandamus. The following was laid down in paragraph 8:

“8. The requirement in S.2 for prior approval of Central Government must be strictly construed as any relaxation of it would be perilous to the fast depleting forest wealth of the country. One of the directive principles of State Policy is to "safeguard the forests and wild life of the country" (Art.48A of the Constitution). One of the fundamental duties of every citizen of India is to protect and improve forests (Art.51A Clause (g)). So clearance of forest area should be allowed only as a stark exception. When Parliament insisted that such clearance can be made only with the prior permission of Central Government the rule should be rigorously followed. Forest wealth is already an endangered bounty of nature.”

40. Shri N.N.Sugunapalan, learned Senior Advocate for

the petitioner has relied on the Division Bench judgment of this Court in **Nature Lovers Movement v. State of Kerala** (ILR 2000 [3] Kerala 219). It is contended by the learned Senior Advocate that when the forest has been cleared prior to the enforcement of the 1980 Act, prior approval of the Central Government is not necessary. In the above case Original Petition was filed in public interest for a declaration that all leases, licences and grants given by the State Government in respect of the forest land stood automatically expired on the commencement of the 1980 Act, and a prayer was made for quashing Exts.P1 and P2 granting lease and licences to various persons after the commencement of the 1980 Act. The Division Bench in the above case held the following in paragraph 6:

“6. The main question that arises for consideration in this writ petition is whether the prior approval of the Central Government is a sine-qua-non before renewing/extending leases of plantations which had been broken up and used for the non forest purposes of plantation activity even before the coming into force of the Act. In this connection, it has to be noted that the question has to be answered . with reference to the type of activity carried on in the land. Admittedly, the land in question is a plantation and in order to continue the plantation activity in the

estate no further 'breaking up' of the area is required, whereas, all that is required is only periodical "shade tree lopping" which is not an activity prevented by any law in force. The plantation activity will not result in further deforestation. These facts are admitted in Para.6 of the counter affidavit filed by the State Government on 21st February 1996. Admittedly, plantation activity can be called a form of afforestation as plantations provide more than 40 percent green cover, as in the case of a dense forest. The case of plantation is different from the case of mining leases in forest land where for every mining activity, breaking up of the forest is involved".

The Apex Court had occasion to consider the issue as to whether the 1980 Act has any retrospective operation in a case arising out of the Full Bench judgment of this Court in **Nature Lovers Movement v. State of Kerala** ([2009] 5 SCC 373). The Writ Petition was dismissed by the High Court holding that the 1980 Act was prospective in operation and the provisions contained therein were not applicable to the cases where land was used for non-forest purpose prior to 25.10.1980. Considering the object of the 1980 Act, the following was laid down by the Apex Court in paragraphs 39, 47 and 48:

"39. Undisputedly, the object of the 1980 Act is conservation of forest and to prevent depletion thereof. Therefore,

the Court is bound to interpret the provisions of that Act which would further the object of the legislation. After enforcement of the 1980 Act, the State Governments were denuded of suo moto power to deal with reserved forest or forest land and permit use thereof for non forest purposes. They could do so only after obtaining prior approval of the Central Government. However, as large tracts of reserved forests and forest land had been occupied by landless poor, who also undertook cultivation for their sustenance many decades before the enactment of the 1980 Act, and there was demand from several quarters that old occupation of the forest land may be regularised, the Government of India, after taking note of the recommendations made in the Forest Ministers Conference and committee appointed by it, issued guidelines for grant of approval to the decision taken by the State Governments before the enforcement of the 1980 Act, i.e., 25/10/1980 to regularize encroachments made on forest land and / or use thereof for non forest purpose. This necessarily implies that where the State Government had not taken any policy decision to regularize pre 25/10/1980 occupation / encroachment of forest land no order for regularization of such occupation / encroachment can be passed without obtaining prior approval of the Central Government in terms of S.2 of the 1980 Act which, as mentioned above, contains a non obstante clause.

47. The ratio of the above noted judgments is that the 1980 Act is applicable to all forests irrespective of the ownership or classification thereof and after 25/10/1980, i.e., date of enforcement of the 1980 Act, no State Government or other authority can pass an order or give a 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 grant

any lease, etc. in respect of forest land to any private person or any authority, corporation, agency or organization which is not owned, managed or controlled by the Government.

48. Another principle which emerges from these judgments is that even if any forest land or any portion thereof has been used for non forest purpose, like undertaking of mining activity for a particular length of time, prior to the enforcement of the 1980 Act, the tenure of such activity cannot be extended by way of renewal of lease or otherwise after 25/10/1980 without obtaining prior approval of the Central Government.”

The Apex Court had disposed of the aforesaid appeal by issuing certain directions and declaration in paragraph 52 which are to the following effect:

“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 hectares of forest land to unauthorized 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 de-reservation 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 organization not owned,

managed or controlled by the Government except after obtaining prior approval of the Central Government.

(3) Conclusion No.D recorded 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 hectares 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 regularization of encroachments on forest land.”

41. In the present case as noted above, the State issued show cause notice for cancellation of the lease on the ground that petitioners are using the leased land for running a tourist resort which is a non-forest activity requiring prior approval of the Central Government under Section 2 of the 1980 Act. The Division Bench judgment as relied on by the petitioners in **Nature Lovers Movement v. State of Kerala** (supra) does not help the petitioner in the present case.

42. Learned Senior Advocate for the petitioner further

placed reliance on the judgment of the Apex Court in **State of Bihar v. Banshi Ram Modi** ([1985] 3 SCC 643) in support of his argument that in event permission had been granted for breaking of reserve forest prior to enforcement of the 1980 Act, permission of the Central Government is not required. It is submitted that in the present case plantation lease was granted prior to the enforcement of the 1980 Act, hence the provisions of the the 1980 Act shall not apply. The judgment in **State of Bihar v. Banshi Ram Modi** (supra) was explained by the Apex Court in a Constitution Bench in **Ambica Quarry Works v. State of Gujrat and Others** ([1987] 1 SCC 213) where it was held that the ratio of judgment in **State of Bihar v. Banshi Ram Modi** (supra) has to be understood in the background of facts of that case. As noted above, in **Nature Lovers Movement v. State of Kerala** (supra) after considering all the relevant judgment, the Three Judges Bench held that after enforcement of the 1980 Act neither the State Government nor any authority can make an order or direction for de-reservation of forest or permit use of forest land for non-

forest purpose or any portion thereof assigned by way of lease or otherwise to any private person or to any authority or corporation, agency or any other organization not owned, managed or controlled by the Government except with the prior approval of the Central Government. From the above discussion it is clear that petitioner has used the leased land for non-forest purpose, i.e., for running tourism resort after the enforcement of the 1980 Act which was in clear violation of the provisions contained in Section 2 of the 1980 Act. For violation of the statutory provisions as contained in Section 2 of the 1980 Act, the State has rightly proceeded to issue show cause notice to the petitioner and cancelled the lease. The action of the State for cancellation of the lease granted to the petitioner was thus fully in accordance with the provisions of the 1980 Act. Ext.P10 cannot be faulted.

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43. Learned Senior Advocate for the petitioner has contended in support of the Writ Petition that petitioner was running a tourist resort only in a part of the leased land and

at best the State could have proceeded against that portion of the lease on which non-forest activity was carried on. The State has no authority or right to cancel the entire leased area which was purchased by the petitioner on 26.04.1994. The above submission raised by the learned counsel for the petitioner has been refuted by the learned Special Government Pleader appearing for the State. It is submitted by the learned Special Government Pleader that in reply to the show cause notice dated 04.01.2008 given to the petitioner no such plea was raised by the petitioner. Learned Special Government Pleader has referred to the reply submitted by the petitioner dated 14.03.2008, Ext.P8.

44. We have perused the reply given by the petitioner to the show cause notice. Although in the reply it was admitted that petitioner was running home stay facility which was stopped after the stay order was vacated in the Original Petition filed by the petitioner in this Court challenging the notice dated 25.11.2002, there was no such plea in the reply that petitioner is running the tourism resort in any part of the leased area of land. No such details were

mentioned in the reply. In the Writ Petition in any of the paragraphs also, no such plea was raised by the petitioner that the petitioner was carrying tourist resort only in a particular portion of the lease and respondents are not entitled to cancel the entire lease area. There being no pleading on behalf of the petitioner that the petitioner is carrying on tourism activities only in a portion of the leased area, it was not necessary for the State to consider any such plea. Moreover, petitioner having violated the terms and conditions of the lease, as held above, the State was well within its power and jurisdiction to cancel all the leases which leased area was purchased by the petitioner by sale deed dated 26.04.1994.

45. In view of the foregoing discussion we are of the view that petitioner has not made out any ground for setting aside Ext.P10 order cancelling the lease deed in respect of Miraflores Estate of 486.63 Acres. The State has after issuance of Ext.P10 order has already resumed the land on 27.06.2011.

46. Now we come to W.A. No.89 of 2011 which has been

filed by the State against the judgment dated 11.08.2010 by which judgment, the learned Single Judge has directed the respondents to conduct a comprehensive survey and demarcate and measure 486.63 acres possession of which forest land was claimed by the petitioner. Learned Single Judge further directed for payment of cost of Rs.25,000/-. The State in its counter affidavit filed in the Writ Petition has pleaded that survey was already conducted and boundaries demarcated. A survey sketch was also filed along with the counter affidavit as Ext.R3(a). Learned counsel for the appellants is also right in his submission that there was no ground for imposing the cost of RS.25,000/- on the State. For the reasons, we have noted above, the Writ Appeal filed by the State is to be allowed setting aside the judgment of the learned Single Judge dated 11.08.2010.

The Writ Appeal and Writ Petition are disposed of as follows:

(1) W.P. No.18339 of 2011 is dismissed.

**(2) W.A. No.89 of 2011 is allowed.
The judgment of the learned Single Judge**

**in W.P(C) No.35736 of 2002 dated
11.08.2010 is set aside and W.P(C)
No.35736 of 2002 is dismissed.**

Parties shall bear their costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**P.R. RAMACHANDRA MENON,
JUDGE.**

vsv/ttb