IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH, 2020

PRESENT

THE HON'BLE MR. ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

WRIT PETITION NO. 1072/2018 (GM-FOR-PIL)

BETWEEN:

1. MR. NARENDRA BELIMALE
   S/O LATE HONNAPPA GOWDA
   AGED ABOUT 44 YEARS
   BELIMALE HOUSE

2. MR. UDAYA KOPPADKA
   S/O LATE THIRTHARAMA GOWDA
   AGED ABOUT 37 YEARS
   KOPPADKA HOUSE

3. MR. LAVITH P K
   S/O KRISHNAPPA GOWDA
   AGED ABOUT 33 YEARS
   PADPU HOUSE

4. MR. SHESHAPPA
   S/O ANGARA MAILA
   AGED ABOUT 67 YEARS
   SANTHADKA HOUSE

5. MR. MAHESH K P
   S/O PARAMASHIVAN

AGED ABOUT 41 YEARS
GOONDKA HOUSE

6. MR. SHIVAPPA
S/O KUSAPPA MALE
AGED ABOUT 69 YEARS
ANJANAKAJE

7. MR. K R GOPALAKRISHNA
S/O K N RAMAKRISHNAIAH
AGED ABOUT 57 YEARS
IDYADKA HOUSE

8. MR. K P ANANTHASHAYANA
S/O LATE PUTTANNA GOWDA
AGED ABOUT 40 YEARS
KINNANA HOUSE

9. MR. MUSTHAFA P M
S/O LATE MOHAMMAD P
AGED ABOUT 37 YEARS
PADNADKA HOUSE

(PETITIONER NOS. 1 TO 9 ARE
R/OF KALMAKARU VILLAGE
SULLIA TALUK – 574 218, D.K.)

10. MR. JAYARAM .A
S/O LATE PUTTANNA GOWDA
AGED ABOUT 60 YEARS
ALKABE HOUSE

11. DR. SOMASHEKAR K L
S/O LATE LAKSHMANA GOWDA
AGED ABOUT 38 YEARS
KUJUGODU KATTEMANE HOUSE

12. MR. RADHAKRISHNA K
S/O LATE KUSHALAPPA GOWDA
AGED ABOUT 29 YEARS
KUJUGODU KATTEMANE HOUSE

13. MR. JAYANTH B
S/O DHARMAPALA GOWDA B
AGED ABOUT 31 YEARS
BALAGODU HOUSE

14. MR. BABU K
S/O LATE MOONTA K
AGED ABOUT 60 YEARS
BETTUMUKKI HOUSE

15. MR. SHEENAPPA P
S/O PODIYA P
AGED ABOUT 36 YEARS
POYYAGADDE HOUSE

16. MR. BHAVITH KUMAR S
S/O VASUDEVA GOWDA
AGED ABOUT 30 YEARS
SHIVALA HOUSE

17. MR. SHIVAKUMARA S P
S/O PERAPPA GOWDA
AGED ABOUT 27 YEARS
SHIVALA HOUSE

18. MR. RAJESH S
S/O PURUSHOTHAM GOWDA
AGED ABOUT 27 YEARS
SHIVALA HOUSE

19. MR. TEJAKUMARA T
S/O LATE GODDAPPA GOWDA
AGED ABOUT 33 YEARS
THALOORU HOUSE

20. MR. DEVIPRAKASH K K
S/O K R MOHAN GOWDA
AGED ABOUT 36 YEARS
KIRIBAGH HOUSE

(PETITIONER NOS. 10 TO 20 ARE
R/O BALAGODU POST & VILLAGE
SULLIA TALUK -574 218 D.K.)

…PETITIONERS

(BY SRI BRIJESH PATIL FOR SRI P N HEGDE, ADVOCATES)

AND:

1. GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT, FOREST AND
CLIMATE CHANGE (ESZ-DIVISION)
205, VAYU, 2ND FLOOR
INDIRA PARYAVARAN BHAVAN
ALIGANG, JOR BAGH ROAD
NEW DELHI-110 001

2. THE STATE OF KARNATAKA
REP BY ITS PRINCIPAL SECRETARY
DEPARTMENT OF FOREST
VIDHANA SOUDHA
BANGALORE-01

3. PRINCIPAL CHIEF CONSERVATOR OF FOREST
ARANYA BHAVAN, 18TH CROSS
MALLESHWARAM, BANGALORE-03

4. MONITORING COMMITTEE
REPRESENTED BY ITS CHAIRMAN
PUSHPAGIRI WILDLIFE SANCTUARY
ECO SENSITIVE ZONE
OFFICE AT REGIONAL COMMISIONER
MYSORE – 570 001

…RESPONDENTS

(BY SRI UNNIKRISHNAN .M, CGC FOR R-1;
SRI A C BALARAJ, AGA FOR R-2 & 3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTIFICATION AT ANNEXURE-C DATED 28.06.2017 ISSUED BY RESPONDENT NO.1.

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

ORDER

Heard the learned counsel appearing for the petitioners, the learned CGC appearing for the first respondent and the learned Additional Government Advocate appearing for the second and third respondents. By consent, the petition is taken up for final disposal.

2. On 13th January 2016, a draft notification was published by the first respondent in exercise of the powers under sub-section (1) read with clause (v) and clause (xiv) of sub-section (2) and sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 (for short 'the said Act of 1986') proposing to declare certain areas around the boundary of Pushpagiri Wildlife Sanctuary as Eco-sensitive Zone. The draft notification was published as required by sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 (for short 'the said Rules'). On 28th June 2017, a final notification was published by the first respondent. The final notification provided that the Village Kalmakar of Sulya Taluk was included in the Eco-sensitive Zone around Pushpagiri Wildlife Sanctuary.

3. The contention of the petitioners in this petition is that in view of clause (a) of sub-rule (3) of Rule 5 of the said Rules, whenever the first respondent proposes to impose prohibition or restriction on the location of an industry or carrying on the

processes and operations in an area, it may, by a notification in the Official Gazette, give notice of its intention to do so. Clause (b) of sub-rule (3) of Rule 5 requires that the notification in terms of clause (a) of sub-rule (3) of Rule 5 must give a brief description of the area, the industries, operations and processes in the area about which such notification pertains. Under clause (c) of sub-rule (3) of Rule 5, any person interested in filing an objection against the imposition of proposed prohibition or restriction is entitled to file objections within sixty days from the date of publication of the notification in the Official Gazette. The learned counsel appearing for the petitioners submits that as the area of the Village Kalmakar was not included in the draft notification dated 13th January 2016, the petitioners were prevented from exercising the right of filing objections as required by clause (c) of sub-rule (3) of Rule 5 of the said Rules. He would, therefore, submit that the impugned notification dated 28th June 2017 to that extent is illegal and deserves to be set aside.

4. The learned CGC appearing for the first respondent does not dispute that the area falling within the jurisdiction of the village Kalmakar was not included in the draft notification dated 13th January 2016.

5. In view of this undisputed factual position, the impugned notification dated 28th June 2017 only to the extent to which the name of the Village Kalmakar is included in the Eco-sensitive Zone around Pushpagiri Wildlife Sanctuary becomes illegal and deserves to be set aside. The reason being that the petitioners were denied an opportunity to object to the inclusion of the name of the said village in the notification.

6. We make it clear that we are not disturbing any other part of the impugned notification relating to any other area. The name of the village Kalmakar appears at Sl.No.6 in Annexure-IV to the impugned notification which records that the said village falls within the Eco-sensitive Zone around Pushpagiri Wildlife Sanctuary.

7. Accordingly, we pass the following order:

(i) The impugned notification dated 28th June 2017 (Annexure-C) only insofar as it includes the name of the village Kalmakar in Sulya Taluk, Dakshina Kannada District in Annexure-IV thereto is hereby quashed and set aside. The rest of the notification is not disturbed;

(ii) It will be open for the first respondent to issue a fresh notification in terms of clause (a) and clause (b) of sub-rule (3) of Rule 5 of the said Rules in relation to the said Kalmakar village proposing to include its same in the Eco-sensitive Zone around the boundary of Pushpagiri Wildlife Sanctuary. If such a notification is issued, it is obvious that the petitioners will be entitled to file their objections in writing within sixty days from the date of publication of such notification in the Official Gazette;

(iii) The issue whether the Village Kalmakar or any part thereof can form a part of Eco-sensitive Zone of Pushpagiri Wildlife Sanctuary is expressly kept open;

(iv) The writ petition is partly allowed on the above terms.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

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