

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

W. P. No. 31017-18/2013

BETWEEN:

M/s. Brigade Enterprises Ltd. & Another

PETITIONERS

And

State of Karnataka & Others

RESPONDENTS

SYNOPSIS

The 2nd Respondent granted the lease of 34 Acres of land in Survey No. 28 of Arisinaguppa Village, Chikmagalur District in favour of the 1st Petitioner in accordance with Rule 19(1)(d) of the Karnataka Land Grant Rules, 1969 for a period of 30 years for the purpose of construction of a resort. The Petitioners are aggrieved by the order bearing No. M4/LNDCR/160:2002-03 dated 08.11.2011 passed by the 2nd Respondent whereby the 2nd Respondent has arbitrarily, illegally, without following the due process of law, and with complete non-application of mind, unilaterally terminated the lease deed dated 05.05.2004 executed by the Governor of Karnataka in favour of the 1st Petitioner in respect of 34 Acres of Gomal Land in Survey No. 28 of Arisinaguppa Village, Chikmagalur District. It is respectfully submitted that the impugned order passed by the Deputy Commissioner (2nd Respondent) is arbitrary and unjust. The Petitioners have suffered immense losses as a result of the purported termination of the lease deed.

Place: Bangalore

Date:

Advocate for Petitioners

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

W. P. No. 31017-18/2013

BETWEEN:

M/s. Brigade Enterprises Ltd. & Another

PETITIONERS

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State of Karnataka & Others

RESPONDENTS

LIST OF DATES AND EVENTS

DATE	PARICULARS
16.01.2002	The 1 st Petitioner addressed a letter to the 2 nd Respondent requesting him to allot land measuring 34 Acres in Survey No. 28 at Arashinaguppe Village for the purpose of construction of a resort.
26.08.2002	Based on the representations made by the 1 st Petitioner, The Zilla Panchayath, Chikmagalur unanimously opined and resolved that they had no objection for grant of the aforementioned land to the 1 st Petitioner for the establishment of resort.
11.04.2003	The 2 nd Respondent addressed a letter to the Principal Secretary, Revenue Department stating that he had conducted the spot investigation on 28.11.2002 and that since the said land does not bear any trees the same could be considered for grant.
12.12.2003	The Principal Secretary, Revenue Department informed the 2 nd Respondent that the Government had permitted to grant lease of the aforementioned land under Rule 19 of the Karnataka Land Grant Rules
01.01.2004	The 2 nd Respondent issued an Order granting the lease of the aforementioned land in favour of the 1 st Petitioner for a period of 30 years
05.05.2004	Registered lease deed came to be executed by the 1 st Respondent in favour of 1 st Petitioner
20.08.2007	The Dasarahalli Village Panchayath issued a license for construction and renovation of buildings along with details pertaining to the building sanctioned.
25.08.2007	The Karnataka State Pollution Control Board issued a letter to the 1 st Petitioner informing that the Board has cleared the project from the water and air pollution point of view for setting up a resort
14.12.2007	The Karnataka Udyog Mitra issued a letter to the 1 st Petitioner informing

	that the project proposal has been considered by the State Level Single Window Clearance Committee.
19.03.2008	The 3 rd Respondent issued a notice based on the complaint filed by one Sridevi Hulikere, D V Girish and S Dinakar Rao stating that the 1 st Petitioner was carrying on construction activities in violation of the interim order passed by the Hon'ble Supreme Court in WP No. 202/1995 and in contravention of the Conservation of Forest Act, 1980, Environment Protection Act, Forest Act, 1963 and Wild Life Protection Act, 1972.
09.04.2008	The 1 st Petitioner submitted a detailed reply to the aforementioned notice to the 3 rd Respondent detailing the manner in which permission was accorded by the Government at various levels for the construction of the project.
15.03.2011	Certain persons claiming to be residents of Arishinagupp Village filed a Writ Petition bearing No. 6860/2008 seeking to quash the order dated 01.01.2004 issued by the 2 nd Respondent on the ground that it violated the provisions of the Karnataka Land Revenue Rules, 1966 and the Karnataka Land Grant Ruled, 1969. This Hon'ble Court, after having considered the various grounds raised by the Petitioners therein, rejected the contentions raised by them and disposed of the said Writ Petition
30.07.2011	The 2 nd Respondent issued a notice seeking to terminate the lease granted in favour of the 1 st Petitioner stating that that a meeting was held under the chairmanship of the Chief Conservator of Forest on 24.03.2011 wherein it has been decided to cancel the lease so granted to the 1 st Petitioner for construction of the resort.
26.09.2011	The 1 st Petitioner submitted a detailed reply to the aforementioned notice dated 30.07.2011 issued by the 2 nd Respondent.
08.11.2011	The 2 nd Respondent issued an Order terminating the lease deed dated 05.05.2004 executed in favour of the 1 st Petitioner.
	Hence this Petition.

Place: Bangalore

Date:

Advocate for Petitioners

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

WRIT PETITION NO. ____/2013

BETWEEN:

1. **M/S. BRIGADE ENTERPRISES LIMITED.,**

A Company registered under the provisions of the Companies Act, 1956 having its office at 29th & 30th Floors, World Trade Center, Brigade Gateway Campus, 26/1, Dr Rajkumar Road Malleswaram-Rajajinagar, Bangalore 560 055

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PETITIONER NO. 1

2. **MR. SURESH YADWAD,**

S/o. Sri. C.S Yadwad,
Aged about 47 years, Residing at A-117, May Flower, Brigade Millennium, J.P.Nagar 7th Phase, Bangalore -560 078

...

PETITIONER NO. 2

AND

1. **STATE OF KARNATAKA**

Represented by its Chief Secretary, Vidhana Soudha, Dr. B.R. Ambedkar Veedhi, Bangalore – 560 001

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RESPONDENT NO. 1

2. **DEPUTY COMMISSIONER**

Chikmagalur District,
Chikmagalur – 577 101

...

RESPONDENT NO. 2

3. **DEPUTY CONSERVATOR OF FORESTS**

Chikmagalur Division,
Chikmagalur

...

RESPONDENT NO. 3

4. **THE PRINCIPAL SECRETARY TO GOVERNMENT,**

Department of Forest Ecology and Environment, M.S. Building, Dr. Ambedkar Veedhi, Bangalore – 560 001

...

RESPONDENT NO. 4

MEMORANDUM OF WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA

The Petitioners above named respectfully submits as under:

1. The addresses of parties for service of processes issued from this Hon'ble Court are as stated in the cause title above. The Petitioners may also be served through their

Counsel, IndusLaw, 101, I Floor, Embassy Classic, No. 11, Vittal Mallya Road, Bangalore 560 001.

2. The address of the Respondents for the service of notice is as shown in the cause title.
3. The Petitioners are aggrieved by the order bearing No. M4/LNDCR/160:2002-03 dated 08.11.2011 passed by the Deputy Commissioner, Chikmagalur District, whereby the Deputy Commissioner has arbitrarily, illegally, without following the due process of law, and with complete non-application of mind, unilaterally terminated the lease deed dated 05.05.2004 executed by the Governor of Karnataka in favour of the 1st Petitioner in respect of 34 Acres of Gomal Land in Survey No. 28 of Arisinaguppa Village, Chikmagalur District ("the said land"). A certified copy of the order dated 08.11.2011 is produced herewith as Annexure – 'A' and hereinafter referred to as the "said Order". It is respectfully submitted that the impugned order passed by the Deputy Commissioner (2nd Respondent) is arbitrary and unjust. The Petitioners have suffered immense losses as a result of the purported termination of the lease deed.

BRIEF FACTS:

4. It is submitted that the 1st Petitioner is one of the leading property developers in South India and has constructed many land mark projects and is also the first company to have been certified as ISO 9001 Certified Property Developer in South India. Also, the 1st Petitioner is the first property developer to have procured MoEF (Ministry of Environment and Forests) clearance for two mega projects in Bangalore. It is submitted that the 1st Petitioner has been in the business of hospitality services for the past several years and has pioneered in the concept of branded serviced residences in Bangalore. Further, the credibility and respect of the 1st Petitioner in its field of business is reinforced by the fact that some of the leading international hotel brands have tied up with the 1st Petitioner for the management of several hotels and eco-sensitive resorts across South India including the city of Chikmagalur. The 2nd Petitioner is one of the shareholders of the 1st Petitioner Company and in view of the unlawful termination of the lease deed the fundamental rights of the 2nd Petitioner for carrying on trade, practise, business, occupation and profession of his choice through the 1st Petitioner has been infringed.
5. It is submitted that the promoters of the 1st Petitioner Company hail from the city of Chikmagalur and they enjoy a very special emotional bond with the place. The promoters of the 1st Petitioner Company were eager to see Chikmagalur finding its place as an international tourism destination and hence they intended to set up an eco-sensitive resort (the "Project"). It is submitted that for the said reason, the 1st Petitioner addressed a letter dated 16.01.2002 to the 2nd Respondent requesting him to allot land

measuring 34 Acres in Survey No. 28 at Arasinaguppe village which was Kharab Land/ Gomal Land for the purpose of construction of resort. A copy of the letter dated 16.01.2002 is produced as Annexure – B.

6. It is submitted that in order to procure the requisite permission from the Panchayath, the 1st Petitioner addressed letters dated 30.04.2002 and 23.07.2002 to The Zilla Panchayat, Chikmagalur seeking permission to carry on with the construction of the Project on the said land. It is submitted that the said letters addressed by the 1st Petitioner were furnished for the opinion of the Village Panchayat. It is submitted that the Zilla Panchayath, Chikmagalur, in its proceedings on 26.08.2002 unanimously opined and resolved that they have no objection for grant of the said land to the 1st Petitioner for the establishment of resort in the said region. A copy of the decision taken by the Zilla Panchayath in its proceedings dated 26.08.2002 is produced as Annexure – C.
7. After having procured a report from the Thasildar, the 2nd Respondent addressed a letter dated 11.04.2003 to the Principal Secretary, Revenue Department, for grant of the said land in favour of the 1st Petitioner as per Rule 7(3) (iii) of the Karnataka Land Grant Rules, 1969 stating that the said proposal is considered in view of tourism development and as per Rule 97 (4) of the Karnataka Land Revenue Rules, 1966 and that the proposed land be eliminated from the category of pasture land and requested for the grant of the said land. The 2nd Respondent further stated that he had conducted the spot investigation on 28.12.2002 and that since the said land does not bear any trees the same could be considered for grant. A copy of the letter dated 11.04.2003 is produced as Annexure – D.
8. It is submitted that The Principal Secretary, Revenue Department vide letter dated 12.12.2003 informed the 2nd Respondent that the Government had permitted to remove 34 Acres in Survey No.28 from the head 'Gomal Land' as per Rule 94 (4) of the Karnataka Land Revenue Rules, 1966 and to grant lease under Rule 19 of the Karnataka Land Grant Rules, 1969 at the rate of Rs.1,000/- per Acre per annum for a period of 30 years to the 1st Petitioner for the construction of resort. A copy of the letter dated 12.12.2003 is produced as Annexure – E.
9. It is submitted that in pursuance of the aforementioned letter, the 2nd Respondent issued an Order dated 01.01.2004 whereby the 2nd Respondent granted the lease of 34 Acres of land in Survey No. 28 in favour of the 1st Petitioner in accordance with Rule 19(1)(d) of the Karnataka Land Grant Rules, 1969 for a period of 30 years and fixed the annual lease rental at Rs. 1,000/- per acre on certain conditions. A copy of the Order dated 01.01.2004 is produced as Annexure – F.

10. Based on the assurances and representations given by various authorities that the 1st Petitioner could start its business activity as sanctioned by the authorities, the 1st Petitioner went ahead with formalities to enter into a formal agreement with the Respondents. It is submitted that pursuant to the aforementioned order dated 01.01.2004 a registered lease deed dated 05.05.2004 came to be executed by the 1st Respondent in favour of the 1st Petitioner which was duly registered as Document No. CKM - 1 - 00247-2004-05 in Book 1 and stored in CD No CKMD8 in the office of the sub-registrar, Chikmagalur. A copy of the registered lease deed dated 05.05.2004 is produced as Annexure - G. It is submitted that upon the execution of the aforementioned lease deed the name of the 1st Petitioner was entered into the revenue records. However, since there was an error in the name entered into the revenue records, the same was ordered to be rectified vide Order No. R.R. Misc 289/04-05. The copies of the Mutation Registers reflecting the name of the 1st Petitioner is produced as Annexure - H Series.
11. It is submitted that the 1st Petitioner also made an application to the Dasarahalli Village Panchayat in order to procure the license for construction and renovation of buildings. The Dasarahalli Village Panchayat, on 20.08.2007 issued a license for construction and renovation of buildings along with the details pertaining to the building sanctioned. Accordingly, the 1st Petitioner was permitted to construct the Hill Resort and SPA at Chikmagalur and was licensed to construct totally 60 buildings as shown in the plan with a total extent of 14923.3 Square Meters which were to be constructed in stages. A copy of the license issued by the said Panchayat is produced as Annexure - J. Further, the 1st Petitioner has also sought the requisite approvals from the Karnataka State Pollution Control Board. It is submitted that the Karnataka State Pollution Control Board issued a letter dated 25.08.2007 to the 1st Petitioner informing that the Board has cleared the project from the Water and Air Pollution control point of view for setting up of a new resort in the said land with a capacity of 70 rooms and listed certain conditions to be complied with. A copy of the approval issued by the Karnataka State Pollution Control Board is produced as Annexure - K. It is further submitted that The Karnataka Udyog Mitra issued a letter dated 14.12.2007 to the 1st Petitioner informing that the project proposal has been considered by the State Level Single Window Clearance Committee and that the same was approved with certain infrastructural assistances. A copy of the letter issued by the Karnataka Udyog Mitra is produced as Annexure - L.
12. It is submitted that the 1st Petitioner, after having procured all requisite approvals from various agencies as narrated above, started the preliminary work in the said land such as formation of roads, earth work excavation, levelling of the land and preparation of designs for construction of the resort. It is submitted that the 1st Petitioner has

expended approximately a sum of Rs. 5.20 Crores towards the aforementioned project. A statement showing the details of the various expenses incurred by the 1st Petitioner towards the said Project is produced as Annexure M. Further, the 1st Petitioner had been regularly depositing the lease rentals and had been duly abiding all the terms and conditions as set out in the lease deed. It is submitted that the 1st Petitioner having requisite expertise in construction of the resort in eco-sensitive regions had taken due care to ensure that the ecology in and around the said region would not be disturbed in any manner in the process of construction of the resort.

13. When matters stood thus, the 3rd Respondent issued a Notice dated 19.03.2008 based on the complaint filed by one Sridevi Hulikere, D.V. Girish and S. Dinakar Rao dated 20.02.2008. It is submitted that the aforementioned persons were only busy bodies who were trying to obstruct the process of construction of the project for their own personal interests. The said complaint was filed only with mala-fide intent to harass the Petitioners herein and to extort monies. These individuals were neither representing any section of the public nor did they file the complaint keeping public interest in mind. Based on such frivolous complaint, the 3rd Respondent issued the said notice. The said notice also detailed that the 1st Petitioner was carrying on construction activities in violation of the interim order passed by the Supreme Court in W.P. No. 202/95 and in contravention of the Conservation of Forest Act, 1980, Environment Protection Act, Forest Act, 1963 and Wild Life Protection Act, 1972 and called upon the 1st Petitioner to be present for hearing on 19.03.2008. A copy of the notice dated 19.03.2008 is produced as Annexure - N. In reply to the said notice, the 1st Petitioner submitted a detailed reply dated 09.04.2008 to the 3rd Respondent detailing the manner in which permission was accorded by the Government at various levels for the project. A copy of the reply dated 09.04.2008 is produced as Annexure - P. It is submitted that in light of this enquiry, further progress of the project was impeded and the 1st Petitioner was not allowed to progress which resulted in huge loss to the 1st Petitioner.

14. It is submitted that during the pendency of the aforementioned proceeding certain persons claiming to be the residents of the said village filed a Writ Petition bearing No. 6860/08 before this Hon'ble Court ("said Writ Petition") seeking to quash the order dated 01.01.2004 passed by the Deputy Commissioner as violative of the Karnataka Land Revenue Rules, 1966 and Karnataka Land Grant Rules, 1969. The Petitioners in the said writ petition challenged the said order passed by the Deputy Commissioner on various grounds and had raised various contentions that the State Government, in approving change of land use, as also, in permitting to set up a tourist resort thereon was unlawful and without authority on the ground that the land in question is located in Western Ghats and was covered with a mosaic of forest grass, which was also

intercepted with forest trees; the Shola forest, which is located in close proximity to the land in question, is virgin forest area where wild animals can be found in abundance and that certain unique birds and spices were also found exclusively in the area; that the Central Government had submitted a tentative list of natural usage of properties to be incorporated on the universal head list and that the land where the project was to be constructed was classified under the head properties depicted by the Government of India; that the Assistant Commissioner Revenue Subdivision in his letter dated 31.08.2007 had expressed that the land in question did not qualify for permanent grant since the Gomal Land was reserved for public use and could not be used for the purpose of setting up a tourist resort; that the construction of the resort would affect the natural flora and fauna of the area; that the said land was constituted as a forest as per the order of the Hon'ble Supreme Court dated 12.12.1996 in W.P. (Civil) No. 202/1995 and that the land is a Forest Land and attracts the provisions of the Forest Conservation Act, 1980 and could not have been diverted to any non-forestry purpose without clearance under the said Act from the Central Government; that the Deputy Commissioner has failed to comply with the procedures as laid down in the Karnataka Land Revenue Act, 1964 and that he ought to have personally inspected the land and made necessary inquiries before granting the lease; the land in question was a prohibited area in that it could not have been used for construction of a resort; the project proposed to be constructed was at a distance of about 8 kilometres from a Tiger Reserve, 14 kilometres from another Tiger Reserve, merely 3.6 kilometres from a State forest area and only 4.7 kilometres from another reserved forest area and for the said reason it was not possible to comply with the environmental clearance norms stipulated in the Notification dated 04.08.2003; the grant made by the State Government as in blatant violation of Rule 19(2)(d) of the Karnataka and Grant Rules, 1969 since the land granted was in excess of 4 hectares; the State Government having issued a Notification and having taken a decision to earmark the land in question as a reserved forest area, the said land for all intent and purposes was liable to be treated as Forest Land and as such, establishment of a tourist resort was not permissible and that the lease granted to establish a tourist resort was unsustainable in law in view of the decisions of the Apex Court in *Maharashtra Land Development Corporation and Ors. v. State of Maharashtra and Anr.* (2010 AIR SCW 7114) and *T.N. Godavarman Thirumulkpad etc. v. Union of India and Ors.* (AIR 1997 SC 1228).

15. This Hon'ble Court vide Order dated 15.03.2011 was pleased to dispose of the said Writ Petition by rejecting all the aforementioned contentions raised by the Petitioners therein. The said Writ Petition was disposed of by specifically observing that insofar as the applicability of Section 4 of the Karnataka Forest Act, 1963 is concerned, the Hon'ble Court was of the view that the Notification dated 05.03.2003 relied upon by the learned

Government Advocate cannot be the basis for defeating the claim of the Respondent Nos. 4 and 5 therein since the communication dated 05.03.2003 was merely a Draft Notification and not a Final Notification since the same was not published in the Official Gazette.

16. It was further observed that Rule 19(2)(d) was wholly inapplicable to the facts and circumstances of the case inasmuch as the State Government had exercised its power under Rule 19(2)(e) to grant the lease of the land in excess of 4 hectares to the Respondent Nos. 5 and 6. This Hon'ble Court also repudiated the various contentions raised by the Petitioners therein in respect of clearance to be obtained from the Karnataka State Pollution Control Board, State Government and the Central Government in view of the fact that the Respondent Nos. 5 and 6 therein had sought approvals from all relevant authorities and more particularly had obtained clearance from the Karnataka State Pollution Control Board and since the Board had also accorded permission for construction of the project under the provisions of the Water (Prevention and Control of Pollution) Act and Air (Prevention and Control of Pollution) Act vide Order dated 25.08.2007. Further, it was also observed that the state-level single window clearance committee of the Karnataka Udyog Mitra (Government of Karnataka Organisation) in its meeting held on 26.11.2007 had approved the project proposal with an investment of Rs. 49 crores and had accorded sanction for the construction of the project.

17. It is pertinent to note that this Hon'ble Court vide Order dated 31.08.2009 was pleased to direct the Chief Secretary to submit a report on whether the land was Gomal Land or Forest Land. The Chief Secretary, amongst other things has pointed out that the forest department had not raised any objection when the Government granted the lease or when the proposal was being considered in the year, 2003 pursuant to the letter dated 11.04.2003 addressed by the Deputy Commissioner. This Hon'ble Court, having considered the said report of the Chief Secretary and having considered the undertaking given by the 1st Petitioner herein in the said Writ Petition in Para 24 and 30 of the Statement of Objections wherein they undertook that no harm would be caused to the Sholas and that they would take all steps necessary to preserve the environment and habitat in and around the place of the project was pleased to dispose of the said Writ Petition. A copy of the judgment passed by this Hon'ble Court in W.P. No. 6860/08 is produced as Annexure - Q.

18. It is submitted that pursuant to the aforementioned Writ Petition being dismissed, the 1st Petitioner continued with the works in the said project in adherence to the terms of the said lease deed and in accordance with the undertaking given before this Hon'ble Court in the aforementioned Writ Petition. It is submitted that as stated above the 1st

Petitioner is the first property developer to have procured the MoEF (Ministry of Environment and Forests) clearance for two mega projects in Bangalore and has been carrying on the construction of the project keeping in view the ecological balance that was to be maintained in the said region. It is submitted that the 1st Petitioner has always ensured that the ecological balance is not disturbed in any manner in the process of carrying on with the works of the aforementioned project.

19. However, on 12.07.2011, the said Mr. D.V. Girish, Mr. M.N. Shadakshari and Mr. G. Veeresh who were the Petitioners in the aforementioned Writ Petition, addressed a letter to the Deputy Commissioner alleging that the 1st Petitioner herein had violated various environmental norms in the process of construction of the project. It is submitted that the said complaint was filed by the aforementioned people only with a view to harass the 1st Petitioner herein and with mala-fide intent to extort monies from the 1st Petitioner and has been filed without any basis. It is pertinent to note that the land where the project was to be constructed was landlocked on three sides by the lands owned by the shareholders and family members of the promoters of the 1st Petitioner herein and no harm or damage would be caused to anyone, much less the public interest. Further, it is submitted that there are many other resorts in and around the area and the very fact that the aforementioned persons are targeting only the project of the 1st Petitioner by filing such frivolous complaints depicts the ulterior motive of these individuals to extort money and to unlawfully enrich themselves at the cost of the 1st Petitioner herein.

20. However, when matters stood thus, the Principal Secretary, Revenue Department addressed a letter dated 21.07.2011 to the 2nd Respondent stating that the land granted to the 1st Petitioner formed a part of the Forest Land and the grant of lease was in violation of the Forest Act. He further pointed out that based on the order passed by the Supreme Court a meeting was held under the chairmanship of the Chief Conservator of Forest on 24.03.2011 wherein it was decided to cancel the lease granted vide Government Order dated 12.12.2003.

21. Based on such motivated and false complaint addressed by the above mentioned persons, the 2nd Respondent issued a Show Cause Notice dated 30.07.2011 to the 1st Petitioner stating that the persons who were the Petitioners in the said Writ Petition had filed a complaint detailing the violations. The Show Cause Notice stated that the land formed a part of the Forest Land and that the lease granted was in violation of the Forest Act and was also violative of the Forest Conservation Act in view of the orders passed by the Hon'ble Supreme Court in IA No. 1209/09 and 171/08. The 2nd Respondent further informed that a meeting was held under the chairmanship of the

Chief Conservator of Forest on 24.03.2011 wherein it has been decided that the lease so granted be cancelled and for the said reasons the 2nd Respondent called upon the 1st Petitioner to file their objections in writing. A copy of the notice dated 30.07.2011 is produced as Annexure – R. It is pertinent to note that this Hon'ble Court, in the said Writ Petition had already given a specific finding that the land granted to the 1st Petitioner herein was not forest land and that the provisions of the Forest Conservation Act would not apply. Also, this Hon'ble Court had also come to the conclusion that the applicability of Section 4 of the Karnataka Forest Act, 1963 does not arise in view of the fact that the notification that was relied on by the Petitioners in the said Writ Petition was only a draft notification and could not be relied upon. It is submitted that the 2nd Respondent has issued a Show Cause Notice dated 30.07.2011 again on the same grounds which was rejected by this Hon'ble Court in the said Writ Petition.

22. It is submitted that on the very face of it, the Show Cause Notice smacks of malafides, bias, arbitrariness, illegality and complete non application of mind. Further, it is submitted that the 2nd respondent was already predetermined to cancel the lease deed executed in favour of the 1st Petitioner herein. It is submitted that the 1st Petitioner filed a detailed reply dated 26.09.2011 to the aforementioned notice dated 30.07.2011 issued by the 2nd Respondent denying all the allegations made in the Show Cause Notice and placed the facts in its true perspective. It is submitted that the 1st Petitioner, in its reply pointed out the manner in which the various authorities including the Karnataka State Pollution Control Board had accorded permission for the construction of the Project. The 1st Petitioner in the said reply further pointed out that Dasarahalli Gram Panchayat had also sanctioned the building plan and that the Project of the 1st Petitioner was also approved by the State level Single Window Clearance Committee of the Karnataka Udyog Mitra in its meeting held on 26.11.2007 and further approved the project proposal of the 1st Petitioner for establishing the Resort and Spa with an investment of Rupees 49 Crores and permitted the 1st Petitioner to establish the facility in 34 Acres of Government land leased in its favour. The 1st Petitioner also stated that they had not violated any terms and conditions imposed under the said lease deed and that they had not violated their undertaking given before the court in the said Writ Petition. A copy of the reply dated 26.09.2011 is produced as Annexure – S.

23. However, the 2nd Respondent without any application of mind passed the order 08.11.2011 cancelling the lease deed granted in favour of the 1st Petitioner and also ordered that the possession of the land be taken away from the 1st Petitioner. It is submitted that the impugned order passed by the 2nd Respondent herein is illegal and perverse and cannot be sustained in law. It is submitted that the 1st Petitioner has invested huge sums of money towards the project pursuant to the execution of the

lease deed as enumerated above. The 1st Petitioner is still in possession of the said land despite termination of the lease deed and is entitled to do so since the order of termination passed by the 2nd Respondent is null and void. Further, the Respondents had granted the said land on lease after having procured all requisite reports in respect of the aforementioned lands. It is submitted that due to inordinate delay and unwarranted interferences from various groups of people and due to the arbitrary actions of the Respondents in unilaterally terminating the lease deed, the 1st Petitioner is put to huge financial losses and has rendered the Project commercially unviable for the Petitioners.

24. Given the circumstances, the order passed by the 2nd Respondent and the purported termination of the Lease deed are contrary to law. The 1st Petitioner having no other alternative or efficacious remedy, has approached this Hon'ble Court. The 1st Petitioner has not filed any other proceedings before any other court or Forum on the same or similar cause of action. There are no other proceedings pending between the parties before any other Court or Forum on the same or similar cause of action.

GROUND:

25. It is submitted that order passed by the 2nd Respondent is arbitrary, illegal and perverse and is devoid of merit.
26. The action of the Respondents in unilaterally terminating the Lease deed prematurely is wholly arbitrary and unjust. The 2nd Respondent ought not to have terminated the lease deed given the fact that the 1st Petitioner has not violated any of the terms of the lease deed.
27. It is submitted that the Respondents have no jurisdiction to terminate the lease deed executed by them. The Respondents, by terminating the lease deed are only trying to get over the judgment of this Hon'ble Court passed in the said Writ Petition. The Respondents have sought to terminate the lease deed again on the contention that it is Forest Land when the said contention has clearly been rejected by this Hon'ble Court in the said Writ Petition. The Respondents are bound by the judgment of this Hon'ble Court and cannot act with complete disregard to the Order passed by this Hon'ble Court. The action of the Respondents in terminating the lease deed at this stage on the ground that the land in question is Forest Land is in violation of the Orders passed by this Hon'ble Court and shows the Respondents had already predetermined to terminate the lease deed executed in favour of the 1st Petitioner.
28. The Respondents have not provided any opportunity of hearing to the 1st Petitioner and have passed the impugned order unilaterally in gross violation of the principles of

natural justice. It is submitted that the grant of lease was in exercise of statutory power and the Respondent is bound to act in a non-arbitrary manner. It is submitted that the actions of the Respondents are amenable to Writ Jurisdiction.

29. It is submitted that the 2nd Respondent has failed to take note of the fact that the 1st Petitioner herein after having made application for the construction of the resort in Survey No. 28 of Arasinakuppe Village, has also sought requisite approvals from various authorities before commencing the construction of the said Project. It is further submitted that upon having received the application from the 1st Petitioner, the 2nd Respondent had accorded the permission and had also executed a registered lease deed in favour of the 1st Petitioner in respect of the above mentioned land after having conducted a survey in order to ascertain if the land could be granted in favour of the 1st Petitioner for the purpose of construction of the resort.
30. It is submitted that the 2nd Respondent has proceeded to pass the impugned order and terminate the registered lease deed without considering the fact that the Zilla Panchayat, Cikkamagalur has also accorded permission to the 1st Petitioner to construct 60 buildings as shown in the plan with a total extent of 14,923.3 square meters in different stages. The 2nd Respondent has also failed to take note of the fact that the Grama Panchayat has also issued license to the 1st Petitioner for the construction of the resort.
31. It is submitted that the 2nd Respondent could not to have proceeded to unilaterally terminate the lease deed in view of the fact that the 2nd Respondent had himself addressed a letter to the Principal Secretary, Revenue Department, for grant of the said land as per Rule 7(3)(iii) of the Karnataka Land Grant Rules, 1969 stating that the said proposal is considered in view of the Tourism Development as per Rule 97(4) of the Karnataka Revenue Land Rules, 1966 and further proposed that the proposed land be eliminated from the category of 'pastured land' and requested the Principal Secretary to grant the said lands. In the said letter, the Deputy Commissioner has categorically stated that he had conducted the spot investigation on 28.12.2002 and that the said land did not bear any trees. It is submitted that in view of the aforementioned letter, the reason accorded by the 2nd Respondent for revoking the registered lease that the land forms part of forest land cannot be sustained.
32. It is submitted that the action of the 2nd Respondent in terminating the registered lease deed and in resuming the land leased to the 1st Petitioner is arbitrary and unconstitutional. It is submitted that the 2nd Respondent has proceeded to pass the impugned order based on a frivolous complaint given by certain unscrupulous elements who have without any substantial proof filed a complaint before the 2nd Respondent. It

is submitted that the 2nd Respondent has mechanically passed the impugned order without even taking into consideration the documents furnished by the 1st Petitioner.

33. It is submitted that the 2nd Respondent could not have come to conclusion that the aforementioned land formed a part of forest land given the fact that the revenue entries clearly showed that the lands leased out in favour of the 1st Petitioner was Gomal Land. Further, it is submitted that when the 1st Petitioner has complied with all the conditions prescribed under the said lease deed and in the absence of any proof of the 1st Petitioner having violated any of the conditions of the lease, the Deputy Commissioner could not have proceeded to unilaterally terminate the lease deed and order for resumption of land leased to the 1st Petitioner.
34. The action of the 2nd Respondent smacks of arbitrary exercise of power in as much as the reasoning accorded by the 2nd Respondent that the lands leased out to the 1st Petitioner forms a part of Shola Forest area and that the lease deed executed was in violation of the Forest Act and the Forest Conservation Act cannot be sustained in law. Further, the reasoning accorded by the 2nd Respondent that the said lease deed was violative of the interim order passed by the Supreme Court in IA Nos. 1209/2009 and 171/98 and that the lease deed had to be revoked in view of the decision taken in a meeting which was held under the Chairmanship of the 3rd Respondent herein, cannot be sustained. It is submitted that the lease deed having been executed on 05.05.2004, the 2nd Respondent, at this stage could not have come to conclusion that the land granted to the 1st Petitioner forms part of the Shola Forest area. It is further submitted that prior to the grant of the land, the 2nd Respondent had himself personally visited the area and had agreed for the lease of the said land stating that the lands were Government Gomal Lands. In the light of the above mentioned reasons, the order passed by the 2nd Respondent is perverse and cannot be sustained.
35. The action of the Respondents in terminating the lease deed on the ground that the said land is reserved as Forest Land and that the land cannot be used for any other activities and that the lease deed is in violation of the Karnataka Forest Conservation Act, 1980 and in violation of the Orders passed by the Hon'ble Supreme Court cannot be sustained in view of the fact that this Hon'ble Court while disposing of the said Writ Petition had already considered all these contentions and had come to the conclusion that the said land was not a Forest Land since there was no final Notification published in the Official Gazette and that the provisions of the Forest Conservation Act would not apply in the present case.
36. It is submitted that the termination of the lease deed by the 2nd Respondent is illegal and cannot be sustained in view of the fact that the termination has not been made on

the ground that the 1st Petitioner has violated the terms and conditions of the lease deed. The 2nd Respondent has sought to terminate the lease deed on the grounds which have already been negated by this Hon'ble Court in the said Writ Petition. Such an order is clearly hit by the principles of *res judicata*. Further, the 2nd Respondent has acted under dictation and has abdicated in his duty to independently apply his mind to the facts and circumstances of the present case. The 2nd Respondent has proceeded to pass a mechanical order. The 2nd Respondent could not have terminated the lease deed again on the ground that the said land was Forest Land. The 2nd Respondent, by issuing the order of terminating the lease deed is without jurisdiction and has resorted to contravene the judgment passed by this Hon'ble Court. For the said reason, it is submitted that the termination of the lease deed by the 2nd Respondent is null and void and is non-est.

37. It is submitted that the 1st Petitioner has never violated any of the terms of the lease deed and the basis on which the 2nd Respondent has sought to terminate the lease deed cannot be sustained. Further, the Chief Secretary has categorically stated in his report filed before this Hon'ble Court in W P No. 6860/2008 that the 3rd Respondent had not raised any objections when the aforementioned land was being granted to the 1st Petitioner. For the said reasons the action of the 2nd Respondent cannot be sustained.
38. It is submitted that the 1st Petitioner has commenced the implementation of the project by investing huge sums of money immediately upon the execution of the lease deed. It is further submitted that the lease deed having been executed for a period of 30 years and the 1st Petitioner having already commenced the works by investing huge sums of money has faced huge loss due to the arbitrary and capricious action of the Respondents.
39. The Order passed by the 2nd Respondent terminating the lease deed is contrary to law, arbitrary and unjust and is violative of the legitimate expectations of the 1st Petitioner. The arbitrary conduct of the Respondents has caused great injury to the 1st Petitioner and has resulted in severe financial loss to the 1st Petitioner in view of the fact that the 1st Petitioner has invested huge sums of money and has also deployed machinery and labour for the purposes of construction of the Project. Also, the 1st Petitioner has invested huge sums of money and has availed the services of various ecological experts in order to ensure that the ecological balance in the area is not disturbed. It is submitted that the 1st Petitioner has taken all measures in order to ensure that the Project does not cause any damage to the environment and has invested huge sums of money towards the design and planning of the Project.

40. It is submitted that the action of the 2nd Respondent in unilaterally terminating the registered lease deed is unconstitutional and is violative of Articles 14, 19(1)(g) and 300A of the Constitution of India. It is submitted that the 2nd Respondent has arbitrarily passed the impugned order without any authority and has acted beyond the power vested in him in law.
41. It is submitted that the order passed by the 2nd Respondent is hit by the principles of promissory estoppel and is in violation of the doctrine of legitimate expectation of fair play and fairness in action. The 1st Petitioner has invested crores of rupees into the construction of the Project based on the representation of the Respondents and in the light of the fact that the 2nd Respondent had executed a registered lease deed and in the light of the fact that all necessary approvals had been granted by the various authorities. Based on such representations by the Respondents the 1st Petitioner has changed its position to its detriment by relying on the assurances given by the Respondents. Further, the plan having been sanctioned and approved by the Dasarahalli Gram Panchayat and the Project being cleared by the State level Single Window Clearance Committee of the Karnataka Udyog Mitra and the requisite approvals having been accorded by the Karnataka State Pollution Control Board, the 1st Petitioner invested huge amounts of money on the Project and commenced construction works. It is submitted that the 2nd Respondent being an instrumentality of state is bound to act in a manner which is fair, just and reasonable. As functionaries of the State, the Respondents cannot act as usurious landlords and mulct the 1st Petitioner of its lawful rights under the lease deed after having granted requisite permissions. It is submitted that the Respondents cannot go back on their promises and seek to take a completely different untenable stand that the land the lands leased out to the 1st Petitioner forms a part of Shola Forest area and that the lease deed executed was in violation of the Forest Act and the Forest Conservation Act. It is submitted that upon termination of the lease deed, the 1st Petitioner have been approaching the concerned officials in the Government in order to get their lease restored. The 1st Petitioner tried to convince the Respondent authorities to have the lease deed restored by pointing out that it has invested huge amounts of money into the project and that termination of the lease deed in such an arbitrary manner has caused immense losses. 1st Petitioner tried his best to resolve this matter amicably by meeting the concerned officials of the Respondent Authorities. However, nothing has been done by the Respondent Authorities till date inspite of sequence of meetings and assurances given by them, to restore the lease in favor of the 1st Petitioner. The Petitioners being left with no other alternative remedy have approached this Hon'ble Court. The actions of the Respondents are amenable to Writ Jurisdiction. The Petitioners have not filed any other petition claiming similar reliefs.

GROUND FOR INTERIM PRAYER

It is submitted that the termination of the lease deed by the 2nd Respondent is illegal and cannot be sustained in view of the fact that the termination has not been made on the ground that the 1st Petitioner has violated the terms and conditions of the lease deed. The 2nd Respondent has sought to terminate the lease deed on the grounds which have already been negated by this Hon'ble Court in the said Writ Petition. Further, the 2nd Respondent has acted under dictation and has abdicated in his duty to independently apply his mind to the facts and circumstances of the present case. The 2nd Respondent could not have terminated the lease deed again on the ground that the said land was Forest Land when the said contention has clearly been rejected by this Hon'ble Court in the said Writ Petition. The Respondents are bound by the judgment of this Hon'ble Court and cannot act with complete disregard to the Order passed by this Hon'ble Court. The action of the Respondents in terminating the lease deed at this stage on the ground that the land in question is Forest Land is in violation of the Orders passed by this Hon'ble Court and shows the Respondents had already predetermined to terminate the lease deed executed in favour of the 1st Petitioner. Further, the 1st Petitioner has invested huge sums of money in the Project and has also mobilized men and machinery for carrying out development over the said land. The 1st Petitioner has invested huge sums of money and has availed the services of various ecological experts in order to ensure that the ecological balance in the area is not disturbed. It is submitted that the 1st Petitioner has taken all measures in order to ensure that the Project does not cause any damage to the environment and has invested huge sums of money towards the design and planning of the Project. It is submitted that the 1st Petitioner is suffering huge loss due to the high handed actions of the Respondents. The Petitioners will be put to great hardship and inconvenience in the event the Impugned order is not set aside.

PRAYER

WHEREFORE, the Petitioners pray that this Hon'ble Court may be pleased to:

1. Issue a Writ, Order or Direction declaring that the order bearing No. M4/LNDCR/160:2002-03 dated 08.11.2011 at Annexure A is illegal, null and void;
2. Issue a Writ of Certiorari quashing the Order dated 08.11.2011 at Annexure A;
- 2A Issue a Writ of Certiorari quashing the Minutes of the meeting dated 24.03.2011 recorded in the meeting held in the chambers of Principal Secretary, Forest, Ecology and Environment.

(Amended as per order dated 18.11.2013 passed by this Hon'ble Court allowing the Interim Application for amendment)

3. Grant costs of the proceedings; and
4. Grant such other relief/s as this Hon'ble Court may deem fit in the interest of justice and equity.

Bangalore

Date:

ADVOCATE FOR PETITIONERS

INTERIM PRAYER

Stay the operation of the impugned order bearing No. M4/LNDCR/160:2002-03 dated 08.11.2011 at Annexure A and permit the 1st Petitioner to carry on the works relating to the Project on the land in Survey No. 28 of Arisinaguppa Village, Chikmagalur District measuring 34 Acres during the pendency of this Writ Petition in accordance with the terms and conditions as stipulated in the registered lease deed dated 05.05.2004.

Bangalore

Date:

N. K. Sileshkar
ADVOCATE FOR PETITIONERS