



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 17<sup>TH</sup> DAY OF FEBRUARY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ**

**WRIT PETITION NO. 4500 OF 2012 (GM-FOR)**

**BETWEEN**

1. T JOHN  
AGED ABOUT 78  
SINCE DEAD BY LR'S

P1A SHEELA SAMUEL  
W/O SAMUEL MATHAI  
SINCE DEAD BY LR'S

P1A(i) SAMUEL MATHAI NOORAMAL  
S/O MATHAI NOORAMAL  
AGED ABOUT 60 YEARS

P1A(ii) JOHN SAMUEL  
S/O SAMUEL MATHAI  
AGED ABOUT 28 YEARS

P1A(iii) MANASA SAMUEL  
D/O MATHAI SAMUEL  
AGED ABOUT 23 YEARS

ALL ARE RESIDING AT  
#33, ST JOHN ROAD CROSS  
RUKMANI COLONY,  
BANGALORE NORTH  
SIVAN CHETTY GARDENS  
BANGALORE NORTH  
BANGALORE-560042.

P1B SHIJI BALU PAUL  
AGED ABOUT 54 YEARS  
W/O BALU PAUL





21, KAIRALI APARTMENTS  
PANAMPALLY NAGAR  
ERNAKULAM  
PANAMPALLY NAGAR  
KERALA-682036.

2. THOMAS P JOHN  
AGED ABOUT 53 YEARS  
S/O T JOHN
3. PAUL P JOHN  
AGED ABOUT 50 YEARS  
S/O T JOHN
4. BIJU P JOHN  
AGED ABOUT 48 YEARS  
S/O T JOHN

PETITIONERS 2 TO 4 ARE  
R/AT GANAPATHI STREET  
MADIKERI 571201  
KODAGU

... PETITIONERS

(BY SRI. S.R. KAMALACHARAN., ADVOCATE)

**AND**

1. STATE OF KARNATAKA  
REPRESENTD BY SECRETARY TO  
GOVERNMENT  
DEPARTMENT OF REVENUE  
M S BUILDING  
DR. AMBEDKAR VEEDHI  
BANGALORE - 560001
2. THE SECRETARY TO DEPARTMENT  
DEPARTMENT OF FOREST AND ECOLOGY  
M S BUILDING  
DR. AMBEDKAR VEEDHI  
BANGALORE - 560001.
3. THE CONSERVATOR OF FORESTS  
KODAGU CIRCLE, MADIKERI  
KODAGU DISTRICT



4. THE DEPUTY CONSERVATOR OF FORESTS  
VIRAJPET DIVISION  
VIRAJPET  
KODAGU DISTRICT
  
5. THE DEPUTY COMMISSIONER  
KODAGU DISTRICT  
MADIKERI
  
6. PATTACHARUVANDA VIJU MUTHAPPA  
S/O P.B. CHINGAPPA,  
AGED 41 YEARS,  
R/AT CHALAVARU VILLAGE,  
MADIKERI TALUK  
KODAGU DISTRICT.

.... RESPONDENTS

(BY SRI. PRADEEP C.S., AAG., A/W  
SRI. MAHANTESH SHETTAR., AGA FOR R1 TO R5;  
SRI. T.A. KARUMBIAH., ADVOCATE FOR R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF WRIT OF CERTIORARI OR ANY OTHER WIRT, QUASHING THE ORDER PASSED BY THE THIRD RESPONDENT DATED 16.12.2011 AS PER ANNEXURE S AND ALSO THE SHOW CAUSE NOTICE DATED 16.12.2011 ISSUED BY THE THIRD RESPONDENT AS PER ANNEXURE T.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 18.12.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ



### **CAV ORDER**

1. The petitioners are before the Court seeking for the following reliefs:
  - a. *ISSUE a Writ In the nature of Writ of Certiorari or any other writ, quashing the order passed by the third respondent in case no. Bhoomi (SL) CR 66/2005-2006 dated 16-12-2011 as per ANNEXURE-S and also the Show Cause Notice bearing no. Bhoomi (SL) CR 66/2005-2006 dated 16-12-2011 issued by the third Respondent as per ANNEXURE - T.*
  - b. *ISSUE a Writ in the nature of Writ of Mandamus or any other Writ, directing the Respondents to comply with the orders passed by this Hon'ble Court, in Writ Petition No.4013/2007 dated 15-3-2009 as per ANNEXURE-L; AND*
  - c. *ISSUE such other writ, order or direction as this Hon'ble Court deems fit in the facts and circumstances of the case including an order as to cost in the interest of justice and equity.*
2. The Petitioners assert that an extent of 488.06 acres of land situated at Chelavara Village, Napoklu Hobli, Virajpet Taluk, Kodagu District, comprising the following survey numbers originally belonged to the Pattacharavanda family.
  - Sy.No.129/3 – 9.74 acres
  - Sy.No.154/8 – 2.24 acres



- Sy.No.154/31 – 40.00 acres
- Sy.No.154/32 – 35.00 acres
- Sy.No.154/33 – 35.00 acres
- Sy.No.154/34 – 120.00 acres
- Sy.No.154/35 – 97.00 acres
- Sy.No.154/36 – 104.42 acres
- Sy.No.170 – 16.54 acres
- Sy.No.173 – 5.00 acres
- Sy.No.174 – 3.78 acres
- Paradeena land in Sy.No.154/2 – 19.34 acres

3. It is their case that these lands were granted more than 300 years ago by the erstwhile Rulers of Coorg. The lands were allegedly classified as Jamma Sagu Malai lands, a category historically associated with hereditary cultivation rights, particularly for plantation crops such as cardamom. According to the Petitioners, the grantees and their susccessors cultivated cardamom and other plantation produce, paying assessment initially to the Rajas of Coorg and subsequently to the Coorg Government after



administrative transition. The Petitioners thus trace their claim not merely to a private transaction, but to an asserted pre-colonial grant, continued under successive sovereign administrations. However, it is admitted that due to arrears of land revenue, the Government is stated to have resumed possession of the lands in the year 1926 for recovery of dues.

4. Following resumption for arrears, the Coorg Government, acting through its Revenue Authorities, conducted a public auction under the provisions of the Coorg Land and Revenue Regulations in 1926. One Palekanda Medappa, then serving as District Judge, emerged as the highest bidder. Upon completion of auction formalities, Sale was confirmed, Possession of the lands was delivered,, Revenue records were mutated in his name. The Petitioners rely upon this auction as a fresh root of title, contending that the State itself alienated the lands through a lawful public process.



5. In 1941, Palekanda Medappa executed a registered sale deed in favour of Sri.Emmanuel Thomas Rampuram. The sale is stated to have been effected pursuant to orders of the Commissioner of Coorg. Consequent mutation proceedings were undertaken, and the revenue records were transferred in the name of Sri Emmanuel Thomas Rampuram. He remained in possession and enjoyment of the lands, paying land revenue and cultivating the property. The Petitioners emphasise this long, undisturbed possession as indicative of recognition of proprietary or at least transferable rights.
  
6. In 1975, Sri.Emmanuel Thomas Rampuram sought permission from the Deputy Commissioner to remove certain standing trees. The request was refused, thereby giving rise to a dispute regarding the nature and extent of his rights. He pursued remedies through, an appeal before the Karnataka Appellate Tribunal; and Institution of O.S. No.4 of 1978 before



the Civil Judge, Madikeri the suit sought declaration of title and allied reliefs.

7. The Trial Court partly decreed the suit, declaring that Sri.Emmanuel Thomas Rampuram was entitled to enjoy the lands as a Malai holder, that he could cultivate cardamom and exercise rights as a Mallegar. However, the Court declined to declare him absolute owner of the tree growth. Thus, the Trial Court recognised limited tenure rights but declined to confer full proprietary rights over forest produce.
8. Aggrieved by the denial of full ownership over trees, Sri.Emmanuel Thomas Rampuram preferred R.A. No.7 of 1978. The First Appellate Court allowed the appeal and declared that he was absolute owner of both land and trees, reasoning that title flowed from the 1926 auction sale conducted by the Government. This judgment elevated his status from that of a tenure-holder to that of absolute owner.



9. The Government of Karnataka challenged the appellate judgment in RSA No.466 of 1980. This Court allowed the Second Appeal and restored the decree of the Trial Court. The legal consequence of the Second Appeal was that recognition of rights only as Jamma Sagu Malai holder, Rejection of absolute ownership over tree growth, Restriction of rights to cultivation and enjoyment subject to tenure conditions. A Special Leave Petition was filed before the Supreme Court and was dismissed. Consequently, the decree of this Court attained finality.
  
10. Thereafter, Sri.Emmanuel Thomas Rampuram and his children transferred the lands to Petitioner No.1. Following the transfer, Mutation entries were effected, Petitioner No.1 was recorded as Jamma Malai holder; Possession and cultivation continued.



11. The Petitioners assert that they stepped into the shoes of their predecessor, subject to the rights recognised in RSA No.466 of 1980.
  
12. A Public Interest Litigation in W.P. No. 36630 of 2003 was instituted concerning Jamma lands across Coorg District. The Division Bench appointed the Chief Secretary as Commissioner to inspect Jamma lands and submit a report. Upon submission of the report, directions were issued to the Deputy Commissioner to initiate steps to alter revenue records and record such lands as Government forest lands. The Petitioners impleaded themselves in the PIL. This Court permitted them to file objections and challenge any adverse action taken pursuant to the report.
  
13. The Deputy Commissioner invoked Section 136 of the Karnataka Land Revenue Act, 1964, and directed deletion of the name of Petitioner No.1 from revenue records. The Tahsildar implemented the order. The



Petitioners challenged these actions in W.P.No.4013 of 2007. This Court held that:

13.1. The change of entries was illegal;

13.2. It lacked statutory authority;

13.3. It was unsupported by material evidence;

13.4. The Chief Secretary's report, insofar as it concerned Petitioners' lands, was contrary to record and made without proper enquiry.

13.5. Thus, administrative action altering revenue entries was judicially invalidated.

14. Subsequent to the directions issued by the Division Bench in the Public Interest Litigation requiring enquiry into the status of Jamma lands in Kodagu District, further proceedings were initiated at the administrative level.

15. The Petitioners specifically contended that the enquiry, if any, ought to have been conducted strictly



by the authorities who were respondents in W.P. No.36630 of 2003 and who were directly bound by the judicial directions issued therein. It was their case that Respondent No.3 herein was neither a party to the PIL proceedings nor expressly authorised by the Court to undertake independent adjudicatory proceedings affecting their rights. According to the Petitioners, any such unilateral exercise of power would amount to assumption of jurisdiction not conferred either by statute or by judicial mandate.

16. Notwithstanding these objections, Respondent No.3 proceeded to initiate and conduct an enquiry concerning the subject lands and thereafter passed orders adverse to the Petitioners. In substance, Respondent No.3:

16.1. recorded a finding that lands classified as Jamma Malai lands fall within the ambit of "statutory forest" under the scheme of the



Karnataka Forest Act, 1963. The finding appears to have been premised on the historical character of such lands, their alleged forest attributes, and the contention that cultivation rights did not divest the State of underlying ownership or forest character. This determination effectively re-characterised the lands from revenue tenure lands to forest lands, thereby altering the legal regime governing them.

16.2. Proceeding on the premise that the lands constituted forest lands belonging to the Government, Respondent No.3 invoked Section 82 of the Karnataka Forest Act, 1963. The provision pertains to forfeiture or cancellation of leases or grants in cases of breach of conditions or unauthorised occupation. By invoking this provision, Respondent No.3 treated the Petitioners not as tenure holders recognised



under revenue law, but as lessees or grantees holding under forest law, thereby subjecting their rights to a different statutory framework.

16.3. On the basis of the above conclusion, Respondent No.3 proceeded to declare forfeiture of what was described as leasehold rights of the Petitioners. This action had the effect of extinguishing their possessory and cultivation rights, which had earlier been recognised, though in limited form, by judicial pronouncement in RSA No.466 of 1980.

17. The Petitioners contend that such forfeiture:

17.1. Proceeds on an erroneous assumption that their rights were mere leasehold rights under the Forest Act;

17.2. Ignores the binding effect of earlier civil decrees and subsequent judicial orders;



17.3. Transcends the jurisdictional limits of the authority.

18. In addition to the forfeiture proceedings, Respondent No.3 directed the Petitioners to pay land rent in respect of the subject property, thereby treating them as persons liable under a subsisting lease or occupation arrangement under forest administration. The Petitioners assert that such demand is internally inconsistent with the order of forfeiture and is unsustainable in law, particularly in light of prior recognition of their status as Jamma Malai holders under revenue jurisprudence.

19. The culmination of the aforesaid proceedings was the interim order dated 16.12.2011 passed in Case No. Bhoomi (SL)/CR-66/2005-06. The said order forms the principal subject matter of challenge in the present writ petition. The Petitioners contend that the impugned order:



19.1. Is without jurisdiction;

19.2. Violates principles of natural justice;

19.3. Runs contrary to earlier judicial determinations;

19.4. Seeks to indirectly nullify the effect of the order dated 15.03.2009 passed in W.P. No. 4013 of 2007.

20. It is in the above circumstances that the Petitioners have approached this Court, seeking quashing of the impugned order and consequential reliefs.

21. The Petitioners have challenged the said order in the present proceedings, and additionally seek compliance with the earlier order dated 15.03.2009 passed in W.P. No. 4013 of 2007.

22. Sri. Kamalacharan, learned counsel appearing for the petitioners, would submit that;

22.1. There are two portions of property, one is the Jamma Malai Land, the other is the Patta Land



in Sy.No. 154/2, which was never Jamma Malai Land, but a freehold land owned by the family of Sri. Emmanuel Thomas Rampuram, as regards which there could be no restriction on use.

22.2. Insofar as 19.34 acres in Sy.No.154/2 is concerned, he submits that the respondents have absolutely no jurisdiction and as such, they cannot have any claim or complaint on the use thereof. His submission is that it is in this land that a coffee estate is being grown, which the petitioners are entitled to do so.

22.3. Insofar as the balance land is concerned, he submits that the rights of the Mallegar in the said land as Jamma Malai Land has been recognised in O.S.No.4 of 1978, and that aspect is saved under Section 202 of the KLR Act, 1964.



22.4. His submission is that though the holder of the Jamma Malai Land may not be the absolute owner, but such holder is entitled to hold the lands and cultivate Cardamom on the said property, which cannot be disturbed.

22.5. This judgment of the trial Court was set aside in a Regular Appeal by the District Court. However, in RSA No.466 of 1980 the judgment of the trial Court was confirmed, and it was held that the property in question being Jamma Malai Lands, the possessory rights as also the the right to grow Cardamom by the Jamma Malai Landholder was recognised and confirmed. This right being affirmed in RSA No.466 of 1980 that right cannot be sought to be negated by the respondents on the ground that there is a lease rent to be paid and/or that there is a violation by the petitioners.



22.6. The right of the petitioners in respect of the Jamma Malai Land having been dealt with by this Court firstly in RSA No.466 of 1980 and secondly in WP No.4013 of 2007, he submits that the respondent could not have held otherwise than what has been held by this Court. The doctrine of res judicata and the principles of judicial propriety preclude the respondents from contending contrary to or in defiance of the judgments of this Court.

22.7. He relies upon the decision of this Court in **Chief Secretary to Government of Karnataka v. Pongere Kariappa<sup>1</sup>** more particularly para 14 and 15 thereof, which are reproduced hereunder for easy reference;

**14.** *Un reported decision in R.F.A. No. 655/1989 dated 30.11.1990 by the Bench consisting Justice N. Venkatachala and Justice Murlidhar Rao was brought to my notice which directly applies on the point and facts are similar. This is what the Bench observed:—*

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<sup>1</sup> ILR 1999 Karn. 1023



*"the lands originally belonged to one Chennappa Somiah, who fell in arrears in payment of land revenue. The lands were auctioned by the revenue authorities. Plaintiff's father was the auction purchaser. The sale certificates are produced as Ex. P3 and P4. Defendants contested the suit by filing written statement, however they did not lead any evidence. After assessing the evidence, the Court below decreed the suit.*

*In addition to the sale certificates at Ex. P3 and Ex. P4, the plaintiff has produced the 'Jamabandi' statement at Ex. P2, which makes it clear that Sy. No. 13/6, 13/7, 13/39 and 13/3A are described as "Sagu Bane" lands. In the auction sale certificates all lands are described as "Sagu lands" and it is not indicated that they are unredeemed lands. In the circumstances, the Court below was justified in holding that the timber was given after the sale. So far as Sy. No. 39/2 is concerned, it does not find a place in Exts. P3 and P4 and no other document of title is produced."*

*Here also it is to be seen that the defendant do not lead any evidence nor produced any documents. Another reference was made to the decision made in O.S. No. 118/1994 where the facts are same if not similar. There also the plaintiff have purchased the suit property in a public auction sale and that the plaintiff claimed right over the land, the Government contended that though the tenure of suit land was mentioned as 'Jamabhandi' as it appeared in Jamabhandi register, the right of timber was not sold to the plaintiff. An issue was framed in that case as to whether the public auction sale held on 19.8.1932 was an absolute sale and whether the plaintiff has acquired absolute right over the suit schedule property? The issue was answered in affirmative in favour of the plaintiff. Finally the Court held that the defendant Government are liable to issue the require permission for felling and cutting or removing the trees without*



*taking seigniorage rate subject to the conditions stipulated under the Karnataka Forest Act or the rules framed thereunder. This Judgment was delivered by the Civil Judge, Madikeri on 15.4.1997 and the Government having decided not to file an appeal as per the Order of the authorities made available to this Court. Therefore the contention of the Respondent/plaintiff that the Government cannot adopt the double standard with reference to the same type of the land as the same applicable to the present case has to be upheld, and there is no answer from the Government as to why the different yardstick applied to the present appellant when it is not made applicable to the other case. But there is no answer from the appellants.*

**15.** *It was also brought to the notice of this Court that Rule-109 of the Coorg Revenue Manual/Regulation as has been amended. I am reproducing the un-amended provisions and as well as amended provision:—*

*Un-amended*

*"The word interest of the defaulter alone therein, as those interests existed immediately before the attachment of the property was notified, shall be sold, and no encumbrances created, or grants or contracts made, by him in good faith before the notification." was replaced by the word such property.*

*amended clause (rule)*

*"Effect on encumbrances of sale of property for a sum other than an arrears due in respect thereof:— When immovable property is brought to sale under this chapter for the recovery of any other sum than an arrears due in respect thereof, such property shall, except in the cases hereinafter excepted, be sold free of all encumbrances, and all grants and contracts previously made by any person other than the*



*purchaser in respect of the property shall become void as against the purchaser.”*

*That means when the property is brought to sale any other right conferred upon anybody including the Government shall remain extinguished. In fact this is in line with Section-110 of the Regulation which is also reproduced herewith:—*

*110- Effect of sale on lands held revenue free or at favourable rates:— When Jama or umbli land, or other land held wholly or partially free of revenue, is sold under this Chapter, Whether for recovery of an arrears due in respect thereof or for the recovery of any other sum, the privileges attaching to the tenure of the land with respect of the assessment of land-revenue shall be extinguished by the sale:*

*This makes it clear that whenever auction sale is held by the Government, all the properties in the Lands of a person who fell short in land revenue arrears, shall be brought to sale and the properties shall be free from any commitment on the land and it shall be held as absolute property of the auction purchaser. This amendment was not brought to the notice of the Court, especially in I.L.R. 1992, Karnataka page-910.*

22.8. Learned Counsel for the Petitioners placing reliance on the decision of this Court in **Pongere Kariappa case**, submits that the principles laid down therein directly apply to the facts of the present case. In paragraph 14 of the said judgment, this Court considered an



earlier unreported decision in R.F.A. No. 655/1989 dated 30.11.1990. In that case:

22.8.1. The original landholder had fallen into arrears of land revenue.

22.8.2. The lands were brought to public auction by the revenue authorities.

22.8.3. The plaintiff's father purchased the lands in auction.

22.8.4. Sale certificates were produced.

22.8.5. Revenue records described the lands as "Sagu lands".

22.8.6. The Government did not produce contrary evidence.

22.9. The Court held that once the lands were sold in public auction and the sale certificates were issued, the purchaser acquired valid rights over the property. The Court further observed that in



the absence of any evidence from the Government, the findings of the Trial Court could not be disturbed. Learned Counsel submits that the factual situation in the present case is similar. Here also:

22.9.1. The lands were brought to public auction by the Government in 1926.

22.9.2. The auction purchaser Mr.Medappa was put in possession.

22.9.3. Revenue entries were mutated.

22.9.4. The State did not establish any reserved right inconsistent with the auction.

22.10. He therefore contends that the effect of such public auction sale is to transfer full rights in the property to the auction purchaser, subject only to what is expressly reserved. It is further



submitted that reference was made in ***Pongere Kariappa*** to a decision in O.S. No. 118/1994, where similar issues arose. In that case:

22.10.1. The plaintiff had purchased the land in public auction.

22.10.2. The Government contended that timber rights were not sold.

22.10.3. The Civil Court framed a specific issue as to whether the auction sale was absolute.

22.10.4. The Court held in favour of the plaintiff and declared that the sale was absolute.

22.10.5. The Government was directed to grant permission for felling trees without insisting upon seigniorage



charges, subject to statutory conditions.

22.10.6. The Government chose not to file an appeal.

22.11. Learned Counsel submits that this demonstrates that the Government cannot adopt different standards for lands of similar nature. If in one case the Government has accepted the effect of public auction as absolute, it cannot take a contrary stand in another case involving similar facts. According to him, applying one standard in one case and a different standard in another amounts to arbitrary action.

22.12. Learned Counsel further draws attention to paragraph 15 of the said judgment, wherein Rule 109 of the Coorg Revenue Regulation was discussed. He submits that after the



amendment, the Rule clearly provides that when immovable property is brought to sale for recovery of any sum, such property shall be sold free from all encumbrances, and all prior grants and contracts shall become void as against the purchaser. The submission is that once the Government itself brings property to sale for arrears of revenue, the purchaser acquires the property free from prior commitments and encumbrances.

22.13. Rule 109 of the Coorg Land and Revenue Regulations, 1899, which is reproduced hereunder for easy reference;

***109.*** *When immoveable property is brought to sale under this Chapter for the recovery of any other sum than an arrear due in respect thereof, such property shall, except in the cases hereinafter excepted, be sold free of other all encumbrances, and all grants and contracts previously made by any person other than the purchaser in respect of the property shall become void as against the purchaser.*



22.14. Learned Counsel further places reliance on Rule 109 of the Coorg Land and Revenue Regulations, 1899 and submits that the Rule provides that when immovable property is brought to sale under the relevant Chapter for recovery of any sum other than an arrear due in respect thereof, such property shall be sold free of all encumbrances, except in specified cases. It further states that all grants and contracts previously made by any person other than the purchaser in respect of the property shall become void as against the purchaser.

22.15. Relying on the above provision, learned Counsel submits that the legislative intent is clear. When the Government brings property to public auction under statutory authority, the purchaser acquires the property free from prior encumbrances. Any prior grants,



contracts or interests, except those saved by law, cease to bind the purchaser.

22.16. It is submitted that in the present case, the land was auctioned in 1926 by the Government itself for recovery of arrears of revenue. Therefore, by operation of Rule 109, the property vested in the auction purchaser free from prior encumbrances. The State cannot now assert surviving restrictions inconsistent with the statutory effect of the auction sale.

22.17. Learned Counsel submits that Rule 109 reinforces the principle that a statutory auction conducted by the Government carries legal consequences. Once the sale is confirmed and possession delivered, the purchaser steps into ownership of the interest conveyed, subject only to the legal character



of the tenure, and not subject to undisclosed or subsequently invented limitations.

22.18. Accordingly, the Respondents cannot now contend that the land was incapable of transfer or that restrictive conditions survived the auction in the absence of any express reservation in the sale itself.

22.19. Learned Counsel also relies upon Section 110 of the Coorg Regulation, which provides that when revenue-free or concessional land is sold under the Chapter, the privileges attached to such tenure stand extinguished by the sale. According to him, the combined reading of amended Rule 109 and Section 110 of the Regulations, makes it clear that when land is sold in public auction for arrears of revenue all prior privileges are extinguished, the purchaser acquires full rights, the property



cannot thereafter be subjected to inconsistent claims by the Government.

22.20. On the basis of the above principles, learned Counsel submits that, the lands in question were sold in public auction by the Government in 1926, Sale certificates were issued, revenue entries were made in favour of the purchaser, the purchaser and his successors remained in possession. Therefore, the Government cannot now contend that the lands continue to carry restrictions inconsistent with the effect of such an auction sale.

22.21. He further submits that the amendment to Rule 109 was not brought to the notice of the Court in certain earlier reported decisions, and therefore, the correct legal position must now be applied.



22.22. It is contended that once the property was sold in public auction for recovery of land revenue, the rights of the purchaser stood crystallised, and the respondents cannot reopen or dilute those rights by invoking provisions of the Karnataka Forest Act or by demanding lease rent. His submission is that once the sale by auction takes place, the land becomes freehold, and even the rights of the Government are extinguished. Thus, he submits that the respondent-State authorities cannot claim any right in the said property.

22.23. Learned Counsel for the Petitioners submits that the core issue raised by the respondents is whether the lands in question constitute forest land. He contends that the respondents have wrongly relied upon historical notifications without examining their legal effect.



22.24. It is submitted that the notification dated 15.03.1887 included a large extent of the then Coorg Province as "protected forest." However, according to learned Counsel, this notification was only a preliminary notification and did not amount to a final declaration of forest. He further submits that by judgment dated 07.10.1904, the Commissioner of Coorg held that the subsequent notification dated 26.05.1902 superseded the earlier notification dated 15.03.1887. Therefore, according to him, the earlier notification of 1887 cannot now be relied upon to claim that the petition lands are forest lands.

22.25. It is also contended that under the 15.03.1887 notification, almost the entire Kodagu (Coorg) District was identified as a proposed protected forest. However, such a proposal was never fully implemented or



finalised in accordance with the law. Hence, mere reference to the 1887 notification is, according to the Petitioners, legally unsustainable.

**22.26.** Learned Counsel refers to Section 28 of the Indian Forest Act, 1878, said section is reproduced hereunder for easy reference;

***28. Formation of village-forests.***

*(1)The State Government may assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.*

*(2)The State Government may make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.*

*(3)All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village-forests.*

22.27. By relying on Section 28 he submits that forest status cannot arise merely by proposal



or preliminary notification. According to him, the scheme of the Forest Act requires:

22.27.1. A proper enquiry into existing rights;

22.27.2. Determination of claims of individuals and communities;

22.27.3. Recording of such rights; and

22.27.4. Issuance of a final notification declaring the land as reserved or protected forest.

22.28. It is submitted that unless a final declaration is made after such enquiry, the Government cannot assert that the land has become forest land. In the absence of a final notification, private rights remain unaffected.

22.29. Learned Counsel submits that the notification dated 15.03.1887 was only a preliminary step intended to initiate enquiry. It did not



extinguish or abridge the rights of individuals, including those of the Petitioners or their predecessors. He contends that no final declaration was issued in respect of the petition lands pursuant to that notification, no rights were determined or recorded against the Petitioners' predecessors, therefore, the rights of the Petitioners continued unaffected.

22.30. It is submitted that after the 1887 notification, the only relevant development was the notification dated 26.05.1902 proposing constitution of the Padinalaknad Ghat Reserved Forest. This notification was published on 02.06.1902.

22.31. Under this notification, H.S. Mullins was appointed as Forest Settlement Officer to enquire into the nature and extent of rights claimed within the limits of the proposed



reserve forest. The Forest Settlement Officer, issued a proclamation stating that no new rights could be created within the proposed reserve area, issued notice dated 18.03.1903 calling upon persons claiming Jamma Malai rights to produce evidence in support of their claims.

22.32. Learned Senior Counsel submits that ultimately, on 20.04.1906, the Padinalaknad Reserved Forest was notified, and the notification was published on 01.05.1906. Crucially, he submits that the lands of the Petitioners were excluded from the final notification. According to him the petition lands do not fall within the list of Jamma Malais included in the Padinalaknad Reserved Forest, since they were not included in the final declaration, they cannot now be treated as forest land.



22.33. It is therefore contended that once the final notification was issued and the petition lands were not included therein, the respondents cannot rely on earlier preliminary notifications to claim forest status.

22.34. In conclusion, learned Counsel submits that, the 1887 notification was only preliminary and stood superseded, the 1902 notification initiated enquiry, the final notification of 1906 did not include the petition lands, no final declaration was ever made declaring the petition lands as protected or reserved forest. Therefore, according to him, the respondents cannot now assert that the lands are forest lands or exercise powers under the Karnataka Forest Act in respect of the said lands.

22.35. Learned Counsel submits that the map produced before this Court clearly shows that



the petition lands are not contiguous with any notified forest area. On the contrary, the lands are interspersed with privately owned lands and even a village settlement. According to him, forest land is normally identifiable as a continuous block. Since the petition lands are surrounded by private holdings and habitations, they cannot be treated as part of any reserved forest.

22.36. He reiterates that the only final notification which can be relied upon is the notification dated 20.04.1906, by which the Padinalaknad Reserved Forest was declared. He submits that no final notification was issued pursuant to the 15.03.1887 notification, the 20.04.1906 notification does not include or refer to the petition lands, therefore, the petition lands cannot be treated as reserved forest.



22.37. Learned Counsel refers to the Forest Department's Working Plan issued in the year 2015 and submits that the petition lands are not included within the reserved forest area described therein. According to him, if the lands were truly reserved forest, they would necessarily form part of the Working Plan. Their exclusion shows that the lands are not treated by the Department itself as forest land. He further submits that the question whether the lands are forest lands was already examined and settled in W.P. No.4013 of 2007.

22.38. It is submitted that pursuant to directions of the Chief Secretary in the PIL, the Deputy Commissioner initiated proceedings under Section 136(3) of the Karnataka Land Revenue Act, 1964, and revised the revenue entries *suo motu*. The said action was



challenged in W.P. No.4013 of 2007. By order dated 13.03.2009, a Co-ordinate Bench of this Court quashed the orders of the Deputy Commissioner and held that the petition lands were outside the forest area. According to learned Counsel, once this Court has held that the lands are not forest lands, there can be no restriction on the Petitioners exercising their recognised rights.

22.39. He also submits that in O.S. No.4 of 1978, the Civil Court had confirmed the right of the Petitioners' predecessor to hold the land and cultivate cardamom. Thus, the finding in W.P. No. 4013 of 2007 reinforces the earlier civil court decree.

22.40. It is further submitted that in Writ Appeal No. 375 of 2011, the Division Bench did not disturb the finding of the learned Single Judge



that the lands are not forest lands. The Division Bench only permitted, the State Government's name to be entered as owner in Column No.11 in respect of Jamma Malai lands and the Petitioners' right to cultivate cardamom to be recorded, in terms of RSA No. 466 of 1980. According to him, the Division Bench did not reverse the finding that the lands are outside the forest area.

22.41. In view of the decisions in O.S. No. 4 of 1978, RSA No. 466 of 1980, W.P. No. 4013 of 2007 and W.A. No. 375 of 2011, learned Counsel submits that the only issue that could possibly arise is whether Jamma Malai lands are transferable. He contends that such a question cannot be decided by forest authorities. It would require adjudication by a competent civil court or this Court. Even assuming the lands are Jamma Malai lands, since it has



already been held that they are not forest lands, the forest authorities would have no jurisdiction to decide upon transferability.

22.42. Learned Counsel relies on ***Pongere Kariappa's case*** to contend that Jamma Malai lands are transferable. According to him a subsequent purchaser acquires the same rights as the previous Jamma Mallegar, so long as cardamom is cultivated, there is no violation, such rights cannot be taken away by administrative action. It is submitted that in RSA No. 466 of 1980, the Government did not take the stand that the lands are reserved or protected forest. Since such a stand was not taken in the earlier suit, the Government cannot now change its position and contend that the lands are forest lands. According to him, if such a plea was available, it ought to



have been raised earlier. Not having done so, the State is precluded from raising it now.

22.43. Learned Counsel further submits that even assuming the 1887 notification is considered, a clarification had been issued that the notification would not apply to lands where private rights and privileges are involved. Since the Petitioners are private parties with recognised rights, the said notification would not apply to their lands. This submission is made in the alternative to the primary argument that there was no final notification affecting their lands.

22.44. He refers to the statement produced as Annexure-H along with the writ petition to show that the petition lands are outside the Padinalaknad Reserved Forest. It is submitted that this aspect was brought to the notice of



the Conservator of Forests, but no finding was recorded on this issue and the material was ignored.

22.45. Learned Counsel strongly disputes the direction to pay lease rental by treating Jamma Malai tenure as a lease. He submits that historically, Jamma Malai lands were subject only to concessional assessment, no lease rent was ever paid, even under the Coorg Land and Revenue Regulations, concessional assessment alone was levied. When the Pattacharavanda family defaulted in payment of land revenue, the lands were attached and sold in public auction in 1926. Thereafter, Sri Palekanda Medappa purchased the lands, he conveyed them to Sri Emmanuel Thomas Rampuram, the property ultimately came to Petitioner No.1. At no point during



this entire period was any lease rental demanded or paid.

22.46. Therefore, the conclusion of the Conservator of Forests that lease rent is payable is, according to learned Counsel, contrary to both historical practice and law. Since no lease rental was ever payable, the question of forfeiture for non-payment does not arise. It is submitted that the respondents are attempting to take over the property by introducing a new theory of lease rental, which was never raised in earlier proceedings. This issue was not raised in O.S. No. 4 of 1978, R.A. No. 7 of 1978, RSA No. 466 of 1980, or W.P. No. 4013 of 2007.

22.47. According to learned Counsel, principles analogous to Order II Rule 2 of the Code of



Civil Procedure would apply, and issues not raised earlier cannot now be introduced.

22.48. He further submits that the present contentions are being raised for the first time after the State failed in earlier rounds of litigation. According to him, the impugned findings are mala fide, contrary to the record, and unsustainable in law.

22.49. He relies upon the decision of the Hon'ble Apex Court in ***State of U.P. v. Johri Mallegar<sup>2</sup>***, more particularly para 21 thereof, which is reproduced hereunder for easy reference;

**21.** *The provisions of the Code of Criminal Procedure which are statutory in nature govern the field. The State of Uttar Pradesh, however, for reasons best known to it amended sub-section (1) of Section 24 of the Code of Criminal Procedure as a result whereof, the State is not required to consult the High Court before appointing a Public Prosecutor for the High Court. Similarly, sub-sections (4), (5) and (6) of Section 24 have also*

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<sup>2</sup> (2004) 4 SCC 714



*been deleted purported to be on the ground that similar provisions exist in the Legal Remembrancer's Manual. The Legal Remembrancer's Manual is merely a compilation of executive orders and is not a "law" within the meaning of Article 13 of the Constitution of India.*

22.50. He relies upon the decision of the Hon'ble Apex Court in ***G.J. Fernandez v. State of Mysore***<sup>3</sup>, more particularly para 12 thereof, which is reproduced hereunder for easy reference;

**12.** *Taking first the contention with respect to the Code not being followed in the matter of tenders, the question that arises is whether this Code consists of statutory rules or not. The High Court has observed that the so-called rules in the Code are not framed either under any statutory enactment or under any provision of the Constitution. They are merely in the nature of administrative instructions for the guidance of the department and have been issued under the executive power of the State. Even after having said so, the High Court has considered whether the instructions in the Code were followed in the present case or not. Before however we consider the question whether instructions in the Code have been followed or not, we have to decide whether these instructions have any statutory force. If they have no statutory force, they confer no right on any body and a tenderer cannot claim any rights on the basis of these administrative instructions. If these are mere administrative instructions it may be open to Government to take disciplinary action against its servants who*

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<sup>3</sup> AIR 1967 SC 1753



*do not follow these instructions but non-observance of such administrative instructions does not in our opinion confer any right on any member of the public like a tenderer to ask for a writ against Government by a petition under Article 226. The matter may be different if the instructions contained in the Code are statutory rules. Learned counsel for the appellant is unable to point out any statute under which these instructions in the Code were framed. He also admits that they are administrative instructions by Government to its servants relating to the Public Works Department. But his contention is that they are rules issued under Article 162 of the Constitution. Now Article 162 provides that "executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws". This Article in our opinion merely indicates the scope of the executive power of the State; it does not confer any power on the State Government to issue rules thereunder. As a matter of fact wherever the Constitution envisages issue of rules it has so provided in specific terms. We may for example, refer to Article 309, the proviso to which lays down in specific terms that the President or the Governor of a State may make rules regulating the recruitment and the conditions of service of persons appointed to services and posts under the Union or the State. We are therefore of opinion that Article 162 does not confer any power on the State Government to frame rules and it only indicates the scope of the executive power of the State. Of course, under such executive power, the State can give administrative instructions to its servants how to act in certain circumstances; but that will not make such instructions statutory rules which are justiciable in certain circumstances. In order that such executive instructions have the force of statutory rules it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under*



*some provision of the Constitution providing therefor. It is not in dispute that there is no statute which confers any authority on the State Government to issue rules in matters with which the Code is concerned; nor has any provision of the Constitution been pointed out to us under which these instructions can be issued as statutory rules except Article 162. But as we have already indicated, Article 162 does not confer any authority on the State Government to issue statutory rules. It only provides for the extent and scope of the executive power of the State Government, and that coincides with the legislative power of the State Legislature. Thus under Article 162, the State Government can take executive action in all matters in which the legislature of the State can pass laws. But Article 162 itself does not confer any rule making power on the State Government in that behalf. We are therefore of opinion that instructions contained in the Code are mere administrative instructions and are not statutory rules. Therefore even if there has been any breach of such executive instructions that does not confer any right on the appellant to apply to the Court for quashing orders in breach of such instructions. It is unnecessary for us to decide whether there has been in fact a breach of any instruction contained in the Code with respect to tenders and we do not therefore so decide. But assuming that there has been any breach that is a matter between the State Government and its servant, and the State Government may take disciplinary action against the servant concerned who disobeyed these instructions. But such disobedience did not confer any right on a person like the appellant, to come to Court for any relief based on the breach of these instructions. It is for this reason that we are not referring to the Code, though the High Court did consider whether there was any breach of these administrative instructions and came to the conclusion that there was no breach. In the view we take it is unnecessary for us to consider this, for we are*



*of opinion that no claim for any relief before a court of law can be founded by a member of the public, like the appellant, on the breach of mere administrative instructions.*

22.51. Learned Counsel, placing reliance upon the decisions of the Hon'ble Supreme Court in ***Johri Mal*** and ***G.J. Fernandez***, submits that statutory provisions alone govern the field and that executive instructions, manuals or departmental guidelines cannot override statutory law. In ***Johri Mal***, the Hon'ble Supreme Court specifically held that the Legal Remembrancer's Manual, being merely a compilation of executive instructions, does not constitute "law" within the meaning of Article 13 of the Constitution of India.

22.52. Relying on the above principle, learned Counsel submits that in the present case also the respondents are attempting to rely upon administrative directions, internal circulars, working plans and executive instructions of



the Forest Department to curtail or extinguish the rights of the Petitioners. According to him, the rights of the Petitioners flow from statutory provisions, civil court decrees and final judicial pronouncements. Such rights cannot be diluted or taken away by executive interpretation. Unless there is a clear statutory provision authorising the respondents to act in the manner they have, the impugned action cannot be sustained.

22.53. It is further submitted that any attempt to treat Jamma Malai tenure as a "lease", or to impose lease rental on the basis of departmental understanding, without statutory backing, is impermissible in law.

22.54. Learned Counsel contends that executive instructions, forest working plans or departmental practices cannot override the



provisions of the Karnataka Land Revenue Act, 1964, the binding decree in O.S. No.4 of 1978, the judgment of this Court in RSA No.466 of 1980, the findings rendered in W.P. No.4013 of 2007 and affirmed in W.A. No.375 of 2011.

22.55. It is therefore submitted that the respondents cannot, by administrative action, enlarge their jurisdiction or alter the legal character of the lands. In the absence of statutory authority, the impugned proceedings are liable to be set aside.

22.56. By further reliance on ***G.J. Fernandez***, learned Counsel submits that the Hon'ble Supreme Court has categorically held that administrative instructions issued under executive power do not have the force of statutory rules unless framed under a specific



statutory or constitutional provision conferring rule-making authority. The Court clarified that executive instructions are not "law" within the meaning of Article 13. A breach of such administrative instruction does not confer enforceable rights upon members of the public and may, at best, give rise to internal administrative consequences. The Hon'ble Court further observed that Article 162 of the Constitution defines only the extent of executive power and does not confer rule-making power.

22.57. Applying the above principles, learned Counsel submits that the respondents are seeking to justify the imposition of lease rental and the exercise of powers under the Karnataka Forest Act by relying upon departmental circulars, forest working plans, executive directions and internal manuals. None of these instruments,



according to him, have statutory force. They are not framed under any specific statutory provision and cannot override the statutory framework of the Karnataka Land Revenue Act, 1964, the binding civil court decree in O.S.No.4 of 1978, the judgment in RSA No.466 of 1980, or the findings rendered in W.P.No.4013 of 2007 and affirmed in W.A.No.375 of 2011. Accordingly, he submits that the impugned action is without authority of law and unsustainable.

22.58. He relies upon the decision of the Hon'ble Apex Court in ***Manuelsons Hotels (P) Ltd. v. State of Kerala***<sup>4</sup>, more particularly para 19 and 20 thereof, which are reproduced hereunder for easy reference;

***19. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject-matter of***

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<sup>4</sup> (2016) 6 SCC 766



*an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court in Commonwealth of Australia v. Verwayen [Commonwealth of Australia v. Verwayen, (1990) 170 CLR 394 (Aust)] , by Deane, J. in the following words:*

*"1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law, the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.*

*2. The central principle of the doctrine is that the law will not permit an unconscionable—or, more accurately, unconscientious—departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.*

*3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.*



*4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party:*

*(a) has induced the assumption by express or implied representation;*

*(b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption;*

*(c) has exercised against the other party rights which would exist only if the assumption were correct;*

*(d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.*

*Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within Category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within Category (b), actual belief in the correctness of the fact or state of affairs assumed may not be*



*necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.*

*5. The assumption may be of fact or law, present or future. That is to say, it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).*

*6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, "equitable estoppel" should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).*

*7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the trust).*

*8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could*



*be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed.”*

*(emphasis supplied)*

**20.** *The above statement, based on various earlier English authorities, correctly encapsulates the law of promissory estoppel with one difference—under our law, as has been seen hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. It is enough that a party has acted upon the representation made. The importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppel—one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party.*

22.59. By relying on ***Manuelsons Hotels’s case***, he submits that in the said decision doctrine of promissory estoppel has been elaborately explained. The Hon’ble Supreme Court has held that the law will not permit an



unconscionable departure by one party from an assumption, whether of fact or law, present or future, which has been adopted by another party as the basis of a course of conduct. The Court further clarified that, the assumption may relate to legal rights or the state of the law, relief under the doctrine is flexible and intended to prevent injustice, it is sufficient if a party has acted upon the representation made, the doctrine operates to prevent unfair or oppressive conduct.

22.60. Relying upon the above principles, learned Counsel submits that in the present case, the Government conducted a public auction in 1926, the auction purchaser was put in possession, revenue entries were mutated, the State did not treat the land as forest land for decades, no lease rent was demanded at any point of time, Civil court decrees



recognised cultivation rights, revenue authorities continued entries accordingly. According to him, these consistent acts and omissions of the State created a clear assumption that, the lands are not reserved forest, the Petitioners' predecessors had lawful cultivation rights, no lease rent was payable, the tenure was recognised and transferable.

22.61. The Petitioners and their predecessors acted on this assumption for nearly a century. They cultivated cardamom, transferred the property, and invested in the land on the basis of the State's conduct and judicial recognition of their rights. It is therefore submitted that the State cannot now, after decades, turn around and assert that the land is forest land, that the tenure is a lease, that lease rentals are payable, that forfeiture can be ordered. Such a change in stand, according to learned



Counsel, would amount to an unconscionable departure from the position consistently adopted by the State.

22.62. Learned Counsel submits that even if the assumption relates to a question of law, namely, the legal status of the land, the doctrine of promissory estoppel applies. The State conducted the auction, accepted assessment, allowed mutations, defended litigation without pleading forest status, did not challenge transfers for decades. These actions, according to him, amount to a clear representation, express or implied, that the lands were not treated as reserved forest lands. The Petitioners, having acted upon this representation, would suffer serious prejudice if the State is now permitted to depart from it is the submission.



22.63. Learned Counsel submits that the Hon'ble Supreme Court has emphasised that relief under the doctrine of promissory estoppel must be flexible and aimed at preventing injustice. In the present case, permitting the State to change its position would defeat long-recognised rights, disturb settled possession, undermine judicial finality, result in manifest injustice.

22.64. On the strength of ***Manuelsons Hotels***, learned Counsel submits that the respondents are estopped from reclassifying the land as forest land, imposing lease rentals, declaring forfeiture, acting contrary to prior judicial findings. Accordingly, the impugned proceedings are liable to be set aside on the ground that the State is bound by its past conduct and representations.



22.65. He relies upon the decision of the Hon'ble Apex Court in ***Subbegowda v. Thimmegowda***<sup>5</sup>, more particularly para 5, 6 and 9 thereof, which are reproduced hereunder for easy reference;

*5. In Raj Bajrang Bahadur Singh v. Thakurain Bakhtraj Kuer [AIR 1953 SC 7] this Court was called upon to examine what the testator had intended the legatee to take under a Will in the context of the expressions like malik kamil (absolute owner) and naslan bad naslan (generation after generation) having been used in the Will in reference to the interest which was sought to be demised. This Court held that such words, though descriptive of a heritable and alienable estate in the donee and connoting full proprietary rights, may not have been used with the intention of conferring absolute rights if there could be something in the context or in the surrounding circumstances to permit such an inference being drawn:*

*"In cases where the intention of the testator is to grant an absolute estate, an attempt to reduce the powers of the owner by imposing restraint on alienation would certainly be repelled on the ground of repugnancy; but where the restrictions are the primary things which the testator desires and they are consistent with the whole tenor of the Will, it is a material circumstance to be relied upon for displacing the presumption of absolute ownership implied in the use of the word 'malik'."*

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<sup>5</sup> (2004) 9 SCC 734



**6.** *For the interpreter of documents it is common knowledge that a transfer of property or a creation of interest therein may be accompanied by conditions, covenants or restraints. Condition may be condition precedent — a condition which must be performed before the grant or alienation takes effect to create an interest in property, or may be condition subsequent — a condition which has an effect of enlarging or defeating the interest already created or vested. In either case the condition will be annexed with the estate and would run with the same. In Philip John Plasket Thomas v. CIT [AIR 1964 SC 587] , AIR vide para 14, this Court has dealt with conditions — precedent and subsequent, in the context of gift of shares. A covenant is not annexed with the estate and runs independently of it which may give rise to a cause of action for specific performance or for an action in damages. A restraint or a limitation has the effect of curtailing the quantum of the estate affected thereby.*

**9.** *A conditional transfer or a settlement accompanied by conditions is not unknown to the law of real property. It is permissible in law to annex or encumber any grant or alienation with condition or limitation which will operate and the Court will give effect to it unless there is some provision of law which annuls or invalidates such condition, restraint or limitation. None has been brought to our notice.*

22.66. By relying on ***Subbegowda***, he submits that the Hon'ble Supreme Court examined the nature of estates and interests created in property and clarified the distinction between: Absolute ownership, Conditional grants,



Estates subject to limitations or restraints. The Hon'ble Supreme Court held that even where expressions suggesting full ownership are used, the surrounding circumstances and the tenor of the instrument must be examined to determine the true nature of the rights conferred.

22.67. It was further held that, a grant may be subject to conditions precedent or conditions subsequent, such conditions run with the estate, a restraint or limitation may curtail the quantum of the estate, conditional transfers are legally permissible unless prohibited by law.

22.68. Relying upon the above principles, learned Counsel submits that Jamma Malai tenure is a recognised form of conditional or limited estate. According to him:



22.69. The holder is not an absolute owner in the fullest sense, the estate is subject to certain limitations, namely cultivation of cardamom, there is no right over standing timber, the tenure is subject to assessment. However, the existence of limitations does not mean that the estate is void, nor does it mean that it can be treated as a mere lease unless expressly declared so.

22.70. It is submitted that the Civil Court in O.S.No.4 of 1978, and this Court in RSA No.466 of 1980, have already interpreted the nature of the estate and held that it is a limited but valid right to cultivate cardamom. Therefore, the tenure is neither an absolute ownership; nor a lease under the Forest Act. It is a limited estate recognised in law.



22.71. Learned Counsel submits that if the Government intended to annex any condition such as payment of lease rent or forfeiture for non-payment, such condition ought to have been expressly provided under law; or incorporated in the grant; or recognised in earlier proceedings. No such condition, according to him, has been shown. In the absence of any statutory provision invalidating the tenure or imposing additional obligations, the limited estate recognised by courts must be respected.

22.72. Learned Counsel submits that the respondents cannot, by administrative interpretation, enlarge or alter the nature of the tenure. If the estate is a limited estate with defined rights and restrictions, as recognised by judicial decree, it cannot now be converted into a leasehold estate under the Forest Act or



a tenure liable to forfeiture for alleged non-payment of lease rent. Such an alteration would amount to changing the very character of the estate without authority of law.

22.73. Relying upon ***Subbegowda***, learned Counsel submits that a limited estate is legally valid, conditions, if any, must be lawful and traceable to statutory authority, courts must give effect to the true nature of the estate as recognised earlier, the respondents cannot impose new conditions or treat the estate differently from what has already been judicially declared. Accordingly, the impugned proceedings, insofar as they seek to re-characterise the tenure or impose forfeiture, are unsustainable.

22.74. He relies upon the decision of the Hon'ble Apex Court in ***V.B Rangaraj vs. V.B.***



**Gopalkrishnan and others<sup>6</sup>**, more particularly para Nos.8, 12, 13, 15 and 18 thereof, which are reproduced hereunder for easy reference;

**8.** *Whether under the Companies Act or Transfer of Property Act, the shares are, therefore, transferable like any other movable property. The only restriction on the transfer of the shares of a company is as laid down in its Articles, if any. A restriction which is not specified in the Articles is, therefore, not binding either on the company or on the shareholders. The vendee of the shares cannot be denied the registration of the shares purchased by him on a ground other than that stated in the Articles.*

**12.** *In Chapter 16 of Gore-Browne on Companies (43rd edn.) while dealing with transfer of shares it is stated that subject to certain limited restrictions imposed by law, a shareholder has prima facie the right to transfer his shares when and to whom he pleases. This freedom to transfer may, however, be significantly curtailed by provisions in the Articles. In determining the extent of any restriction on transfer contained in the Articles, a strict construction is adopted. The restriction must be set out expressly or must arise by necessary implication and any ambiguous provision is construed in favour of the shareholder wishing to transfer.*

**13.** *In Palmer's Company Law (24th edn.) dealing with the 'transfer of shares' it is stated at pages 608-09 that it is well settled that unless the Articles otherwise provide the shareholder*

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<sup>6</sup> (1992) 1 SCC 160



*has a free right to transfer to whom he will. It is not necessary to seek in the Articles for a power to transfer, for the Act (the English Act of 1980) itself gives such a power. It is only necessary to look to the Articles to ascertain the restrictions, if any, upon it. Thus a member has a right to transfer his share/shares to another person unless this right is clearly taken away by the Articles.*

**15.** *Dealing with 'restrictions on transfer of shares' in Penington's Company Law (6th edn.) at page 753 it is stated that shares are presumed to be freely transferable and restrictions on their transfer are construed strictly and so when a restriction is capable of two meanings, the less restrictive interpretation will be adopted by the court. It is also made clear that these restrictions have to be embodied in the Articles of Association.*

**18.** *Hence, the private agreement which is relied upon by the plaintiffs whereunder there is a restriction on a living member to transfer his shareholding only to the branch of family to which he belongs in terms imposes two restrictions which are not stipulated in the article. Firstly, it imposes a restriction on a living member to transfer the shares only to the existing members and secondly the transfer has to be only to a member belonging to the same branch of family. The agreement obviously, therefore, imposes additional restrictions on the member's right to transfer his shares which are contrary to the provisions of the Article 13. They are, therefore, not binding either on the shareholders or on the company. In view of this legal position, the finding recorded by the courts below that the sale by defendant 1 of his shares to defendants 4 to 6 is invalid as it is in breach of the agreement, is erroneous in law. In view of our above finding, it is unnecessary to go into the question whether the High Court was justified in directing the transfer of shares by*



*defendants 4 to 6 to the plaintiffs even if its finding that the sale was invalid was correct.*

*In the circumstances, the appeals are allowed, the decree of the High Court is set aside and the plaintiffs' suit is dismissed with costs.*

22.75. Learned Counsel further placing reliance on the decision of the Hon'ble Supreme Court in ***V.B. Rangaraj v. V.B. Gopalkrishnan and Others***, submits that the Hon'ble Supreme Court in the said judgment laid down a fundamental principle relating to transferability of property interests. The Court held that property, including shares, is presumed to be freely transferable unless there is a specific restriction imposed by law or expressly provided in a binding instrument. Any restriction on transfer must be clearly set out. It cannot be inferred or implied. If a restriction is ambiguous, it must be construed in favour of transferability.



22.76. The Hon'ble Supreme Court further held that a private agreement imposing additional restrictions beyond what is expressly provided in law or in the governing document cannot bind parties or override statutory rights. Restrictions on transfer must have a clear legal foundation. They cannot arise merely from understanding, practice, or executive interpretation.

22.77. Relying on the above principle, learned Counsel submits that although the case dealt with shares under company law, the underlying doctrine is of general application, **transferability is the rule; restriction is the exception.** A restriction must be expressly provided by statute or by a legally binding instrument. It cannot be assumed.



22.78. In the present case, no statutory provision has been shown prohibiting transfer of Jamma Malai rights. The Respondents rely on historical descriptions of limited rights and departmental understanding, but no express statutory bar has been placed before this Court.

22.79. He submits that, just as in ***Rangaraj case***, where restrictions not contained in the Articles were held unenforceable, any attempt here to impose restrictions not expressly contained in statute must fail. A limitation on enjoyment does not automatically become a prohibition on transfer.

22.80. Accordingly, learned Counsel submits that the Respondents cannot invalidate the transfers on the basis of implied, inferred, or administratively conceived restrictions. Unless



there is a clear statutory provision declaring the tenure non-transferable, the presumption of transferability must prevail.

22.81. Based on the above he submits that the writ petition is required to be allowed and reliefs sought are to be granted.

23. Sri.Pradeep.C.S., learned Additional Advocate General would submit that;

23.1. Insofar as Prayer-B in the writ petition is concerned, it is submitted that the same does not survive for consideration. The order dated 15.03.2009 passed in W.P. No. 4013 of 2007 was set aside in Writ Appeal No. 375 of 2011, and therefore no further relief can be claimed on that basis.

23.2. It is submitted that the Hon'ble Division Bench in W.A. No. 375 of 2011 directed that the name of the State Government be recorded as owner



in respect of lands bearing Sy.Nos. 129/3, 154/5, 170, 154/8, 173 and 174 of Chelavara Village, Napoklu Hobli, Virajpet Taluk, Kodagu District, measuring in all 468 acres and 72 cents. The Hon'ble Division Bench further directed that in Column No. 11 of the revenue records, the rights of the respondents (present Petitioners) are to be recorded only to the extent that they have a right to cultivate cardamom on the land in question.

23.3. Learned Counsel submits that the Hon'ble Division Bench applied the decision in RSA No. 466 of 1980 and clarified that what remains open for consideration is only the question whether the respondents therein (present Petitioners) have any right to inherit the land or claim the right to cultivate the same on the strength of sale deeds executed in their favour. The Hon'ble Division Bench left it open to the



competent authority to examine such questions in accordance with law.

23.4. It is further submitted that the impugned order and the show cause notice issued by the forest authorities are in accordance with law and do not call for interference. According to the respondents, the land in question falls within the boundaries of the protected forest declared under Section 28 of the Indian Forest Act, 1878, pursuant to Notification No. 13 dated 15.03.1887 issued by the Chief Commissioner of Coorg and published in the Coorg District Gazette on 01.06.1887.

23.5. Learned Counsel contends that the Jamma Mallegars never possessed or claimed rights of alienation, transfer or sub-lease. Therefore, when the auction was conducted for recovery of land revenue, only the limited rights of the



Jamma Mallegars were brought to sale. No right greater than what was held by the Jamma Mallegars could vest in the auction purchaser, namely Sri Palekanda Medappa. The only right available under Jamma Malai tenure, according to the respondents, was the limited right to cultivate cardamom by indigenous methods, without ownership over the land or timber. Consequently, Sri Palekanda Medappa could not have acquired any proprietary right beyond such limited cultivation right.

23.6. It is further submitted that the subsequent sale by Sri.Palekanda Medappa in favour of Sri.Emmanuel Thomas Rampuram, and the later sale in favour of Petitioner No.1, were without authority insofar as they purported to convey greater rights than those originally held. The principle of law, according to the respondents, is that no person can convey a



better title than he himself possesses. If Sri.Palekanda Medappa purported to convey rights beyond his limited tenure, the remedy of the purchaser, if any, lies against the vendor and not against the State. Mere payment of land revenue by subsequent purchasers does not confer title, nor does it create proprietary rights in forest land.

23.7.He places reliance on the order passed in ***T JOHN S/O THOMAS & Ors., vs. STATE OF KARNATAKA& Ors***<sup>7</sup>., more particularly para 20 thereof, which is reproduced hereinunder for easy reference;

***20.*** *It is not in dispute that the limited right in jamma malai lands of a holder is the cultivation of cardamom, if it can really be called cultivation, which alone is permitted. The holder has no proprietary right over the lands or the tree growth. The petitioners admittedly are not claiming any larger right and such right having been recognised by the judgment and decree in the civil suit between erstwhile holders and the State Government and which right has been alienated in favour of*

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<sup>7</sup> WP No.4013 of 2007 dated 13.03.2009



*the petitioners and the finding as regards the right of the holder having attained finality in view of the judgment of this Court in the second appeal, the present finding that the jamma malai lands are part of the reserved forest is not supported by any material placed on record. The reference to the history of jamma malai lands and the manner in which the jamma malais have been declared as protected forests under the relevant legislation does not establish that the present lands of the petitioners were also notified and declared as part of the reserved forest.*

23.8. Learned AAG by relying on ***T. John S/o Thomas & Ors.,*** submits *that* this Court observed that the limited right of a holder of Jamma Malai land is confined to the cultivation of cardamom. It was specifically held that the holder has no proprietary right over the land or over the tree growth. The Court further noted that though such a limited right may have been recognised in earlier civil proceedings, the claim of larger proprietary rights cannot be sustained unless supported by material showing that the lands were not part of a reserved forest.



23.9. Relying upon the above decision, learned Counsel submits that the legal position is clear that a Jamma Mallegar possesses only a limited right of cultivation. There is no proprietary right in the land itself and no ownership over the tree growth. Therefore, even assuming that such limited right has been recognised in earlier proceedings, it cannot be expanded into full ownership or transferable proprietary title.

23.10. It is contended that the Petitioners cannot claim greater rights than those available to a Jamma Mallegar. At best, what could have been alienated was only the limited cultivation right. Any attempt to assert broader ownership rights, or to resist regulatory control of the State on that basis, is contrary to the settled position of law.



23.11. Learned AAG reiterates that, at the highest, what could have been transferred in favour of the auction purchaser was only the limited right to cultivate cardamom, and even such right, according to him, could not have been lawfully transferred, as the land forms part of protected forest pursuant to Notification dated 15.03.1887. It is submitted that the Chief Secretary of Karnataka, after visiting Kodagu District and verifying the relevant records, submitted a report pursuant to directions issued in the Public Interest Litigation. The directions issued thereafter, including recording the name of the Government and classifying the land as forest land, were based on such verification and cannot be termed unilateral or arbitrary.

23.12. It is further submitted that in W.P. No. 4013 of 2007, this Court directed entry of the name of the Government as owner in respect of Jamma



Malai lands. Therefore, the Deputy Commissioner and Tahsildar merely carried out the directions flowing from the report of the Chief Secretary and the judicial orders. According to him, such action cannot be faulted.

23.13. Learned Counsel categorically submits that the respondents do not contend that the land is reserved forest; however, they deny the Petitioners' contention that the land is not forest land. According to him, the land in question is protected forest as distinguished from reserved forest. Even protected forest, it is submitted, is forest land requiring preservation and protection under law. Since the land is forest land, the Conservator of Forests, being a competent forest officer, had jurisdiction to conduct enquiry and pass appropriate orders. The enquiry conducted,



according to him, is lawful and within statutory authority.

23.14. On the above basis, learned Counsel submits that the Petitioners have no valid title to the property and have been in unlawful occupation and enjoyment thereof. It is contended that their actions amount to violation of Rule 22 of the Karnataka Forest Rules, 1969, punishable under Rule 43 of the said Rules read with Section 35 of the Karnataka Forest Act, 1963. Consequently, the impugned proceedings are justified and do not warrant interference.

23.15. Rule 22 of the Forest Rules are reproduced hereunder for easy reference;

**22. Management of village forests.-** *The management of village forest transferred to or vested in the Village Panchayat under Sections 42 and 46 of Karnataka Village Panchayat and Local Boards Act, 1959 shall be governed by the following rules.-*

*(1) The Panchayat shall meet for deliberation at least once in a month and record the*



*proceedings of the meeting in a book maintained for the purpose, which shall be signed by the Chairman of the Panchayat who shall forward copies of the record proceedings to the Range Forest Officer and Tahsildar.*

*(2) Any resolution of the Panchayat may be cancelled by the Range Forest Officer, if it is considered to be against the principles of forest conservation and protection or by the Tahsildar if it is considered to be against the interest of the community or illegal for reasons to be stated by them in writing. An appeal shall lie to the 3 [Deputy Conservator of Forests] against the decisions of the Range Forest Officer, and to the Deputy Commissioner against the decisions of the Tahsildar.*

*(3) Every Panchayat shall maintain regularly such accounts and books and in such form as may be prescribed by the Deputy Commissioner and submit such of them to the Tahsildar at such periods as the Deputy Commissioner may direct. The account shall be audited once a year under the orders of the Tahsildar.*

*(4) No wood and other forest produce shall be removed from the village forest except under and in accordance with the permit issued by the Panchayat either free or for a fixed fee. The permit shall be in the form prescribed by the 1 [Deputy Conservator of Forests] or supplied by the 2 [Deputy Conservator of Forests] on payment of cost. The Panchayat shall determine what forest produce may be removed free, the purpose for which and the conditions under which it may be taken and may prescribe a scale of fees for the removal of produce which the Panchayat does not permit to be the taken fee of charge and the purpose for which it may be removed.*

*(5) Permits, free or otherwise, may be issued by the Panchayat or any person authorised by it. The Panchayat may prescribe the check-posts at*



*which the produce shall be brought for inspection and where permits shall be checked or recovered. The permit or licence shall be obtained before any felling, conversion, collection or removal is commenced. The permit holder must comply with the rules and conditions entered in the permit. The permit shall be valid only within the limits of the village panchayat.*

*(6) The Panchayat may sell by public auction all forest produce in the village forest except Sandalwood, Rosewood and Teak, subject to confirmation by the Chairman of the Panchayat in consultation with the Range Forest Officer.*

*(7) The Panchayat shall have control over all the grazing areas such as 'gomal lands', 'forest pasture', 'revenue waste' and such other lands in the village forests within the limits of the village or groups of villages for the benefit of which such village forests have been constituted. Grazing shall be free in all the gomal lands in the village forests, but in respect of the other lands included in the village forests, the Panchayat may allow free grazing or levy such fees as shall from time to time be determined by it, subject to the approval of the Deputy Commissioner.*

*(8) The Panchayat may prepare each year a list of all the cattle in the village and fix the limit of cattle per hectare after taking into consideration the area available for grazing in the village forest.*

*(9) The Panchayat may regulate grazing in village forest by alternate closing and opening of arrears for such periods as it deems proper having regard to the number of cattle and the area available.*

*(10) The Panchayat shall set apart certain portions of the grazing area available in the village forest for the exclusive use of sheep and goats.*



*(11) The Panchayat may permit grazing of the cattle of the neighbouring villages, after consideration of surplus grazing area, if any, available at its disposal.*

*(12) The Panchayat shall decide whether to permit or refuse grazing of the cattle of the professional graziers and the fee that may be levied on such cattle.*

*(13) The Panchayat may impound the cattle allowed to enter the forest contrary to the rules.*

*(14) The Panchayat may stop the exercise of any of the privileges in the forest by the villagers and exclude the cattle of such persons from the forest, if they fail to pay the dues of the Panchayat or to conform to any of the rules made by the Panchayat.*

*(15) The Panchayat may close any portion of the forest for grazing or for the exercise of any other privileges and against any class of cattle for any period considered necessary with the approval of the Tahsildar.*

*(16) The Panchayat may divide the forest into blocks and work each of them in rotation in accordance with the Working Plan or Working Scheme drawn up for the purpose by the Range Forest Officer and approved by the 1 [Deputy Conservator of Forests].*

*(17) Lands included in a village forest shall not ordinarily be given out for cultivation or for any others purpose without the consent of the Panchayat.*

*(18) The Panchayat shall suitably demarcate the boundaries of the village forest and maintain the demarcation in good condition.*

*(19) The Panchayat shall improve the condition of the growing stock and plant, fuel, timber, manurial and other economically important trees in the forest and in this respect they will be*



*guided by the advice of officers of the Forest Department.*

*(20) The Panchayat shall improve the condition of pasturage by undertaking measures such as rotational grazing, introduction of nutritive varieties of grass, growth of fodder, species of trees and such other measures as may be suggested by Agriculture, Animal Husbandry and Forest Departments.*

*(21) Sale proceeds of grass and other forest produce, compensation amounts recovered in the composition of forest offences and all contributions made shall be constituted into a 'Village Forest Fund' which should be deposited in the Government Savings Bank in the name of the Panchayat. The Chairman and any other member of the Panchayat authorised by the Panchayat shall jointly operate upon the account whenever necessary. The funds shall be used solely for the purpose of protection and improvement of the village forest.*

*(22) The Sub-Deputy Conservator of Forest Officer or the Range Forest Officer shall inspect the village forest and the accounts pertaining thereto at least once a year and report the result of such inspection to the Deputy Commissioner under intimation to the 2 [Deputy Conservator of Forests].*

*(23) The Tahsildar of the Taluk and the local Range Forest Officer shall once in every six months jointly inspect the village forests, check the accounts of the Panchayat and scrutinise the general policy adopted by the Panchayat in working the forests. A joint inspection report should be submitted to the Conservator of Forests and the Deputy Commissioner.*

*(24) The 3 [Deputy Conservator of Forests], the Assistant Commissioners, the Forest Sub-Divisional Officers and the Tahsildars may also during their tours inspect the village forests in*



*their jurisdiction and the accounts and registers maintained by the Panchayat.*

23.16. Learned AAG further places reliance on Rule 22 of the Karnataka Forest Rules, 1969, which governs the management of village forests transferred to or vested in the Village Panchayat under Sections 42 and 46 of the Karnataka Village Panchayat and Local Boards Act, 1959. He submits that Rule 22 lays down an elaborate statutory framework for the regulation, supervision and control of village forests, including:

23.16.1. Regulation of removal of forest produce only under permit;

23.16.2. Control over grazing and forest produce;

23.16.3. Maintenance of accounts and audit;

23.16.4. Inspection by Forest Officers and Revenue Authorities;



23.16.5. Prohibition against giving land for cultivation without consent;

23.16.6. Implementation of working plans approved by forest authorities;

23.16.7. Establishment of a Village Forest Fund;

23.16.8. Regular inspection and supervision by forest officials.

23.17. Learned Counsel submits that the scheme of Rule 22 clearly demonstrates that lands classified as village forests or protected forests are subject to regulatory control and management under the Forest Department. Even if such lands are not declared as reserved forests, they remain forest lands governed by statutory rules.



23.18. According to him, if the lands in question fall within the category of protected forest or village forest, then any use of the land, including cultivation, removal of produce, or transfer, must conform to the regulatory framework prescribed under Rule 22 and the Karnataka Forest Act, 1963.

23.19. It is therefore contended that the Petitioners cannot assert absolute or unrestricted rights over the lands. Even assuming that limited cultivation rights exist, such rights are subject to statutory regulation. Any activity inconsistent with forest management principles, including unauthorized transfer or commercial exploitation beyond permitted limits, would amount to violation of the Rules.

23.20. Learned Counsel submits that the impugned action is traceable to the statutory scheme



governing protected forests and village forests, and therefore cannot be characterised as arbitrary or merely administrative. On the above grounds, it is submitted that the proceedings initiated by the forest authorities are lawful and within the statutory framework.

23.21. Learned AAG further refers to Section 99(1)(d) of the Karnataka Forest Act, 1963 read with Rule 69 of the Karnataka Forest Rules, 1969, to submit that a Forest Officer not below the rank of a Forest Ranger is authorised to conduct enquiry under the Act and the Rules. It is contended that the present Enquiry Officer is above the rank of Forest Ranger and is therefore fully competent in law to initiate and conduct the proceedings in question.



23.22. It is further submitted that the Petitioners have planted coffee in a portion of the land, despite having no right to do so. According to the respondents, the limited right available to a Jamma Mallegar is confined to cultivation of cardamom and does not extend to planting coffee or changing the nature of cultivation. Such planting of coffee, it is contended, amounts to unauthorised use of forest land and constitutes violation of the provisions of the Karnataka Forest Act and the Rules framed thereunder.

23.23. Planting coffee in a protected forest is a non-forestry activity and, in this regard, he refers to Section 2 (iv)(a) of the Forest Conservation Act 1980, which is reproduced hereunder for easy reference;

***2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose:***



*(i) to (iii) xxxx*

**(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. [Substituted by the Forest (Conservation) Amendment Act (69 of 1988), Section 2 (15.3.1989)] - 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;*

23.24. Learned AAG further submits that the act of planting coffee in a protected forest constitutes a non-forest activity. In this regard, he places reliance on Section 2 of the Forest (Conservation) Act, 1980, particularly the Explanation to Section 2, which defines "non-forest purpose." It is pointed out that under the Explanation to Section 2, "non-forest purpose" includes the breaking up or clearing of any forest land for the cultivation of tea, coffee, spices, rubber, palms, oil-



bearing plants, horticultural crops or medicinal plants.

23.25. On this basis, it is contended that cultivation of coffee on forest land is expressly classified as a non-forest purpose under the statute. Therefore, even assuming that the Petitioners had limited rights of cultivation of cardamom under Jamma Malai tenure, such rights cannot extend to planting coffee, as coffee cultivation falls within the category of non-forest activity. It is submitted that any use of forest land for non-forest purpose requires prior approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980. In the absence of such approval, the planting of coffee is unauthorised and in violation of statutory provisions. Accordingly, the respondents contend that the Petitioners have altered the nature of the land and engaged in



a prohibited activity, thereby justifying the initiation of proceedings under the Karnataka Forest Act and the Rules framed thereunder.

23.26. His contention is that this Court in WP No.4013 of 2007, having held that the land is Jamma Malai Land it is only eight rights which flow to the Mallegar namely;

- i) that the jammamalegars possess no proprietary right in the jamma males;*
- ii) that in virtue of a grant made by the Coorg Rajas they possess the right to cultivate cardamoms therein according to the indigenous method, which may be improved but not radically altered;*
- iii) that they have no right to minor forest produce therein except in so far as relates to the use of canes, wattes, nettipai and kuvalai leaves, creepers and fiber for purposes ancillary to cardamom cultivation;*
- iv) that they possess no right to shoot within the males or the reserved forest;*
- v) that they have right of access to the males by defined routes as may be necessary for purposes connected with the cultivation of cardamoms;*
- vi) that they possess the right to fell such timber as may be necessary for the preparation of cardamom plots and for the construction of buildings within the males for*



*the housing of themselves and their labourers and the storage of the cardamom produce collected;*

*vii) that they possess the right to utilise other forest produce for the construction of the buildings mentioned under item (ui) and to cut firewood for their own use within the males and for the purpose of drying cardamoms spot; and on the*

*viii) that for themselves and their labourers they possess the light to consume within the males a reasonable quantity of toddy drawn from the Baine palms growing therein.*

23.27. On the basis of the above, learned Counsel submits that there is no right of alienation, transfer or sub-lease attached to Jamma Malai tenure. The rights of Sri Palekanda Medappa, even assuming he acquired such rights in auction, were limited to the above enumerated rights. He could not have conveyed greater rights than he possessed. Consequently, the subsequent sale in favour of Sri Emmanuel Thomas Rampuram, and thereafter in favour of Petitioner No.1, could not confer proprietary title.



23.28. It is contended that both Sri Palekanda Medappa and Sri.Emmanuel Thomas Rampuram purported to sell property over which they had no ownership. Therefore, the Petitioners cannot claim any proprietary right in the lands in question. At best, they could claim only such limited cultivation right as was originally available to the Jamma Mallegars, and nothing beyond that. On this basis, it is submitted that the Petitioners have derived no legal title to the land and cannot resist the regulatory jurisdiction of the forest authorities.

23.29. Learned AAG submits that in W.P. No. 4013 of 2007, this Court only held that the lands in question are not part of a reserved forest. According to him, there was no finding that the lands are not protected forests under Section 28 of the Indian Forest Act, 1878. He



contends that the lands fall within the boundaries of the protected forest notified under Notification dated 15.03.1887, published in the Coorg District Gazette on 01.06.1887, issued under Section 28 of the Indian Forest Act, 1878. Therefore, even if the lands are not reserved forest, they are statutory forest lands by virtue of being protected forest.

23.30. It is further submitted that the respondents have consistently maintained that the lands are protected forest and not reserved forest. A protected forest, according to him, also falls within the ambit of the Karnataka Forest Act, 1963. Consequently, Section 64(a) of the Karnataka Forest Act is attracted, and the forest authorities are competent to exercise jurisdiction in respect of such lands. On this basis, learned Counsel submits that the



impugned action is traceable to statutory authority and does not suffer from want of jurisdiction.

23.31. He refers to Section 33 of the Karnataka Forest Act 1963, which is reproduced hereunder for easy reference;

**33. Power to make rules for district forests.—**

*(1) Subject to all rights now legally vested in individuals and communities, the State Government may, for any district or portion of a district, make rules to regulate the use of the forest produce or of the pasturage of any land at the disposal of Government and not included in a reserved or village forest.*

*(2) Without prejudice to the generality of the foregoing power such rules may,—*

*(i) declare that certain trees not classed as reserved trees shall be granted to cultivating raiyats on favourable rates of seigniorage;*

*(ii) provide for placing any area at the disposal of Government under special protection in view of its subsequent settlement and constitution as a reserved forest or for any other purpose, and prescribe the conditions and penalties attendant on such special protection;*

*(iii) regulate or prohibit the grant of land and its clearing and breaking up for cultivation or other purposes;*



1[(iiiia) prohibit unauthorised occupation of land for any purpose;]1 1. Inserted by Act 10 of 1989 w.e.f. 16.3.1989.

(iv) regulate or prohibit the kindling of fires and prescribe the precautions to be taken to prevent the spreading of fires;

(v) regulate or prohibit the felling, cutting, girdling, marking, lopping, tapping or injuring by fire or otherwise of any trees, the sawing, conversion, and removal of trees and timber and the collection and removal of other forest produce;

(vi) regulate or prohibit the quarrying of stone or gravel, the burning of lime or charcoal, the smelting of ore, or the boiling of catechu;

(vii) regulate or prohibit the cutting of grass and pasturing of cattle, and prescribe the payments (if any) to be made for such cutting or pasturing;

(viii) regulate or prohibit hunting, shooting, beating or driving for game, fishing, poisoning or driving for game, fishing, poisoning or dynamiting water, and setting traps or snares;

(ix) regulate the disposal of timber and other forest produce whether by sale or by free grant;

(x) prescribe the fees, royalties or other payments for such timber and other forest produce and the manner in which they shall be levied.

(3) In making a rule under this section, the State Government may provide that a person guilty of contravention thereof shall, on conviction, be punishable with imprisonment which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

(4) The land placed under special protection under a rule made in pursuance of clause (ii) of sub-section (2), shall be called "protected forest"



*and shall be duly notified as such in the official Gazette.*

23.32. Learned AAG further refers to Section 33 of the Karnataka Forest Act, 1963, which empowers the State Government to make rules regulating the use of forest produce and pasturage of land at the disposal of the Government and not included in a reserved or village forest. It is submitted that under subsection (2) of Section 33, the State Government is authorised, inter alia, to:

23.32.1. Place any area under special protection pending its settlement or constitution as reserved forest or for any other purpose;

23.32.2. Regulate or prohibit grant of land and its clearing for cultivation or other purposes;



- 23.32.3. Prohibit unauthorised occupation of land;
- 23.32.4. Regulate or prohibit felling of trees and removal of forest produce;
- 23.32.5. Prescribe fees, royalties and other payments.

23.33. Sub-section (4) further provides that land placed under special protection under clause (ii) of sub-section (2) shall be called "protected forest" and shall be duly notified as such in the Official Gazette. On the basis of the above provision, learned Counsel submits that lands falling within the scope of Section 33 are statutorily recognised as protected forests once notified. The object of the provision, according to him, is to safeguard such lands and enable the State Government



to frame appropriate rules for regulation and protection.

23.34. It is therefore contended that any land coming within the ambit of Section 33(2), once notified under sub-section (4), becomes protected forest and the Forest Department is under a statutory duty to preserve and protect such lands. Consequently, the forest authorities are competent to regulate use, prohibit unauthorised cultivation, and initiate proceedings in case of violation.

23.35. On this basis, it is submitted that the land in question falls within the category of protected forest and is subject to the regulatory framework of the Karnataka Forest Act, 1963.

23.36. He refers to Rule 141 of the Karnataka Forest Rules, 1969 which is reproduced hereunder for easy reference;



**141. Trees on lands assigned for cultivation before 1865 in Coorg District.-** Teak, Rosewood, Ebony and Poon trees, which have not been paid for and which stand on land assigned before 1865, shall not be cut, removed or sold by the holders without the written permission of the 1 [Deputy Conservator of Forests] and without payment of the value of the trees. The conditions mentioned under Rule 137 shall apply to the removal of trees on these lands.

23.37. Learned AAG further places reliance on Rule 141 of the Karnataka Forest Rules, 1969, which provides that Teak, Rosewood, Ebony and Poon trees standing on lands assigned before 1865 in Coorg District cannot be cut, removed or sold by the holders without written permission of the Deputy Conservator of Forests and without payment of the value of such trees. The Rule also makes applicable the conditions prescribed under Rule 137 for removal of trees.

23.38. By referring to Rule 141, learned Counsel submits that even in respect of lands historically assigned, the holder does not



possess an unrestricted right to remove timber. According to him, a Jamma Malai holder cannot remove timber at will and is confined strictly to the limited rights historically recognised. He reiterates that the only substantive right available is cultivation of cardamom according to the indigenous method. The holder may tap Bagani palms for toddy for self-consumption, subject to excise regulations, but cannot sell such toddy to third parties. Beyond these limited rights, it is submitted, no proprietary or commercial rights exist.

23.39. Learned Counsel further submits that Jamma Malais, even if treated as distinct enclosures within forest areas, do not cease to form part of forest land. According to him, such classification does not confer ownership or transferable title upon the holders, but merely



recognises limited cultivation privileges within forest boundaries.

23.40. On the basis of the above, learned AAG submits that the Petitioners have no proprietary right over the land. Their rights, if any, are limited and conditional. The impugned order passed by the Conservator of Forests is, according to him, in conformity with the Karnataka Forest Act, 1963 and the Rules framed thereunder. Consequently, the writ petition is liable to be dismissed.

24. In rejoinder, Sri.Kamalacharan., learned counsel for the petitioner, would submit that:

24.1. The arguments advanced by the Respondents are legally unsustainable and contrary to the record and prior binding judgments. At the outset, the Respondents rely heavily on the judgment in W.A. No. 375 of 2011 and



contend that the earlier order in W.P. No. 4013 of 2007 was set aside. This submission is incorrect. The Hon'ble Division Bench did not hold that the lands are forest lands. It only directed that the name of the Government be entered in Column No.11 of the revenue records in respect of Jamma Malai lands, while specifically preserving the Petitioners' right to cultivate cardamom as recognised in RSA No. 466 of 1980. The Hon'ble Division Bench did not declare the lands as protected forest nor did it expand the powers of the Forest Department. Therefore, the Respondents cannot rely on that judgment to justify the present action.

24.2. The Respondents now argue that the lands are protected forest under Section 28 of the Indian Forest Act, 1878. This stand is inconsistent with their earlier position. In RSA



No. 466 of 1980, the State did not contend that the lands were protected forest. In W.P. No. 4013 of 2007, the State mainly argued that the lands were reserved forest, a contention that failed. Having failed earlier, the State now changes its stand and asserts protected forest status. Such shifting positions cannot be permitted, especially when earlier proceedings have attained finality.

24.3. The notification dated 15.03.1887 relied upon by the Respondents was only a preliminary notification. There is no material to show that a final declaration was issued including the petition lands after determination of private rights. On the contrary, the final notification dated 20.04.1906 relating to Padinalaknad Reserved Forest did not include the petition lands. The Respondents cannot rely on an old



preliminary notification while ignoring later developments.

24.4. The Petitioners do not dispute that Jamma Malai tenure confers limited rights. However, a limited right does not mean that it is non-transferable. RSA No. 466 of 1980 recognised the right to cultivate cardamom. It did not declare such right to be non-transferable. No law has been shown which prohibits transfer of Jamma Malai rights. In fact, after the auction in 1926, revenue records were mutated and transfers were recognised for decades without objection from the State. The State cannot now question transfers that it had accepted for nearly a century.

24.5. The Respondents argue that Sri Palekanda Medappa could not transfer more rights than he possessed. However, the auction sale was



conducted by the Government itself. Sale certificates were issued and possession was delivered. The relevant Coorg Regulations provided that properties sold in revenue auction were sold free from prior encumbrances. The Government cannot conduct an auction, collect money, allow possession for decades, and later deny the legal consequences of its own act. If the auction was invalid, the State ought to have challenged it within time. It cannot indirectly invalidate it now.

24.6. The reliance on Section 33 of the Karnataka Forest Act is also misplaced. That provision applies only when land is specifically notified as protected forest under Section 33(4). No such notification covering the petition lands has been produced. Mere existence of power does not prove its exercise.



24.7. Similarly, Rule 22 of the Karnataka Forest Rules applies only to village forests vested in Panchayats. The petition lands were never vested in a Village Panchayat. Therefore, Rule 22 does not apply.

24.8. Rule 141 merely restricts cutting of certain valuable trees without permission. The Petitioners are not claiming unrestricted timber rights. This rule does not convert the land into forest land nor does it extinguish cultivation rights.

24.9. The Respondents also rely on the Forest (Conservation) Act, 1980 and argue that planting coffee amounts to non-forest activity. This argument assumes that the land is forest land, which has not been established. Unless the land is first shown to be forest land under law, the provisions of the Forest



(Conservation) Act cannot be invoked. Moreover, the Petitioners' right to cultivate has already been recognised. Change of crop cannot automatically make the occupation illegal in the absence of a clear statutory prohibition.

24.10. The reliance on Section 99 of the Karnataka Forest Act and Rule 69 regarding the competence of the enquiry officer does not cure the defect of jurisdiction. Authority to hold an enquiry presupposes that the land falls within the Act. If the land is not lawfully established as forest land, the enquiry itself is without jurisdiction.

24.11. The Respondents further rely on departmental reports and working plans. However, as held by the Hon'ble Supreme Court in **Johri Mal** and **G.J. Fernandez**, executive instructions



and departmental manuals do not override statutory provisions or judicial decisions. The Petitioners' rights have been recognised by civil courts and affirmed by this Court. Such rights cannot be curtailed by administrative interpretation.

24.12. The allegation that the Petitioners are in illegal occupation is wholly unfounded. The Petitioners trace their title through a Government auction sale, registered sale deeds, long possession and judicial recognition. The State accepted revenue, recognised entries and never treated the land as forest land in earlier proceedings. It is not open to the State now to describe such possession as unlawful.

24.13. For nearly a century, the conduct of the State consistently indicated that the lands were not



reserved forest and that limited cultivation rights existed. The Petitioners and their predecessors acted on that basis. The State cannot now change its position to the prejudice of the Petitioners.

24.14. Learned Counsel further submits that Sri Emmanuel Thomas Rampuram had instituted O.S. No. 4 of 1978 after purchasing the land from the auction purchaser, Sri Palekanda Medappa. The revenue records had already been mutated in his name at that time. The State Government was arrayed as Defendant No.1 in the said suit.

24.15. It is significant, according to learned Counsel, that in that suit the State did not contend that transfer of Jamma Malai land was prohibited or impermissible. The suit was contested. It was decided by the Trial Court. It went in



appeal. It reached this Court in RSA No. 466 of 1980. At no stage, neither before the Trial Court, nor before the First Appellate Court, nor before this Court in Second Appeal, did the State raise a plea that the transfer of Jamma Malai rights was invalid or prohibited in law.

24.16. In that background, learned Counsel submits that it is not open to the State at this belated stage to introduce a completely new contention that the transfer itself was void or impermissible. If such a plea was available, it ought to have been raised in the earlier proceedings. Having failed to do so, and the matter having attained finality, the State cannot now reopen the issue indirectly through forest proceedings.



24.17. Learned Counsel further submits that no statute or rule has been placed before this Court which expressly prohibits transfer of Jamma Malai rights. The Respondents have repeatedly asserted that the tenure is non-transferable, but no specific provision of law has been shown which imposes such a bar.

24.18. Even in the decision referred to by the learned Additional Advocate General in ***Totiyana Ponnappa***, a copy of which has not been placed on record, the eight rights enumerated do not contain any express prohibition against transfer. The rights are described as limited, but limitation is not the same as prohibition of transfer. In the absence of a clear statutory restriction, transfer of a limited estate cannot be presumed to be invalid.



24.19. Therefore, learned Counsel submits that the contention regarding non-transferability is without legal foundation and cannot be permitted to defeat rights which have already been recognised by judicial decrees that have attained finality.

24.20. His submission is that petitioners being holders of Jamma land "a holder" is defined under the Coorg Land and Revenue Regulations in terms of Rule 3 (6), which is reproduced hereunder for easy reference;

**3(6)** *"holder" or "landholder" signifies the person who is in possession of a holding or any share or portion thereof or in the enjoyment of any part of the profits thereof and who is bound by law, contract or local usage to pay land-revenue direct to the Government, but does not include a tenant:*

24.21. Learned Counsel further submits that the Petitioners are holders of Jamma Malai land within the meaning of the Coorg Land and Revenue Regulations. By referring to Rule



3(6) of the said Regulations, which defines a "holder" or "landholder" as a person who is in possession of a holding or any portion thereof, or who enjoys any part of its profits, and who is bound by law, contract or local usage to pay land revenue directly to the Government. The definition specifically excludes a tenant.

24.22. Relying on this definition, learned Counsel submits that the Petitioners squarely fall within the meaning of "holder." They are in possession of the land. They enjoy the profits derived from cultivation. They are liable to pay land revenue directly to the Government. Therefore, their status is that of landholders under the Coorg Land and Revenue Regulations, and not that of tenants or mere licensees.



24.23. It is submitted that this statutory definition is significant. A holder is recognised as a person directly accountable to the Government for revenue. The definition does not describe such person as a lessee of forest land. Nor does it indicate that the holder's possession is precarious or subject to arbitrary termination.

24.24. Accordingly, learned Counsel submits that the Petitioners' status as "holders" under the Coorg Land and Revenue Regulations reinforces their lawful possession and recognised tenure, and it is not open to the Respondents to re-characterise them as unauthorised occupants or mere cultivators without legal standing.

24.25. His submission is that there cannot be implied restriction on sale, any owner or holder can sell the property unless there is a specific Bar



for such sale. It refers to Section 6 of the Transfer of Property Act, which is reproduced hereunder for easy reference;

**6. What may be transferred.**— *Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force,—*

*(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred;*

*(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby;*

*(c) An easement cannot be transferred apart from the dominant heritage;*

*(d) All interest in property restricted in its enjoyment to the owner personally cannot be transferred by him;*

*(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred;*

*(e) A mere right to sue cannot be transferred;*

*(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable;*

*(g) Stipends allowed to military naval, air-force and civil pensioners of the Government and political pensions cannot be transferred;*



*(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or (3) to a person legally disqualified to be transferee;*

*(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.*

24.26. Learned Counsel further submits that there can be no implied restriction on transfer of property. According to him, any owner or lawful holder of property is entitled to transfer his interest unless there is a clear and specific statutory bar prohibiting such transfer. In this regard, he refers to Section 6 of the Transfer of Property Act, 1882, which lays down the general rule that property of any kind may be transferred, except as otherwise provided by that Act or by any other law for the time being in force. Section 6 then specifically



enumerates certain categories of interests which cannot be transferred, such as a mere chance of succession, a mere right to sue, certain personal rights, public offices, and other interests expressly restricted by law. The provision also makes clear that a tenant having an untransferable right of occupancy cannot assign such right if it is declared to be untransferable by law.

24.27. Relying on Section 6, learned Counsel submits that the law proceeds on the presumption of transferability. Transfer is the rule; prohibition is the exception. If a right is to be treated as non-transferable, the restriction must be expressly provided either in the Transfer of Property Act itself or in some other law for the time being in force. It is submitted that no provision has been shown to this Court declaring Jamma Malai rights to be



untransferable. There is no statute, rule, or regulation placed on record which expressly prohibits sale of such limited interest. The Respondents merely assert non-transferability, but assertion is not law. In the absence of a clear statutory bar, the Court cannot infer an implied prohibition. Learned Counsel therefore submits that Section 6 of the Transfer of Property Act supports the Petitioners' case. Since Jamma Malai rights do not fall within any of the prohibited categories enumerated under Section 6, and no other law has been produced prohibiting transfer, the sale transactions cannot be treated as void merely on assumption or implication. Accordingly, the contention of the Respondents that the transfers were invalid is without legal basis and deserves to be rejected.



24.28. He refers to the decision of the Hon'ble Apex Court in ***Subbegowda v. Thimmegowda***<sup>8</sup>, more particularly para 5, 6 and 9 thereof, which are reproduced hereunder for easy reference;

*5. In Raj Bajrang Bahadur Singh v. Thakurain Bakhtraj Kuer [AIR 1953 SC 7] this Court was called upon to examine what the testator had intended the legatee to take under a Will in the context of the expressions like malik kamil (absolute owner) and naslan bad naslan (generation after generation) having been used in the Will in reference to the interest which was sought to be demised. This Court held that such words, though descriptive of a heritable and alienable estate in the donee and connoting full proprietary rights, may not have been used with the intention of conferring absolute rights if there could be something in the context or in the surrounding circumstances to permit such an inference being drawn:*

*"In cases where the intention of the testator is to grant an absolute estate, an attempt to reduce the powers of the owner by imposing restraint on alienation would certainly be repelled on the ground of repugnancy; but where the restrictions are the primary things which the testator desires and they are consistent with the whole tenor of the Will, it is a material circumstance to be relied upon for displacing the presumption of absolute ownership implied in the use of the word 'malik'."*

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<sup>8</sup> (2004) 9 SCC 734



**6.** *For the interpreter of documents it is common knowledge that a transfer of property or a creation of interest therein may be accompanied by conditions, covenants or restraints. Condition may be condition precedent — a condition which must be performed before the grant or alienation takes effect to create an interest in property, or may be condition subsequent — a condition which has an effect of enlarging or defeating the interest already created or vested. In either case the condition will be annexed with the estate and would run with the same. In Philip John Plasket Thomas v. CIT [AIR 1964 SC 587] , AIR vide para 14, this Court has dealt with conditions — precedent and subsequent, in the context of gift of shares. A covenant is not annexed with the estate and runs independently of it which may give rise to a cause of action for specific performance or for an action in damages. A restraint or a limitation has the effect of curtailing the quantum of the estate affected thereby.*

**9.** *A conditional transfer or a settlement accompanied by conditions is not unknown to the law of real property. It is permissible in law to annex or encumber any grant or alienation with condition or limitation which will operate and the Court will give effect to it unless there is some provision of law which annuls or invalidates such condition, restraint or limitation. None has been brought to our notice.*

24.29. By relying on **Subbegowda's case**, he submits that the Hon'ble Supreme Court in the said judgment explained an important principle relating to transfer of property. The Court held that even where an estate is



limited or subject to conditions, such estate remains valid and transferable unless there is a specific legal prohibition. The Court also clarified that a transfer may be accompanied by conditions, limitations or restraints. A condition may restrict the manner of enjoyment of the property, but such restriction does not automatically make the estate inalienable unless the law expressly prohibits transfer.

24.30. The Hon'ble Supreme Court further observed that conditional transfers are recognised in law. The Court will give effect to such conditions unless there is some statutory provision which annuls or invalidates them. In other words, limitation of rights is not the same as prohibition of transfer. A limited estate is still an estate in property. Relying on the above principles, learned Counsel submits



that Jamma Malai tenure, even if treated as a limited estate with restrictions on enjoyment, remains an interest in property. The limitation that cultivation must be of cardamom, or that timber rights are restricted, does not automatically mean that the interest cannot be transferred. Unless there is a specific statutory bar against transfer, such limited interest remains transferable.

24.31. It is further submitted that the Respondents have not placed before this Court any statutory provision declaring Jamma Malai rights to be non-transferable. The eight rights referred to by the Respondents describe the scope of enjoyment, but nowhere do they impose a prohibition on alienation.

24.32. Therefore, applying the principles laid down in ***Subbegowda***, he submits that:



24.32.1. A limited estate can validly exist in law;

24.32.2. Conditions attached to such estate regulate enjoyment, not transferability;

24.32.3. In the absence of a statutory prohibition, sale of such limited interest is legally permissible.

24.33. Accordingly, the Respondents' contention that the transfers are void merely because the estate is limited is without legal basis and contrary to the law declared by the Hon'ble Supreme Court.

24.34. Learned Counsel further submits that there is no absolute or statutory restriction that Jamma Malai land can be used only for cultivation of cardamom. The historical position must be understood in context. In the



1800s, coffee cultivation in Coorg was minimal. At that time, cardamom was the principal commercial crop grown in the region. Over time, with changes in agricultural practices, climatic understanding, and commercial viability, coffee cultivation expanded significantly in Coorg, Chikkamagaluru and Hassan districts.

24.35. He submits that agricultural usage of land necessarily evolves with climatic conditions and economic realities. The introduction of coffee into Coorg was a later development. Landholders, including holders of Jamma Malai lands, began cultivating commercial crops such as coffee, cardamom, pepper, arecanut and other plantation crops based on suitability of soil and climate. The right recognised by courts was a right of cultivation. It was not a rigid and frozen right confined forever to a



single crop irrespective of changing agricultural conditions.

24.36. It is further submitted that Sri Emmanuel Thomas Rampuram had approached the Coffee Board and obtained permission to cultivate coffee in a portion of the land. This demonstrates that the activity was undertaken transparently and not clandestinely.

24.37. Insofar as the Petitioners are concerned, it is specifically submitted that coffee is cultivated in about 20 acres in Sy.No.154/2 (now Sy.No.154/2B). This land is Paradeena Banne land. It is neither Jamma land nor Jamma Malai land. It has always been treated separately. The Chief Secretary's report does not classify Sy.No.154/2 as Jamma Malai land. The Jamabandi Register describes this land as unredeemed Paradeena land. A registered sale



deed in favour of Petitioner No.1 evidences title to this land. Further, the list of Jamma lands produced by the Forest Department for Kodagu District does not include Sy.No.154/2. Therefore, the Respondents cannot now contend that this land is Jamma Malai or forest land. It stands on a different footing altogether.

24.38. Learned Counsel also submits that merely because certain portions of Jamma Malai land may not be suitable for cultivation of cardamom due to physical or environmental reasons, those portions do not cease to belong to the holder. The right recognised is a right in respect of the land as a whole, subject to limitations. Inability to grow cardamom in every portion due to terrain or climatic conditions does not divest the holder of rights over such portions. Accordingly, the



contention that cultivation of coffee automatically renders possession illegal, or that the entire holding becomes unauthorised on that basis, is without legal or factual foundation.

24.39. In this regard, he relies upon the judgment **dated 07.10.1904 passed by the Commissioner of Coorg** para 53 thereof, which is reproduced hereunder for easy reference;

*53. As to the question whether it is legitimate to excludo portions of the original grant upon which cardamoms for physical reasons cannot be cultivated, the answer must I think be in the negative. Though what the Raja had in view was merely the growth and collection of cardamoms, and though this major right cannot possibly be exercised in such areas, yet, subsidiary rights may be capable of exercise therein. It would therefore, I think, be illegal to make any such exclusion from the original grant without the consent of the occupant. At the same time I must remind the appellants that if the retention of such areas is administratively inconvenient and not reasonably requisite in their interests as producers of cardamoms, there is no reason why they should not be assessed at special rates. The matter is therefore obviously a fitting subject for compromise.*



24.40. Learned Counsel by relying on the judgment dated 07.10.1904 passed by the Commissioner of Coorg, submits that the Commissioner clearly held that it would be illegal to exclude portions of the original grant merely because cardamom cannot be cultivated there for physical reasons. Even if the principal object of the grant was cultivation of cardamom, the land as granted could not be reduced or curtailed without the consent of the occupant.

24.41. The Commissioner recognised that although cardamom may not be capable of cultivation in every portion of the land, subsidiary rights could still be exercised in those areas. Therefore, exclusion of such portions from the grant was held to be impermissible. At the highest, the matter could be addressed administratively, including by assessment at



special rates, but not by unilateral reduction of rights.

24.42. Relying on this historical and authoritative interpretation, learned Counsel submits that once the right to cultivate cardamom was recognised, the land as a whole remained with the holder. If physical or climatic conditions make cultivation of cardamom impracticable in certain portions, that cannot result in forfeiture or loss of those portions.

24.43. He further submits that there is no express restriction prohibiting cultivation of other suitable crops. The original limitations were framed at a time when coffee cultivation was not prevalent in Coorg. Coffee was introduced later, and Coorg has since become one of the finest coffee-producing regions in the country. Agricultural practice evolves with time and



climate. A right of cultivation cannot be artificially frozen to the agricultural conditions of the nineteenth century.

24.44. It is submitted that cultivation of coffee is a lawful agricultural activity. It contributes to the economy and generates revenue for the State. In the absence of a specific statutory prohibition applicable to the petition lands, the Petitioners' right to grow coffee cannot be interfered with merely on the ground that historically cardamom was grown. Accordingly, learned Counsel submits that the Respondents' attempt to treat cultivation of coffee as unlawful is contrary to historical interpretation, statutory framework and practical agricultural reality.

24.45. Learned Counsel further reiterates that there has never been any lease deed executed by



the Government either in favour of the predecessors of the Petitioners or in favour of Petitioner No.1. At no point of time has the Government treated the tenure as a lease. No lease rent or ground rent has ever been demanded or paid. What existed historically was a grant subject to assessment, not a lease arrangement.

24.46. It is submitted that for decades, the predecessors of the Petitioners paid only land revenue as assessed. No separate lease rental was imposed. It is only after the present round of litigation commenced that the Respondents have sought to characterise the tenure as a lease and claim lease rent or ground rent. Such a belated re-characterisation of the tenure is impermissible. A tenure cannot retrospectively



be converted into a lease merely to justify imposition of rental liability.

24.47. Learned Counsel further submits that the issue of transfer has already been recognised in RSA No. 466 of 1980 and in W.A. No. 375 of 2011. The Government participated in those proceedings. It did not challenge the validity of the transfers. The courts recognised the Petitioners' predecessor as the holder entitled to cultivate. Having allowed the matter to attain finality, the Government cannot now contend that the property was non-transferable.

24.48. It is also submitted that reliance on the Karnataka Forest Manual, 1976 is wholly misplaced. The Manual does not have statutory force. It is only a compilation of executive and administrative instructions meant for internal



guidance. Under Article 13 of the Constitution, only law having statutory force can restrict property rights. Executive instructions cannot override statutory provisions or judicial decisions. The Government cannot impose restrictions on holding or transfer of Jamma Malai lands based on a Manual introduced in 1976, long after the auction sale of 1926 and long after successive transfers had been recognised.

24.49. Finally, learned Counsel submits that in O.S.No.4 of 1978, in the first appeal, and in RSA No. 466 of 1980, the Government never contended that Jamma lands were non-transferable or that only descendants of the original grantees could hold them. That issue was never raised. Having failed to raise such a contention in earlier proceedings, the Government cannot now introduce it in



collateral proceedings. Litigation must attain finality, and parties are bound by the stands taken earlier. Accordingly, the plea of non-transferability and the attempt to treat the tenure as a lease are both without legal foundation and deserve to be rejected.

24.50. In this regard, he relies upon the decision in ***State of U.P. v. Johri Mal***<sup>9</sup>, more particular para 21 thereof, which is reproduced hereunder for easy reference;

**21.** *The provisions of the Code of Criminal Procedure which are statutory in nature govern the field. The State of Uttar Pradesh, however, for reasons best known to it amended sub-section (1) of Section 24 of the Code of Criminal Procedure as a result whereof, the State is not required to consult the High Court before appointing a Public Prosecutor for the High Court. Similarly, sub-sections (4), (5) and (6) of Section 24 have also been deleted purported to be on the ground that similar provisions exist in the Legal Remembrancer's Manual. The Legal Remembrancer's Manual is merely a compilation of executive orders and is not a "law" within the meaning of Article 13 of the Constitution of India.*

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<sup>9</sup> (2004) 4 SCC 714



24.51. His submission is that the Government itself having auctioned the Jamma lands in the year 1926 under Regulation 106 and 108 of the Coorg Land and Revenue Regulations 1899, the said land having been conveyed to Sri.Palekanda Medappa absolutely and without any conditions attached, the respondents cannot now contend that there is a restriction on transfer.

24.52. Regulation 106 and 108 are reproduced hereunder for easy reference;

**106.** (1) *After an order of the [Assistant Commissioner] confirming a sale has become final in manner aforesaid, the [Assistant Commissioner] shall put the purchaser into possession of the property sold, and shall grant him a certificate to the effect that he has purchased that property,*

*(2) Till the purchaser is put into possession, the property shall remain under attachment.*

*(3) The certificate granted under sub-section (1) shall be deemed to effect a valid transfer of the property, but need not be registered as a conveyance.*

*(4) Any suit brought against the certified purchaser on the ground that the purchase was*



*made on behalf of another person not the certified purchaser shall be dismissed with costs.*

*(5) The person named in the certificate as the purchaser of any immoveable property shall be liable for all instalments of revenue falling due in respect of the property after the order confirming the sale has become final.*

**108.** *(1) Subject to the provisions of this section with respect to engagements made between the defaulter and his tenants, immoveable property brought to sale under this Chapter for the recovery of an arrear due in respect due thereof shall be sold free of all incumbrances, and all grants and contracts previously made by any person other than the purchaser in respect of the property shall become void as against the purchaser.*

*(2) The provisions of section 91 with respect to the validity or invalidity, as against the Government, of such engagements as are referred to in that section shall, so far as they can be made applicable, apply, as against the purchaser, to such engagements as have been made between the defaulter and his tenants:*

*Provided that an engagement, which has not before the sale been declared under that section to be void, shall not be liable to be set aside otherwise than by suit at the instance of the purchaser.*

24.53. He submits that Regulation 106 makes the legal consequence of a confirmed revenue sale abundantly clear. Once the Assistant Commissioner confirms the sale and the order attains finality, the purchaser must be put in



possession of the property and granted a certificate of purchase. The Regulation expressly states that such a certificate shall be deemed to effect a valid transfer of the property and need not be registered as a conveyance. In other words, the transfer flows directly from the statute itself. The title does not depend upon any separate deed. The sale certificate operates as a statutory conveyance.

24.54. The Regulation further provides that the certified purchaser becomes liable for future revenue and that any suit alleging that the purchase was benami must fail. These provisions, according to learned Counsel, demonstrate that the law intended to confer finality and certainty upon a Government-conducted revenue sale.



24.55. He then refers to Regulation 108, which provides that immovable property brought to sale for recovery of arrears shall be sold free of all encumbrances and that all prior grants and contracts made by any person other than the purchaser shall become void as against the purchaser. The legislative intent is therefore unmistakable, once the property is sold in a statutory auction, it passes to the purchaser free from previous burdens, subject only to the nature of the tenure recognised by law.

24.56. Learned Counsel submits that when these two Regulations are read together, the position is clear. The 1926 auction was conducted by the Government itself. The sale was confirmed. A sale certificate was issued. Possession was delivered. Revenue records were mutated. By operation of Regulation 106, a valid statutory



transfer came into existence. By virtue of Regulation 108, the property stood conveyed free of prior encumbrances.

24.57. In such circumstances, the State cannot now contend that the property was inherently incapable of transfer or that the purchaser acquired no legally transferable interest. If the tenure were truly non-transferable, the Government could not have auctioned it. If any restriction was intended to survive the sale, it ought to have been expressly preserved at the time of sale. No such reservation has been shown.

24.58. Accordingly, learned Counsel submits that the 1926 auction resulted in a valid statutory transfer of the interest held in the land. That interest, though limited in nature as subsequently clarified by judicial decisions,



was nonetheless capable of transfer in the absence of an express statutory prohibition. The present attempt to question the validity of the auction or the subsequent transfers is therefore contrary to the statutory framework itself.

24.59. He submits that once the Government exercised its statutory power to bring the property to sale and conveyed the same to Sri Palekanda Medappa, the purchaser acquired whatever rights were capable of being conveyed under the law. The Government cannot now turn around and argue that the land was inherently non-transferable or that the purchaser acquired no transferable interest.

24.60. Although reference has been made to Regulations 106 and 108, learned Counsel



clarifies that the relevant scheme of the Coorg Regulations contemplated attachment and sale of property for default in payment of revenue. Once such sale is conducted by the Government itself and the purchaser is put in possession and revenue records are mutated, the State cannot later impose additional unwritten conditions.

24.61. He submits that a Government auction sale carries with it a presumption of legality and finality. If the tenure was truly inalienable, the Government could not have auctioned it at all. Having auctioned the property, received consideration, issued sale certificates, and allowed the purchaser and his successors to remain in possession for decades, the State is estopped from contending that the transfer was invalid.



24.62. In simple terms, the Government cannot sell the property in 1926 and then, nearly a century later, argue that the property was never capable of being sold. Accordingly, learned Counsel submits that once the land was brought to public auction for revenue default and conveyed to the auction purchaser, all rights in respect of that holding vested in the purchaser to the extent permitted by law. The present contention of non-transferability is therefore inconsistent with the State's own earlier conduct.

24.63. Learned Counsel further submits that if there had in fact been any legal restriction prohibiting transfer of Jamma Malai land, the Government ought not to have conducted the auction in 1926. Alternatively, at the very least, the Government ought to have expressly imposed such a restriction in the



sale certificate or in the conveyance in favour of Sri Palekanda Medappa. No such condition was imposed. The sale was conducted by the Government itself, possession was delivered, and revenue entries were mutated. In the absence of any express restriction at the time of sale, it is impermissible for the State to now contend, nearly a century later, that the property was inherently non-transferable.

24.64. He then turns to the issue of "protected forest." Learned Counsel reiterates that the Respondents rely only on the notification dated 15.03.1887 (referred to in submissions as 15.02.1887), which was merely a proposal. It was not a final notification issued after completion of enquiry. A proposal cannot, by itself, convert private or granted land into protected forest. The law requires a final declaration after due enquiry into rights. In



this regard, he places reliance on the judgment of the Commissioner of Coorg dated 07.10.1904, wherein it was clearly observed that without completion of enquiry and final declaration, rights of occupants cannot be curtailed.

24.65. Learned Counsel further submits that the Working Plan of the Virajpet Forest Division for the year 2015 has been placed on record. The said working plan specifically identifies reserved forest areas village-wise. In Chelavara Village, only Sy.No.176 is shown as reserved forest. None of the survey numbers belonging to the Petitioners are shown as reserved forest.

24.66. As regards protected forest, the working plan lists only three properties in Chelavara Village as protected forest. None of the Petitioners'



lands are included in that list. Further, even the list of Jamma Malai holders within Padinalaknad Reserved Forest does not include the subject properties. A portion of Sy.No.5 belonging to one Bovrienda Chinnappa is shown as falling within Padinalaknad Reserved Forest, but the Petitioners' lands are not.

24.67. On the basis of these official records, learned Counsel emphatically submits that the Petitioners' lands are neither reserved forest nor protected forest, nor do they form part of the Padinalaknad Reserved Forest. The Respondents' contention to the contrary is not supported by statutory notification or official records and therefore cannot be sustained.

24.68. By referring to the judgment in OS 4 of 1978, he submits that the trial Court has unequally



declared that the properties are Jamma Malai properties and those rights are saved under Section 202 of the Karnataka Land Revenue Act 1964. Section 202 is reproduced hereunder for easy reference;

**202. Repeal and Savings.**—(1) *The enactments specified in the Schedule, and any other law corresponding to this Act are hereby repealed: Provided that subject to the provisions of this Act, the repeal shall not effect,—*

*(a) the previous operation of any such enactment or law or anything duly done or suffered thereunder;*

*(b) any right, privilege, obligation or liability acquired, accrued or incurred under such enactment or law;*

*(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against such enactment or law;*

*(d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;*

*and any such investigation, legal proceeding or remedy may be instituted or enforced and any such penalty, forfeiture, or punishment may be imposed as if such enactment or law had not been repealed.*

*(2) Notwithstanding anything contained in the proviso to sub-section (1) but subject to any notification issued under section 201, anything*



*done or any action taken (including any appointment, or delegation made, land revenue, non-agricultural assessment, fee or cess, settled, fixed or imposed, notification, order, instrument or direction issued, rule or regulation made, certificate obtained or permission granted) under any enactment or law repealed by sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.*

*[(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2) or in any enactment or law repealed by sub-section (1) or any other law, in respect of any order made or proceedings disposed of by any officer subordinate to the Divisional Commissioner under any enactment or law, repealed by sub-section (1) or any rule or order made under such enactment or law, no appeal shall lie to the Divisional Commissioner, but an appeal shall lie to the tribunal as if the Tribunal were the appellate Authority under such enactment, law, rule or order, and such appeal shall be disposed of by the Tribunal in accordance with the provisions of such enactment, law, rule or order.]*

*(3) Any reference in any enactment or law or in any instrument to any provision of any of the enactment or law repealed by sub-section (1) shall, unless a different intention appears, be construed as a reference to the corresponding provision of this Act.*

*(4) Any custom, usage or order prevailing in any area of the State, at the time of the commencement of this Act, and having the force of law therein shall, if such custom, usage or order is repugnant to, or inconsistent with any of the provisions of this Act, cease to be*



*operative to the extent of such repugnancy or inconsistency.*

24.69. Learned Counsel submits that Section 202 of the Karnataka Land Revenue Act, 1964 assumes central importance in the present case. Though the Act repealed earlier enactments, including the Coorg Land and Revenue Regulations, the repeal was not intended to disturb vested rights or undo actions lawfully taken under the repealed laws.

24.70. He submits that Section 202(1) clearly provides that repeal shall not affect the previous operation of the earlier enactments, nor shall it affect any right, privilege, obligation or liability acquired or incurred thereunder. In other words, rights that had already accrued under the Coorg Regulations continue to remain valid and enforceable even after repeal.



24.71. He further points out that Section 202(2) strengthens this protection by declaring that anything done or any action taken under the repealed enactments, including notifications, orders, certificates, assessments, permissions or other instruments, shall be deemed to have been done under the corresponding provisions of the 1964 Act and shall continue in force unless specifically superseded.

24.72. Learned Counsel submits that this provision directly protects the 1926 auction sale conducted under the Coorg Regulations. The sale was confirmed. A certificate was issued. Possession was delivered. Revenue entries were mutated. All these were acts duly done under the repealed law. By operation of Section 202, such acts are deemed to continue under the present statutory framework.



24.73. He emphasises that repeal does not erase history. It does not extinguish accrued rights. It does not invalidate transfers validly effected under earlier law. Unless there is a specific provision in the 1964 Act annulling those rights, they continue to subsist.

24.74. He further submits that there is no provision in the Karnataka Land Revenue Act, 1964 declaring Jamma Malai rights extinguished or rendered non-transferable. In the absence of inconsistency, the rights recognised under the earlier regime continue by statutory protection.

24.75. Accordingly, learned Counsel submits that the State cannot rely upon repeal of the Coorg Regulations to reopen or unsettle rights that stood created, recognised and acted upon decades ago. Section 202 preserves



continuity, stability and finality, and the rights flowing from the 1926 auction and subsequent judicial recognition remain protected in law.

24.76. In O.S.No.4 of 1978, the Trial Court categorically held that the properties in question are Jamma Malai lands. The Court examined the historical tenure and expressly recognised the nature of rights attached to such lands. It was further held that those rights stand protected under Section 202 of the Karnataka Land Revenue Act, 1964. He refers to Section 202, which is a saving provision. The section makes it clear that repeal of earlier enactments does not affect rights, privileges, obligations or liabilities acquired or accrued under such enactments. It further provides that anything done or any action taken under repealed laws shall be deemed to have been done under the



corresponding provisions of the Karnataka Land Revenue Act, 1964, and shall continue in force unless lawfully superseded.

24.77. Relying on this provision, learned Counsel submits that the rights attached to Jamma Malai tenure, as recognised under the earlier Coorg Regulations, stood preserved even after the coming into force of the Karnataka Land Revenue Act, 1964. Those rights were not extinguished by repeal. They continued by virtue of the statutory saving clause.

24.78. He further submits that the Trial Court in O.S. No. 4 of 1978 clearly held that the holder of Jamma Malai land is not the absolute owner in the sense of having full proprietary rights, but is entitled to hold the land and cultivate cardamom therein. It was also held that the



holder does not have title over the tree growth standing on the land.

24.79. Importantly, the plaintiff in that suit, Sri Emmanuel Thomas Rampuram, was not the original grantee. He was a transferee. The first transferee was Sri Palekanda Medappa, the auction purchaser in 1926. Sri Emmanuel Thomas Rampuram had acquired the property from him under a registered sale deed. Despite this position, the Trial Court recognised and affirmed the rights of Sri Emmanuel Thomas Rampuram as holder. The State was a party to that suit. The Court did not declare the transfer void. It did not hold that the tenure was inalienable. On the contrary, it recognised the transferee's rights as holder, subject to limitations. Learned Counsel therefore submits that the very recognition of rights in favour of a transferee



by a competent Civil Court necessarily negates the present contention of the Respondents that Jamma Malai tenure is non-transferable. If the tenure had been legally incapable of transfer, the Civil Court would have so held. No such finding was rendered.

24.80. Accordingly, the rights having been judicially recognised and saved under Section 202 of the Karnataka Land Revenue Act, 1964, the Respondents cannot now contend that the transfers were void or that the Petitioners derive no lawful right from their predecessors.

24.81. Learned Counsel further submits that even in RSA No. 466 of 1980, this Court, while allowing the appeal filed by the State, did not negate the right of Sri Emmanuel Thomas Rampuram to hold the land. He submits that this Court in the said Second Appeal clarified



the legal position by holding that the land in question is Jamma Malai land and that the holder possesses only a limited right, namely, the right to cultivate cardamom. The Court restricted the extent of proprietary claims, particularly in respect of tree growth. However, the Court did not hold that Sri Emmanuel Thomas Rampuram had no right to hold the land at all. It did not declare the transfer void. It did not direct dispossession. It did not hold that the tenure was incapable of being transferred. On the contrary, the effect of the judgment was to define the nature and extent of the right, not to extinguish it. The limited right of cultivation was affirmed. The status of the holder was recognised. The only restriction imposed was with regard to ownership over trees.



24.82. Learned Counsel therefore submits that RSA No. 466 of 1980 actually supports the Petitioners' case. It conclusively determined the nature of the tenure as Jamma Malai and confirmed that the holder has a subsisting right to cultivate cardamom. The Respondents cannot now reinterpret the said judgment as if it nullified the holding itself.

24.83. Accordingly, it is submitted that the rights of Sri Emmanuel Thomas Rampuram, as recognised and defined in RSA No. 466 of 1980, continue to enure to the benefit of the Petitioners as his successors in interest.

24.84. He refers to the decision of the Hon'ble Apex Court in ***Subbegowda v. Thimmegowda***<sup>10</sup> more particularly para 5, 6 and 9 thereof, which are reproduced hereunder for easy reference;

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<sup>10</sup> 2004 (9) SCC 734,



**5.** *In Raj Bajrang Bahadur Singh v. Thakurain Bakhtraj Kuer [AIR 1953 SC 7] this Court was called upon to examine what the testator had intended the legatee to take under a Will in the context of the expressions like malik kamil (absolute owner) and naslan bad naslan (generation after generation) having been used in the Will in reference to the interest which was sought to be demised. This Court held that such words, though descriptive of a heritable and alienable estate in the donee and connoting full proprietary rights, may not have been used with the intention of conferring absolute rights if there could be something in the context or in the surrounding circumstances to permit such an inference being drawn:*

*"In cases where the intention of the testator is to grant an absolute estate, an attempt to reduce the powers of the owner by imposing restraint on alienation would certainly be repelled on the ground of repugnancy; but where the restrictions are the primary things which the testator desires and they are consistent with the whole tenor of the Will, it is a material circumstance to be relied upon for displacing the presumption of absolute ownership implied in the use of the word 'malik'."*

**6.** *For the interpreter of documents it is common knowledge that a transfer of property or a creation of interest therein may be accompanied by conditions, covenants or restraints. Condition may be condition precedent — a condition which must be performed before the grant or alienation takes effect to create an interest in property, or may be condition subsequent — a condition which has an effect of enlarging or defeating the interest already created or vested. In either case the condition will be annexed with the estate and would run with the same. In Philip John Plasket Thomas v. CIT [AIR 1964 SC 587]*



*, AIR vide para 14, this Court has dealt with conditions — precedent and subsequent, in the context of gift of shares. A covenant is not annexed with the estate and runs independently of it which may give rise to a cause of action for specific performance or for an action in damages. A restraint or a limitation has the effect of curtailing the quantum of the estate affected thereby.*

*9. A conditional transfer or a settlement accompanied by conditions is not unknown to the law of real property. It is permissible in law to annex or encumber any grant or alienation with condition or limitation which will operate and the Court will give effect to it unless there is some provision of law which annuls or invalidates such condition, restraint or limitation. None has been brought to our notice.*

24.85. Learned Counsel once again places reliance on the decision of the Hon'ble Supreme Court in ***Subbegowda v. Thimmegowda***, and submits that the Hon'ble Supreme Court in the said decision has explained an important principle of property law, namely, that an interest in property may be limited, conditional or subject to restraints, and yet remain a valid and enforceable estate. The Court clarified that a grant may be



accompanied by conditions, either precedent or subsequent, and such conditions run with the estate. The existence of limitations does not invalidate the transfer unless there is a specific statutory provision annulling such condition or restraint.

24.86. The Hon'ble Supreme Court further observed that a conditional transfer or settlement is recognised in law and is enforceable unless there is some legal provision declaring it void. The Court emphasised that limitations regulate the enjoyment of property; they do not automatically render the estate non-transferable.

24.87. Relying on the above principles, learned Counsel submits that in the present case, the nature and extent of rights in Jamma Malai lands have already been judicially determined



in O.S.No.4 of 1978 and clarified in RSA No.466 of 1980. The rights were recognised as limited, particularly confined to cultivation of cardamom and without proprietary rights over tree growth. Those limitations define the character of the estate. They do not prohibit transfer of that limited interest. He submits that once a Court of competent jurisdiction has determined the nature of rights attached to the property and such determination has attained finality, those rights form the legal character of the estate. It is permissible in law for such limited estate to be transferred, and the transferee steps into the shoes of the transferor subject to the same limitations.

24.88. Unless there is a specific statutory provision annulling or prohibiting such transfer, the estate as defined by judicial pronouncement continues to operate. No such prohibitory



provision has been brought to the notice of this Court.

24.89. Accordingly, learned Counsel submits that the Respondents cannot now seek to invalidate the transfer or deny the Petitioners' status as holders when the nature of the estate has already been settled and has attained finality.

24.90. He relies upon the decision of this Court in ***Chief Secretary to Government of Karnataka v. Pongere Kariappa***<sup>11</sup>, more particularly para 14 and 15 thereof, which is reproduced hereunder for easy reference;

**14.** *Un reported decision in R.F.A. No. 655/1989 dated 30.11.1990 by the Bench consisting Justice N. Venkatachala and Justice Murlidhar Rao was brought to my notice which directly applies on the point and facts are similar. This is what the Bench observed:—*

*"the lands originally belonged to one Chennappa Somiah, who fell in arrears in payment of land revenue. The lands were auctioned by the revenue authorities. Plaintiff's father was the auction purchaser. The sale certificates are*

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<sup>11</sup> *ILR 1999 Karn., 1023*



*produced as Ex. P3 and P4. Defendants contested the suit by filing written statement, however they did not lead any evidence. After assessing the evidence, the Court below decreed the suit.*

*In addition to the sale certificates at Ex. P3 and Ex. P4, the plaintiff has produced the 'Jamabandi' statement at Ex. P2, which makes it clear that Sy. No. 13/6, 13/7, 13/39 and 13/3A are described as "Sagu Bane" lands. In the auction sale certificates all lands are described as "Sagu lands" and it is not indicated that they are unredeemed lands. In the circumstances, the Court below was justified in holding that the timber was given after the sale. So far as Sy. No. 39/2 is concerned, it does not find a place in Exts. P3 and P4 and no other document of title is produced."*

*Here also it is to be seen that the defendant do not lead any evidence nor produced any documents. Another reference was made to the decision made in O.S. No. 118/1994 where the facts are same if not similar. There also the plaintiff have purchased the suit property in a public auction sale and that the plaintiff claimed right over the land, the Government contended that though the tenure of suit land was mentioned as 'Jamabhandi' as it appeared in Jamabhandi register, the right of timber was not sold to the plaintiff. An issue was framed in that case as to whether the public auction sale held on 19.8.1932 was an absolute sale and whether the plaintiff has acquired absolute right over the suit schedule property? The issue was answered in affirmative in favour of the plaintiff. Finally the Court held that the defendant Government are liable to issue the require permission for felling and cutting or removing the trees without taking seigniorage rate subject to the conditions stipulated under the Karnataka Forest Act or the rules framed thereunder. This Judgment was delivered by the Civil Judge, Madikeri on 15.4.1997 and the Government having decided*



*not to file an appeal as per the Order of the authorities made available to this Court. Therefore the contention of the Respondent/plaintiff that the Government cannot adopt the double standard with reference to the same type of the land as the same applicable to the present case has to be upheld, and there is no answer from the Government as to why the different yardstick applied to the present appellant when it is not made applicable to the other case. But there is no answer from the appellants.*

**15.** *It was also brought to the notice of this Court that Rule-109 of the Coorg Revenue Manual/Regulation as has been amended. I am reproducing the un-amended provisions and as well as amended provision:—*

*Un-amended*

*"The word interest of the defaulter alone therein, as those interests existed immediately before the attachment of the property was notified, shall be sold, and no encumbrances created, or grants or contracts made, by him in good faith before the notification." was replaced by the word such property.*

*amended clause (rule)*

*"Effect on encumbrances of sale of property for a sum other than an arrears due in respect thereof:— When immovable property is brought to sale under this chapter for the recovery of any other sum than an arrears due in respect thereof, such property shall, except in the cases hereinafter excepted, be sold free of all encumbrances, and all grants and contracts previously made by any person other than the purchaser in respect of the property shall become void as against the purchaser."*

*That means when the property is brought to sale any other right conferred upon anybody including the Government shall remain*



*extinguished. In fact this is in line with Section-110 of the Regulation which is also reproduced herewith:—*

*110- Effect of sale on lands held revenue free or at favourable rates:— When Jama or umbli land, or other land held wholly or partially free of revenue, is sold under this Chapter, Whether for recovery of an arrears due in respect thereof or for the recovery of any other sum, the privileges attaching to the tenure of the land with respect of the assessment of land-revenue shall be extinguished by the sale:*

*This makes it clear that whenever auction sale is held by the Government, all the properties in the Lands of a person who fell short in land revenue arrears, shall be brought to sale and the properties shall be free from any commitment on the land and it shall be held as absolute property of the auction purchaser. This amendment was not brought to the notice of the Court, especially in I.L.R. 1992, Karnataka page-910.*

24.91. Learned Counsel once again relies on ***Pongere Kariappa***, and submits that in the said case, this Court considered a situation where lands were brought to public auction by the revenue authorities on account of arrears of land revenue. The purchaser acquired the property through a Government-conducted auction. The Government later attempted to restrict or deny certain rights, including rights



relating to timber. However, this Court held that where land is sold in public auction by the State itself, and sale certificates are issued, the purchaser acquires the rights conveyed under such sale.

24.92. The Court also noticed that in similar cases, the Civil Court had held that auction sales conducted by the Government were absolute in nature. It was further held that the Government could not apply different standards to similar lands. Once it accepted the legal consequences of auction sale in one case, it could not take a contrary stand in another case involving the same category of land. The Government, having chosen not to challenge such decisions, could not subsequently adopt a different yardstick.



24.93. Learned Counsel further refers to the amended Rule 109 of the Coorg Revenue Manual/Regulation. He submits that the amendment clearly provides that when immovable property is brought to sale for recovery of dues, such property shall be sold free of encumbrances, and previous grants or contracts in respect of the property become void as against the purchaser. He also refers to Section 110 of the Coorg Regulations, which provides that when Jama or other land is sold under the Chapter, the privileges attaching to the tenure stand extinguished by the sale.

24.94. According to learned Counsel, the combined effect of these provisions is that once the Government brings property to sale for revenue default, the property passes to the auction purchaser free from prior



encumbrances. The purchaser holds the property in his own right, subject only to the legal character of the tenure and not subject to undisclosed restrictions.

24.95. He submits that in ***Pongere Kariappa***, this Court has properly examined the effect of the Coorg Land and Revenue Regulations, including the provisions relating to auction sale. The decision clarifies what rights flow from such sale and how the Government's own act of auction impacts the character of the title conveyed.

24.96. Relying on the above, learned Counsel submits that the 1926 auction conducted by the Government in the present case must be understood in the same legal framework. Once the State auctioned the property for revenue arrears and conveyed it to Sri



Palekanda Medappa, it cannot now contend that the purchaser acquired no transferable interest or that hidden restrictions survive the sale.

24.97. Accordingly, he submits that the ratio in ***Pongere Kariappa*** squarely supports the Petitioners' case and must guide this Court in determining the legal effect of the 1926 auction under the Coorg Land and Revenue Regulations.

24.98. On that basis, he submits that the petitions required to be allowed, the right of the petitioners to hold the land recognised, the right of the petitioners to transfer the land to be declared, so also the right of the petitioners to grow coffee along with cardamom be declared.



25. Heard Sri.S.R.Kamalacharan, learned counsel for the Petitioners and Sri.Pradeep.C.S., learned Additional Advocate General for Respondents No.1 to 5. Perused papers.

26. The points that would arise for consideration are;

- 1. Whether the lands in question are forest lands in law, and if so, whether they stand validly declared as Reserved Forest or Protected Forest under the applicable statutory framework?**
- 2. Whether the Notification dated 15.03.1887 or any subsequent proceedings culminated in a final and legally enforceable declaration affecting the petition lands?**
- 3. What is the true legal character of Jamma Malai tenure, whether it constitutes a limited but transferable estate, a purely personal cultivation right, or a leasehold interest under forest law?**
- 4. What is the legal effect of the public auction conducted in 1926 under the Coorg Land and Revenue Regulations, and whether the auction purchaser acquired transferable rights in the holding?**
- 5. Whether the transfers from the auction purchaser to subsequent transferees, including the Petitioners, are valid and legally sustainable?**



6. **Whether the nature and extent of rights in the petition lands stand conclusively determined by the judgments in O.S. No. 4 of 1978, RSA No. 466 of 1980, W.P. No. 4013 of 2007 and W.A. No. 375 of 2011, and whether the Respondents are precluded from re-agitating those issues?**
7. **Whether the Respondent authorities had jurisdiction to initiate the impugned enquiry, invoke the provisions of the Karnataka Forest Act, 1963, and demand lease rental or treat the tenure as a lease?**
8. **Whether the impugned order dated 16.12.2011 and the connected proceedings are liable to be quashed as being without jurisdiction, contrary to binding judicial determinations, or otherwise unsustainable in law?**
9. **What order?**

27. I answer the above points as follows:

28. **Answer to Point No. 1: Whether the lands in question are forest lands in law, and if so, whether they stand validly declared as Reserved Forest or Protected Forest under the applicable statutory framework?**

28.1. Sri. S.R. Kamalacharan, learned counsel for the Petitioners, submits that the lands in question, situated at Chelavara Village, Napoklu Hobli,



Virajpet Taluk, Kodagu District, comprising survey numbers 129/3, 154/8, 154/31, 154/32, 154/33, 154/34, 154/35, 154/36, 170, 173, 174, and Paradeena land in Sy.No.154/2, are not forest lands in law. According to him, the lands have never been validly declared as either a Reserved Forest or Protected Forest under any applicable statutory framework.

28.2. Learned counsel contends that the notification dated 15.03.1887, relied upon by the Respondents, was only a preliminary notification and did not amount to a final declaration of forest. He submits that by the judgment dated 07.10.1904, the Commissioner of Coorg held that the subsequent notification dated 26.05.1902 superseded the earlier notification dated 15.03.1887. Therefore, the 1887 notification cannot now be relied upon to claim that the petition lands are forest lands.



28.3. It is further submitted that under the 1887 notification, almost the entire Kodagu (Coorg) District was identified as a proposed protected forest. However, such a proposal was never fully implemented or finalised in accordance with the law. Mere reference to the 1887 notification is, according to the Petitioners, legally unsustainable.

28.4. Learned counsel refers to Section 28 of the Indian Forest Act, 1878, and submits that forest status cannot arise merely by proposal or preliminary notification. According to him, the scheme of the Forest Act requires: a proper enquiry into existing rights; determination of claims of individuals and communities; recording of such rights; and issuance of a final notification declaring the land as a reserved or protected forest. Unless a final declaration is made after such an enquiry, the Government



cannot assert that the land has become forest land. In the absence of a final notification, private rights remain unaffected.

28.5. Learned counsel submits that after the 1887 notification, the only relevant development was the notification dated 26.05.1902 proposing the constitution of the Padinalaknad Ghat Reserved Forest, published on 02.06.1902. Under this notification, H.S. Mullins was appointed as Forest Settlement Officer to enquire into the nature and extent of rights claimed within the limits of the proposed reserve forest. Ultimately, on 20.04.1906, the Padinalaknad Reserved Forest was notified and published on 01.05.1906. Crucially, the petition lands were excluded from the final notification. Since they were not included in the final declaration, they cannot now be treated as forest land.



28.6. Learned counsel further submits that the map produced before this Court clearly shows that the petition lands are not contiguous with any notified forest area. On the contrary, the lands are interspersed with privately owned lands and even a village settlement. Forest land is normally identifiable as a continuous block. Since the petition lands are surrounded by private holdings and habitations, they cannot be treated as part of any reserved forest.

28.7. Learned counsel refers to the Forest Department's Working Plan issued in the year 2015 and submits that the petition lands are not included within the reserved forest area described therein. If the lands were truly reserved forest, they would necessarily form part of the Working Plan. Their exclusion shows that the lands are not treated by the Department itself as forest land.



28.8. It is further submitted that in W.P. No. 4013 of 2007, a Co-ordinate Bench of this Court quashed the orders of the Deputy Commissioner and held that the petition lands were outside the forest area. Once this Court has held that the lands are not forest lands, there can be no restriction on the Petitioners exercising their recognised rights. The Division Bench in Writ Appeal No. 375 of 2011 did not disturb this finding.

28.9. Sri. Pradeep C.S., learned Additional Advocate General appearing for Respondents No.1 to 5, submits that the land in question falls within the boundaries of the protected forest declared under Section 28 of the Indian Forest Act, 1878, pursuant to Notification No. 13 dated 15.03.1887 issued by the Chief Commissioner of Coorg and published in the Coorg District Gazette on 01.06.1887.



28.10. Learned AAG categorically submits that the Respondents do not contend that the land is a reserved forest; however, they deny the Petitioners' contention that the land is not forest land. According to him, the land in question is protected forest as distinguished from reserved forest. Even a protected forest, it is submitted, is forest land requiring preservation and protection under law.

28.11. It is submitted that the Chief Secretary of Karnataka, after visiting Kodagu District and verifying the relevant records, submitted a report pursuant to directions issued in the Public Interest Litigation. The directions issued thereafter, including recording the name of the Government and classifying the land as forest land, were based on such verification.



28.12. Learned AAG further refers to Section 33 of the Karnataka Forest Act, 1963, which empowers the State Government to make rules regulating the use of forest produce and pasturage of land at the disposal of the Government and not included in a reserved or village forest. Sub-section (4) further provides that land placed under special protection under clause (ii) of sub-section (2) shall be called "protected forest" and shall be duly notified as such in the Official Gazette.

28.13. On the basis of the above provision, learned counsel submits that lands falling within the scope of Section 33 are statutorily recognised as protected forests once notified. The forest authorities are competent to regulate use, prohibit unauthorised cultivation, and initiate proceedings in case of violation.



28.14. In rejoinder, Sri. Kamalacharan submits that the reliance on Section 33 of the Karnataka Forest Act is misplaced. That provision applies only when land is specifically notified as a protected forest under Section 33(4). No such notification covering the petition lands has been produced. The mere existence of power does not prove its exercise. He further reiterates that the Working Plan of the Virajpet Forest Division for the year 2015 specifically identifies reserved forest areas village-wise, and in Chelavara Village, only Sy.No.176 is shown as reserved forest. None of the survey numbers belonging to the Petitioners are shown as reserved or protected forest.

28.15. I have carefully considered the rival submissions and perused the material on record. The central question under this Point is whether the petition lands can be classified as



forest lands, and if so, whether they have been validly declared as Reserved Forest or Protected Forest under the applicable statutory framework.

28.16. At the outset, it is necessary to understand the statutory scheme governing the declaration of forests. The Indian Forest Act, 1878, which was the applicable legislation at the material time, provided a detailed and structured procedure for the constitution of both reserved forests and protected forests. Under Section 28 of the said Act, the Local Government was empowered to declare any land at the disposal of the Government to be a protected forest. However, such a declaration required compliance with the statutory procedure, including the determination of existing rights.



28.17. Section 28 of the Indian Forest Act, 1878 has been reproduced hereinabove.

28.18. A plain reading of Section 28 makes it clear that for land to be declared as protected forest, two conditions must be satisfied: first, the land must be forest-land or waste-land not included in a reserved forest; and second, the land must be the property of the Government, or the Government must have proprietary rights therein, or the Government must be entitled to the whole or any part of the forest-produce thereof. Even then, a formal notification in the Official Gazette is mandatory.

28.19. The Respondents rely on the notification dated 15.03.1887 issued by the Chief Commissioner of Coorg. This notification proposed to declare a large extent of the then Coorg Province as "protected forest." However, a critical



distinction must be drawn between a preliminary or proposed notification and a final declaration. The Petitioners' contention that this notification was only a preliminary step intended to initiate an enquiry, and not a final declaration, is well-founded.

28.20. The judgment dated 07.10.1904 passed by the Commissioner of Coorg assumes significance. In that judgment, the Commissioner held that the subsequent notification dated 26.05.1902 superseded the earlier notification dated 15.03.1887. This finding has not been shown to have been set aside or reversed. If the 1902 notification superseded the 1887 notification, then the legal foundation upon which the Respondents base their claim of "protected forest" stands considerably weakened.



28.21. Furthermore, the notification dated 26.05.1902 proposed the constitution of the Padinalaknad Ghat Reserved Forest. A Forest Settlement Officer was appointed to enquire into the nature and extent of rights claimed within the proposed area. After completion of the statutory process, the Padinalaknad Reserved Forest was notified on 20.04.1906 and published on 01.05.1906. This was a final notification issued after due enquiry in accordance with law.

28.22. The Petitioners' contention that their lands were excluded from the final notification of 1906 is supported by the material on record. The list of Jamma Malais included in the Padinalaknad Reserved Forest does not include the subject properties. Annexure-H produced along with the writ petition shows that the petition lands are outside the Padinalaknad Reserved Forest.



This material was brought to the notice of the Conservator of Forests, but no finding was recorded on this issue and the material was ignored.

28.23. I am also persuaded by the fact that the Forest Department's own Working Plan issued in 2015 does not include the petition lands within the reserved forest area. In Chelavara Village, only Sy.No.176 is shown as a reserved forest. As regards a protected forest, the Working Plan lists only three properties in Chelavara Village as protected forest, and none of the Petitioners' lands are included. The Working Plan is an official document of the Forest Department itself. If the Department's own records do not treat the petition lands as forest land, the claim that they constitute protected forest is difficult to sustain.



28.24. The Respondents have relied upon Section 33 of the Karnataka Forest Act, 1963. While Section 33(4) provides for notification of protected forests, the Respondents have not produced before this Court any notification under Section 33(4) covering the petition lands. The mere existence of power under Section 33 does not establish its exercise. The burden lies on the Respondents to demonstrate that the petition lands have been duly notified as a protected forest. No such notification has been placed on record.

28.25. It is pertinent to note that in W.P. No. 4013 of 2007, a Co-ordinate Bench of this Court examined the question and held that the petition lands were outside the forest area. The relevant observations in the said order, particularly paragraph 20 thereof which is reproduced hereunder for easy reference:



*20. It is not in dispute that the limited right in jamma malai lands of a holder is the cultivation of cardamom, if it can really be called cultivation, which alone is permitted. The holder has no proprietary right over the lands or the tree growth. The petitioners admittedly are not claiming any larger right and such right having been recognised by the judgment and decree in the civil suit between erstwhile holders and the State Government and which right has been alienated in favour of the petitioners and the finding as regards the right of the holder having attained finality in view of the judgment of this Court in the second appeal, the present finding that the jamma malai lands are part of the reserved forest is not supported by any material placed on record. The reference to the history of jamma malai lands and the manner in which the jamma malais have been declared as protected forests under the relevant legislation does not establish that the present lands of the petitioners were also notified and declared as part of the reserved forest.*

28.26. This finding is by way of a judicial pronouncement by a Co-ordinate Bench of this Court. The learned AAG submits that W.P. No. 4013 of 2007 only held that the lands are not part of a reserved forest and did not address whether they are protected forests. While there is some force in this distinction, the fact remains that no material has been placed before this Court to demonstrate that the



petition lands were ever subjected to a valid notification under Section 28 of the Indian Forest Act, 1878 or Section 33(4) of the Karnataka Forest Act, 1963.

28.27. The Respondents' case essentially rests on the 1887 notification. However, as discussed above, that notification was only a preliminary proposal. It was superseded by the 1902 notification. The final notification of 1906, which completed the statutory process, did not include the petition lands. The Department's own Working Plan does not treat the lands as forest land. No separate notification under Section 33(4) of the Karnataka Forest Act has been produced.

28.28. In the light of the above analysis, I am of the considered view that the petition lands have not been validly declared as Reserved Forest or



Protected Forest under the applicable statutory framework. The Respondents have failed to establish that the lands are forest lands in law. The 1887 notification, being a preliminary proposal that was superseded and never finalised insofar as the petition lands are concerned, cannot serve as the legal basis for treating the lands as a protected forest.

28.29. The map produced before this Court further supports this conclusion. The petition lands are surrounded by private holdings and habitations, and are not contiguous with any notified forest block. This physical characteristic is consistent with the finding that the lands were never validly declared as forest.

28.30. Accordingly, I answer Point No. 1 by holding that the lands in question are not forest lands in law. They have not been validly declared as a Reserved Forest or Protected Forest under the applicable statutory framework.



29. **Answer to point No.2: Whether the Notification dated 15.03.1887 or any subsequent proceedings culminated in a final and legally enforceable declaration affecting the petition lands?**

29.1. Sri.Kamalacharan, learned counsel for the Petitioners, submits that the notification dated 15.03.1887 was only a preliminary notification proposing to declare a large extent of Coorg Province as a protected forest. It did not amount to a final declaration and did not, by itself, convert any land into forest land.

29.2. It is submitted that the judgment dated 07.10.1904, passed by the Commissioner of Coorg, clearly held that the subsequent notification dated 26.05.1902 superseded the earlier notification of 1887. Once the 1887 notification stood superseded, it cannot now be revived or relied upon to claim forest status over the petition lands.



29.3. Learned counsel further submits that the 1902 notification initiated the process for the constitution of the Padinalaknad Ghat Reserved Forest. A Forest Settlement Officer was appointed. Enquiries were conducted. Rights were determined. Ultimately, on 20.04.1906, the Padinalaknad Reserved Forest was notified and published on 01.05.1906. The petition lands were not included in this final notification. Since the only lawful process culminated in a final notification which excluded the petition lands, no valid declaration of forest status was ever made in respect of these lands.

29.4. Learned counsel also submits that a clarification had been issued that the 1887 notification would not apply to lands where private rights and privileges are involved. Since the Petitioners are private parties with recognised



rights, the said notification would not apply to their lands.

29.5. It is further submitted that Section 28 of the Indian Forest Act, 1878 contemplated a structured process. A mere proposal cannot extinguish private rights without completion of the statutory procedure, including enquiry, determination and final declaration. In the absence of completion of such process, the lands retain their pre-existing character.

29.6. Sri. Pradeep C.S., learned AAG, submits that the notification dated 15.03.1887 issued under Section 28 of the Indian Forest Act, 1878 constituted a valid declaration of a protected forest. According to him, the petition lands fall within the boundaries of the protected forest declared under this notification. He contends



that the lands were and continue to be protected forest by virtue of this notification.

29.7. It is submitted that the Respondents have consistently maintained that the lands are a protected forest and not a reserved forest. The distinction between a reserved forest and a protected forest is material. While the petition lands may not have been included in the Padinalaknad Reserved Forest notification of 1906, their exclusion from that notification does not affect their status as a protected forest under the earlier notification of 1887.

29.8. Learned AAG submits that Respondent No.3 in the impugned enquiry had recorded a finding that lands classified as Jamma Malai lands fall within the ambit of "statutory forest" under the scheme of the Karnataka Forest Act, 1963. The finding was premised on the historical character



of such lands and the contention that cultivation rights did not divest the State of underlying ownership or forest character.

29.9. This Point requires the Court to trace the chain of notifications and proceedings to determine whether any valid and legally enforceable declaration of forest status was ever made in respect of the petition lands.

29.10. The chronological sequence of events is as follows:

29.10.1. First, the notification dated 15.03.1887 was issued by the Chief Commissioner of Coorg under Section 28 of the Indian Forest Act, 1878, proposing to declare a large portion of the Coorg Province as a protected forest. This notification was published on 01.06.1887. However, the scope



of this notification was extraordinarily wide, covering almost the entire Kodagu District. Its nature was that of a preliminary step, intended to initiate an enquiry process.

29.10.2. Second, the notification dated 26.05.1902 was issued proposing the constitution of the Padinalaknad Ghat Reserved Forest and was published on 02.06.1902. The Commissioner of Coorg, by his judgment dated 07.10.1904, held that this notification superseded the earlier notification of 1887 in respect of the areas covered thereby. This finding is significant because it establishes that the 1887 notification did not have a continuing independent operation, at least insofar as areas covered by the



subsequent notification are concerned.

29.10.3. Third, H.S. Mullins was appointed as Forest Settlement Officer to conduct the statutory enquiry. The Forest Settlement Officer issued a proclamation and notice dated 18.03.1903 calling upon persons claiming Jamma Malai rights to produce evidence in support of their claims. This demonstrates that a proper statutory process was being followed.

29.10.4. Fourth, on 20.04.1906, the Padinalaknad Reserved Forest was notified and the notification was published on 01.05.1906. This was the final notification issued after



completion of the statutory process of enquiry and determination of rights.

29.11. The critical fact is that the petition lands were not included in the final notification of 1906. This has two consequences. First, the process initiated by the 1902 notification reached its logical conclusion with the 1906 final notification. Whatever was not included in the final notification was excluded from the reserved forest. Second, since the 1887 notification was superseded by the 1902 notification (as held by the Commissioner of Coorg in 1904), the petition lands could not continue to derive forest status from the superseded notification.

29.12. The judgment dated 07.10.1904, passed by the Commissioner of Coorg, is an authoritative



historical determination that cannot be lightly disregarded. The Commissioner, after considering the rival contentions, clearly held that the 1902 notification superseded the 1887 notification. This finding has stood for over a century and has not been shown to have been reversed or set aside by any competent authority.

29.13. Furthermore, in paragraph 53 of the said judgment, the Commissioner also dealt with the question of exclusion of portions of original grants. The Commissioner held: "As to the question whether it is legitimate to exclude portions of the original grant upon which cardamoms for physical reasons cannot be cultivated, the answer must I think be in the negative. Though what the Raja had in view was merely the growth and collection of cardamoms, and though this major right cannot



possibly be exercised in such areas, yet, subsidiary rights may be capable of exercise therein. It would therefore, I think, be illegal to make any such exclusion from the original grant without the consent of the occupant.”

29.14. This observation is significant. Even the Commissioner of Coorg, who was the highest administrative authority at the time, recognised that portions of the grant could not be unilaterally excluded, and that subsidiary rights existed even in areas where cardamom could not physically be cultivated. This is consistent with the recognition of private rights in the petition lands.

29.15. The Respondents’ attempt to rely on the 1887 notification, while conceding that the lands are not a reserved forest, creates an internal inconsistency. If the statutory process that



commenced with the 1887 notification was completed through the 1902 notification, the Forest Settlement Officer's enquiry, and the final notification of 1906, then the result of that process is binding. Lands excluded from the final notification cannot be treated as protected forest by reverting to the superseded 1887 notification.

29.16. The principles laid down by the Hon'ble Supreme Court in ***G.J. Fernandez v. State of Mysore*** are also applicable by analogy. The Hon'ble Court emphasised the importance of statutory authority for government action. Executive interpretation or administrative convenience cannot substitute for statutory compliance. If the statutory process did not result in a declaration affecting the petition lands, administrative action cannot achieve



indirectly what the statute did not accomplish directly.

29.17. Additionally, the Working Plan of the Virajpet Forest Division (2015) does not include the petition lands as either a reserved forest or a protected forest. This is an official document of the Forest Department itself. It is a contemporaneous record that reflects the Department's own understanding of the status of the lands. The exclusion of the petition lands from the Working Plan is powerful evidence that no valid declaration was ever made in respect of these lands.

29.18. The clarification referred to by learned counsel for the Petitioners, that the 1887 notification would not apply to lands where private rights and privileges exist, further supports the Petitioners' case. The Petitioners' predecessors



held recognised private rights in the lands, which were later confirmed in O.S. No. 4 of 1978 and RSA No. 466 of 1980. Such lands with subsisting private rights could not be swept into the broad ambit of the 1887 notification.

29.19. In the light of the above analysis, I hold that the notification dated 15.03.1887 did not culminate in a final and legally enforceable declaration affecting the petition lands. The said notification was preliminary in nature. It was superseded by the notification dated 26.05.1902. The final notification dated 20.04.1906, which was the culmination of the statutory process, excluded the petition lands. No other valid notification under Section 28 of the Indian Forest Act, 1878 or Section 33(4) of the Karnataka Forest Act, 1963 has been produced in respect of the petition lands.



29.20. Accordingly, I answer Point No. 2 by holding that the notification dated 15.03.1887 and the subsequent proceedings did not culminate in any final and legally enforceable declaration affecting the petition lands.

30. **Answer to Point no.3: What is the true legal character of Jamma Malai tenure, whether it constitutes a limited but transferable estate, a purely personal cultivation right, or a leasehold interest under forest law?**

30.1. Sri.Kamalacharan, learned counsel for the Petitioners, submits that Jamma Malai's tenure constitutes a recognised form of conditional or limited estate in property. According to him, the holder is not an absolute owner in the fullest sense, but the estate is subject to certain defined limitations, namely cultivation of cardamom, no right over standing timber, and liability to assessment. The existence of such limitations does not mean that the estate is



void or that it can be treated as a mere lease, unless expressly declared so by law.

30.2. Learned counsel places reliance on the decision of the Hon'ble Supreme Court in ***Subbegowda v. Thimmegowda***, and submits that the Hon'ble Court examined the nature of estates and interests created in property and clarified the distinction between absolute ownership, conditional grants, and estates subject to limitations or restraints. It was held that even where expressions suggesting full ownership are used, the surrounding circumstances and the tenor of the instrument must be examined to determine the true nature of the rights conferred. It was further held that a grant may be subject to conditions precedent or conditions subsequent, such conditions run with the estate, and conditional transfers are legally permissible unless prohibited by law.



30.3. Learned counsel submits that the Civil Court in O.S. No. 4 of 1978, and this Court in RSA No. 466 of 1980, have already interpreted the nature of the estate. It was held that the holder has a limited but valid right to cultivate cardamom. The tenure is neither an absolute ownership nor a lease under the Forest Act. It is a limited estate recognised in law. If the Government intended to annex any condition, such as payment of lease rent or forfeiture for non-payment, such a condition ought to have been expressly provided under law, or incorporated in the grant, or recognised in earlier proceedings.

30.4. Learned counsel further submits that the Petitioners are "holders" within the meaning of Rule 3(6) of the Coorg Land and Revenue Regulations, which defines a "holder" or "landholder" as a person who is in possession of



a holding or any portion thereof, or who enjoys any part of its profits, and who is bound by law, contract or local usage to pay land revenue directly to the Government. The definition specifically excludes a tenant. The Petitioners squarely fall within this definition, being in possession, enjoying the profits derived from cultivation, and liable to pay land revenue directly to the Government.

30.5. Learned counsel also relies upon Section 6 of the Transfer of Property Act, 1882, which provides that property of any kind may be transferred, except as otherwise provided by that Act or by any other law for the time being in force. He submits that the law proceeds on the presumption of transferability. Transfer is the rule; prohibition is the exception. No provision has been shown to this Court



declaring Jamma Malai rights to be untransferable.

30.6. It is further submitted that if there had been any restriction on transfer, the Government would have raised this plea in O.S. No. 4 of 1978 or RSA No. 466 of 1980. No such plea was raised. The Civil Court recognised the transferee's rights as holder. The Government participated in those proceedings and did not challenge the validity of the transfers.

30.7. Sri. Pradeep C.S., learned AAG, submits that Jamma Malai tenure confers only a limited right of cultivation of cardamom. The holder has no proprietary right over the land or the tree growth. He places reliance on the order in W.P. No. 4013 of 2007, wherein this Court observed that the limited right in Jamma Malai lands of a holder is the cultivation of cardamom, and the



holder has no proprietary right over the lands or the tree growth.

30.8. Learned AAG further submits that the Jamma Mallegars never possessed or claimed rights of alienation, transfer or sub-lease. Therefore, the tenure is merely a personal cultivation privilege that cannot be transmitted through sale or transfer. He refers to the eight rights of a Jamma Mallegar, which include: (i) no proprietary right in the Jamma Males; (ii) right to cultivate cardamoms according to indigenous method; (iii) no right to minor forest produce except for purposes ancillary to cardamom cultivation; (iv) no right to shoot within the Males; (v) right of access by defined routes; (vi) right to fell timber necessary for cardamom plots and buildings; (vii) right to use forest produce for construction and firewood; and (viii) right to consume toddy from Baine palms.



According to him, none of these rights include a right of alienation.

30.9. It is further contended that the tenure amounts to a form of lease or licence from the Government, as the underlying ownership always remained with the State. The holders were permitted to cultivate on terms set by the sovereign authority. Therefore, the State retains the right to regulate, control and even terminate the tenure for breach of conditions.

30.10. The determination of the true legal character of Jamma Malai tenure is central to the resolution of most issues in this case.

30.11. Jamma Malai tenure has deep historical roots in the erstwhile Coorg (Kodagu) Province. It originated as a grant made by the erstwhile Rulers of Coorg, recognising the right of certain communities to cultivate cardamom in



designated areas. The tenure was not created by statute; it antedated British administration and was recognised and continued by successive sovereign authorities. This historical origin is important in understanding the nature of the rights involved.

30.12. The nature of this tenure was authoritatively examined by the Commissioner of Coorg in his judgment dated 07.10.1904. That judgment recognised that the holders possessed defined rights, including the right to cultivate cardamom, subsidiary rights relating to minor forest produce ancillary to cardamom cultivation, and the right to fell timber for preparation of cardamom plots and construction of buildings within the Males. The judgment also recognised limitations, namely that the holders were not absolute proprietors and had



no right over tree growth beyond what was necessary for cardamom cultivation.

30.13. The Civil Court in O.S. No. 4 of 1978 examined these rights in the context of a suit instituted by Sri Emmanuel Thomas Rampuram, and held that he was entitled to enjoy the lands as a Malai holder, cultivate cardamom, and exercise rights as a Mallegar. However, the Court declined to declare him absolute owner of the tree growth. In RSA No. 466 of 1980, this Court affirmed the Trial Court's findings. The legal effect was recognition of a limited estate, not absolute ownership, but a subsisting right of cultivation and enjoyment.

30.14. The question now is whether this limited estate is: (a) a transferable estate; (b) a purely personal cultivation right incapable of transfer; or (c) a leasehold interest under forest law.



30.15. Regarding the characterisation as a leasehold interest: The Respondents seek to treat the tenure as a lease under the Forest Act, and on that basis claim the right to demand lease rent and declare forfeiture. This characterisation is wholly untenable. A lease presupposes a contractual relationship between the lessor and the lessee, with defined terms, duration, rent, and conditions. No lease deed has ever been executed between the Government and the Petitioners or their predecessors. No lease rent has ever been demanded or paid at any point in the history of this tenure. The tenure originated from a sovereign grant, not from a contractual arrangement. The Government itself has never treated it as a lease in any of the earlier proceedings, including O.S. No. 4 of 1978, RSA No. 466 of 1980, or W.P. No. 4013 of 2007. The attempt to re-characterise the tenure as a



lease at this late stage is without any legal foundation.

30.16. Regarding the characterisation as a purely personal right: The Respondents contend that the eight rights of a Jamma Mallegar do not include a right of alienation, and therefore the tenure is personal and non-transferable. However, the absence of an express mention of the right of alienation in the enumeration of eight rights does not automatically make the tenure non-transferable. The eight rights described the scope of enjoyment of the estate; they do not constitute an exhaustive code governing all aspects of the tenure, including transferability.

30.17. The decision of the Hon'ble Supreme Court in ***Subbegowda v. Thimmegowda***, is directly applicable. The Hon'ble Court held that a



transfer of property or a creation of interest therein may be accompanied by conditions, covenants or restraints. A condition may restrict the manner of enjoyment, but such a restriction does not automatically render the estate non-transferable. The Court further held that a conditional transfer or settlement accompanied by conditions is recognised in law, and the Court will give effect to such conditions unless there is some provision of law which annuls or invalidates them.

30.18. Applying the principles in ***Subbegowda***, the Jamma Malai tenure is a limited estate with conditions attached to enjoyment, namely cultivation of cardamom and absence of proprietary rights over timber. These conditions regulate the mode of enjoyment. They do not prohibit transfer. A limitation on the quantum of the estate is different from a prohibition on



alienation. Unless there is a specific statutory provision declaring the tenure non-transferable, the interest remains capable of being transferred, such transfer however, shall be subject to the limitations of Tenure.

30.19. No such statutory prohibition has been placed before this Court. The Respondents have asserted non-transferability but have not cited any provision of the Coorg Land and Revenue Regulations, the Karnataka Land Revenue Act, 1964, or any other statute which expressly prohibits transfer of Jamma Malai rights.

30.20. On the contrary, Section 6 of the Transfer of Property Act, 1882 provides that property of any kind may be transferred, except as otherwise provided by that Act or by any other law. The exceptions listed in Section 6 do not include Jamma Malai tenure. In the absence of



an express statutory bar, the general rule of transferability applies.

30.21. In ***V.B. Rangaraj case***, the Hon'ble Supreme Court laid down a fundamental principle relating to transferability of property interests. The Hon'ble Supreme Court held that property, including shares, is presumed to be freely transferable unless there is a specific restriction imposed by law or expressly provided in a binding instrument. Any restriction on transfer must be clearly set out. It cannot be inferred or implied. If a restriction is ambiguous, it must be construed in favour of transferability.

30.22. The Hon'ble Supreme Court further held that a private agreement imposing additional restrictions beyond what is expressly provided in law or in the governing document cannot bind parties or override statutory rights.



Restrictions on transfer must have a clear legal foundation. They cannot arise merely from understanding, practice, or executive interpretation.

30.23. Transferability is the rule; restriction is the exception. A restriction must be expressly provided by statute or by a legally binding instrument. It cannot be assumed.

30.24. In the present case, no statutory provision has been shown prohibiting transfer of Jamma Malai rights. The Respondents rely on historical descriptions of limited rights and departmental understanding, but no express statutory bar has been placed before this Court. A limitation on enjoyment does not automatically become a prohibition on transfer.

30.25. The Respondents cannot therefore invalidate the transfers on the basis of implied, inferred,



or administratively conceived restrictions. Unless there is a clear statutory provision declaring the tenure non-transferable, the presumption of transferability must prevail.

30.26. Furthermore, Rule 3(6) of the Coorg Land and Revenue Regulations defines a "holder" as a person in possession of a holding who is bound to pay land revenue to the Government, and specifically excludes a tenant. This definition recognises the holder as a person with a substantive interest in land, not as a licensee or lessee with a precarious title. The Petitioners fall squarely within this definition.

30.27. The historical practice also supports the finding of transferability. The Government itself conducted a public auction in 1926 and sold the Jamma Malai lands to Sri.Palekanda Medappa. If the tenure were truly non-transferable, the



Government could not have auctioned it. What is also of significance is that there is no particular qualification for a Jamai Malai tenure holder, Sri Palekanda Medappa was admittedly a District Judge in full-time employment and not a cardamom grower.

30.28. The Government thereafter accepted the mutation of revenue entries. It accepted subsequent transfers. It contested O.S. No.4 of 1978 without raising the plea of non-transferability. It did not raise this issue in RSA No. 466 of 1980 either. The State's own conduct over nearly a century is inconsistent with the claim of non-transferability made now.

30.29. The principles laid down in ***Manuelsons Hotels case*** relating to promissory estoppel, are also attracted. The Hon'ble Supreme Court held that the law will not permit an unconscionable



departure by one party from an assumption which has been adopted by the other party as the basis of a course of conduct. The State conducted the auction, accepted assessment, allowed mutations, defended litigation without pleading non-transferability, and did not challenge transfers for decades. These acts created a clear assumption that the tenure was transferable. The Petitioners and their predecessors acted on this assumption for nearly a century. Permitting the State to depart from this position now would amount to unconscionable conduct.

30.30. Accordingly, I hold that Jamma Malai tenure constitutes a limited but transferable estate in property. It is not a mere personal cultivation right, nor is it a leasehold interest under forest law. It is an estate recognised by long historical practice, defined by judicial pronouncements,



and capable of transfer in the absence of any express statutory prohibition.

30.31. I answer Point No.3 by holding that the Jamma Malai tenure is a limited but transferable estate, conferring upon the holder the right to cultivate cardamom and exercise associated subsidiary rights, subject to the limitations recognised in O.S.No.4 of 1978 and RSA No.466 of 1980. It is neither a purely personal cultivation right nor a leasehold interest under forest law.

31. **Answer to Point No. 4: What is the legal effect of the public auction conducted in 1926 under the Coorg Land and Revenue Regulations, and whether the auction purchaser acquired transferable rights in the holding?**

31.1. Sri.Kamalacharan, learned counsel for the Petitioners, places reliance on the decision of this Court in ***Pongere Kariappa case***, and submits that the principles laid down therein directly apply to the present case. In that case, this Court considered a situation where lands



were brought to public auction by the revenue authorities on account of arrears of land revenue and held that the purchaser acquired valid rights over the property.

31.2. Learned counsel further draws attention to Rule 109 of the Coorg Revenue Regulation (as amended), which provides that when immovable property is brought to sale for recovery of any sum, such property shall be sold free from all encumbrances, and all prior grants and contracts shall become void as against the purchaser. He also relies upon Section 110 of the Coorg Regulation, which provides that when revenue-free or concessional land is sold under the Chapter, the privileges attached to such tenure stand extinguished by the sale.



31.3. It is submitted that the combined reading of amended Rule 109 and Section 110 makes it clear that when land is sold in public auction for arrears of revenue: all prior privileges are extinguished; the purchaser acquires full rights; the property cannot thereafter be subjected to inconsistent claims by the Government.

31.4. Learned counsel contends that once the property was sold in public auction for recovery of land revenue, the rights of the purchaser stood crystallised. The Government cannot reopen or dilute those rights by invoking provisions of the Karnataka Forest Act or by demanding lease rent. His submission is that once the sale by auction takes place, the land becomes freehold and even the rights of the Government are extinguished.



31.5. Sri. Pradeep C.S., learned AAG, contends that the Jamma Mallegars never possessed or claimed rights of alienation, transfer or sub-lease. Therefore, when the auction was conducted for recovery of land revenue, only the limited rights of the Jamma Mallegars were brought to sale. No right greater than what was held by the Jamma Mallegars could vest in the auction purchaser. The principle of law, according to the Respondents, is that no person can convey a better title than he himself possesses.

31.6. It is submitted that the only right available under Jamma Malai tenure was the limited right to cultivate cardamom by indigenous methods, without ownership over the land or timber. Consequently, Sri Palekanda Medappa could not have acquired any proprietary right beyond such limited cultivation right.



31.7. The question under this Point is the legal effect of the public auction conducted in 1926. Specifically, whether the auction purchaser, Sri Palekanda Medappa, acquired transferable rights in the holding.

31.8. The admitted factual position is as follows: The Pattacharavanda family held the Jamma Malai lands. They fell into arrears of land revenue. The Coorg Government, acting through its Revenue Authorities, conducted a public auction under the provisions of the Coorg Land and Revenue Regulations in 1926. Sri.Palekanda Medappa, then serving as District Judge, was the highest bidder. The sale was confirmed by the competent authority. Possession was delivered. Revenue records were mutated in his name.



31.9. The legal effect of such auction sale must be determined with reference to the Coorg Land and Revenue Regulations, 1899, which governed the process.

31.10. In ***Pongere Kariappa case***, Rule 109 was considered and declared that when immovable property is brought to sale under the Chapter for recovery of a sum, such property shall be sold free of all encumbrances, and all prior grants and contracts made by any person other than the purchaser shall become void as against the purchaser. A statutory revenue sale is not a conditional or tentative transaction. Once the sale is conducted in accordance with law and confirmed, the property passes to the purchaser free from pre-existing encumbrances. Any prior arrangement inconsistent with the purchaser's title stands extinguished as against him. Section 110 of the



Coorg Regulations, which provides that when Jama or other land held revenue-free or at concessional rates is sold under the Chapter, the privileges attaching to the tenure in respect of assessment of land revenue shall stand extinguished by the sale.

31.11. When Rule 109 and Section 110 are read together, the statutory effect of a revenue sale becomes evident. The sale not only transfers the interest of the defaulter but also clears the property of prior encumbrances and extinguishes certain privileges attaching to the earlier tenure. The purchaser acquires the property by operation of law and holds it subject to the legal character of the tenure as it stands after the sale.

31.12. In the present case, the 1926 auction was conducted by the Government itself. Once the



sale was confirmed and the purchaser was put in possession, the statutory consequences under Rule 109 and Section 110 followed. The property vested in the auction purchaser free from prior encumbrances. The State cannot now contend that undisclosed restrictions survived the sale.

31.13. The statute itself declares the effect of the sale.

The Government, having invoked the statutory mechanism of revenue recovery and sale, is bound by the consequences of its own action. The legal position flowing from Rule 109 and Section 110 cannot be diluted by subsequent executive interpretation or administrative position.

31.14. A combined reading of these provisions makes it clear that when Jamma lands are brought to sale by the Government for recovery of revenue



arrears, the effect of the sale is to extinguish all prior privileges and encumbrances. The property is sold free from prior commitments. The purchaser acquires the property in his own right.

31.15. In ***Pongere Kariappa case***, this Court specifically considered these provisions and held that once the lands were sold in public auction and sale certificates were issued, the purchaser acquired valid rights over the property. This Court further held that the Government cannot adopt different standards for lands of a similar nature. If in one case the Government accepted the effect of public auction as absolute, it cannot take a contrary stand in another case involving similar facts.

31.16. The Respondents invoke the principle that no one can give a better title than what he



possesses. According to them, only the limited cultivation right could have been transferred in the auction. However, this argument overlooks a fundamental distinction. The auction was not a private transaction between two individuals where the principle of would ordinarily apply. It was a sale conducted by the sovereign authority of the State, under statutory authority, for recovery of public dues. The Coorg Regulations specifically prescribed the legal consequences of such sale, including the extinguishment of prior privileges and encumbrances.

31.17. When the State itself, acting under its statutory authority, brings property to sale and the sale is confirmed, the State is bound by the legal consequences of its own act. The Regulations provide that the property is sold free from encumbrances. The State cannot, having



conducted the sale, collected the consideration, delivered possession, and mutated the records, later contend that the purchaser acquired nothing of value.

31.18. The decision in ***Pongere Kariappa*** strongly supports the Petitioners' case. In that case, this Court noticed that in similar cases involving Sagu lands, the Civil Court had held that auction sales conducted by the Government were absolute in nature. The Government chose not to appeal in some of those cases. This Court observed that the Government could not apply different yardsticks to similar lands.

31.19. It is also significant that the auction sale of 1926 was never challenged by the Government. No proceedings were initiated to set aside the sale or to declare it void. The Government accepted the sale, allowed the purchaser and



his successors to remain in possession, mutated the revenue records, and accepted land revenue payments for decades. This conduct is wholly inconsistent with the present contention that the auction purchaser acquired only a tenuous, non-transferable right.

31.20. In the light of the statutory provisions of the Coorg Land and Revenue Regulations, the decision in ***Pongere Kariappa case***, and the conduct of the State spanning nearly a century, I hold that the public auction conducted in 1926 vested in the auction purchaser, Sri.Palekanda Medappa, transferable rights in the holding. The effect of the auction was to convey the Jamma Malai rights, including the right to cultivate and enjoy the property, subject to the limitations inherent in the tenure as judicially determined. The purchaser acquired a transferable estate, and the prior encumbrances and privileges



attaching to the tenure stood extinguished by the sale.

31.21. I answer Point No.4 by holding that the public auction conducted in 1926 under the Coorg Land and Revenue Regulations had the legal effect of transferring the Jamma Malai rights to the auction purchaser, who acquired transferable rights in the holding.

32. **Answer to Point No. 5: Whether the transfers from the auction purchaser to subsequent transferees, including the Petitioners, are valid and legally sustainable?**

32.1. Sri.Kamalacharan, learned counsel for the Petitioners, submits that in 1941, Sri Palekanda Medappa executed a registered sale deed in favour of Sri Emmanuel Thomas Rampuram. The sale was effected pursuant to orders of the Commissioner of Coorg. Revenue records were transferred in the name of Sri Emmanuel Thomas Rampuram. He remained in possession



and enjoyment of the lands, paying land revenue and cultivating the property.

32.2. Learned counsel submits that Sri Emmanuel Thomas Rampuram was a party to O.S. No. 4 of 1978, in which the Government was Defendant No.1. The Trial Court recognised his rights as holder. The Government did not contend in that suit that the transfer was invalid. In RSA No. 466 of 1980, this Court affirmed the recognition of the holder's rights. At no stage did the Government challenge the validity of the transfers.

32.3. It is further submitted that the property was subsequently transferred to Petitioner No.1. Following the transfer, mutation entries were effected. Petitioner No.1 was recorded as Jamma Malai holder. Possession and cultivation continued.



32.4. Learned counsel relies upon ***Subbegowda v. Thimmegowda*** to contend that a limited estate is valid and capable of transfer. He further relies upon Section 6 of the Transfer of Property Act, 1882, and submits that in the absence of a specific statutory bar, the transfer is valid.

32.5. Sri. Pradeep C.S., learned AAG, contends that the subsequent sale by Sri Palekanda Medappa in favour of Sri Emmanuel Thomas Rampuram, and the later sale in favour of Petitioner No.1, were without authority insofar as they purported to convey greater rights than those originally held. The principle, according to the Respondents, is that no person can convey a better title than he himself possesses. If Sri Palekanda Medappa purported to convey rights beyond his limited tenure, the remedy of the



purchaser lies against the vendor and not against the State.

32.6. It is submitted that both Sri.Palekanda Medappa and Sri.Emmanuel Thomas Rampuram purported to sell property over which they had no ownership. Therefore, the Petitioners cannot claim any proprietary right in the lands. At best, they could claim only such limited cultivation right as was originally available to the Jamma Mallegars.

32.7. Having held under Point No.3 that Jamma Malai tenure constitutes a limited but transferable estate, and under Point No.4 that the 1926 auction conveyed transferable rights to the auction purchaser, the question of validity of subsequent transfers follows logically.

32.8. The chain of title is as follows: (a) The Pattacharavanda family held the Jamma Malai



lands. (b) In 1926, the Government auctioned the lands for revenue arrears. Sri Palekanda Medappa was the auction purchaser. (c) In 1941, Sri.Palekanda Medappa executed a registered sale deed in favour of Sri.Emmanuel Thomas Rampuram, pursuant to orders of the Commissioner of Coorg. (d) Sri Emmanuel Thomas Rampuram and his children thereafter transferred the lands to Petitioner No.1.

32.9. At each stage, the transfer was effected by a registered sale deed, revenue records were mutated, and the transferee was recognised as the holder. The Government accepted these mutations and did not challenge the transfers.

32.10. The Respondents' argument that the transfers are invalid because the auction purchaser could not convey more than he possessed has already been addressed under Point No.4. The auction,



conducted by the Government under the Coorg Regulations, had the effect of conveying transferable rights. Sri.Palekanda Medappa acquired a valid and transferable estate. His subsequent sale to Sri.Emmanuel Thomas Rampuram conveyed the same estate.

32.11. What is particularly significant is the conduct of the Government in O.S.No.4 of 1978. Sri. Emmanuel Thomas Rampuram was the plaintiff in that suit. He was a transferee, not the original grantee. The Government was arrayed as Defendant No.1. Despite being a party, the Government did not contend that the transfer was invalid or that the tenure was non-transferable. The Trial Court recognised and affirmed the rights of Sri Emmanuel Thomas Rampuram as the holder. This recognition necessarily implies acceptance of the validity of the transfer.



32.12. In RSA No. 466 of 1980, this Court affirmed the Trial Court's findings. The Court defined the nature of the right, limited cultivation right without absolute ownership over trees, but did not hold that Sri Emmanuel Thomas Rampuram had no right to hold the land at all. The Court did not declare the transfer void. It did not direct dispossession. The status of the holder was recognised. The only restriction imposed was with regard to ownership over the trees.

32.13. As observed in the submissions, the Government did not challenge the validity of transfers in any of the earlier proceedings. Having failed to raise such a contention in O.S.No.4 of 1978, in R.A. No.7 of 1978, or in RSA No.466 of 1980, the Government cannot now introduce this plea in collateral proceedings. Principles analogous to constructive res judicata and Order II Rule 2 of



the Code of Civil Procedure prevent a party from raising issues which could and ought to have been raised in earlier proceedings.

32.14. The reliance by learned counsel for the Petitioners on Section 6 of the Transfer of Property Act, 1882 is well-placed. The section establishes the general principle that property of any kind may be transferred, except as otherwise provided by that Act or by any other law. No statutory provision prohibiting the transfer of Jamma Malai rights has been shown. The exceptions enumerated in Section 6 do not cover such rights. The general rule of transferability therefore applies.

32.15. The principles laid down in ***Subbegowda case*** further support this conclusion. The Hon'ble Supreme Court held that conditional transfers are recognised in law. The Court will give effect



to conditions annexed to an estate unless there is some provision of law which annuls or invalidates them. Limitations regulate enjoyment; they do not prohibit transfer. In the present case, the limitations recognised in RSA No.466 of 1980, cultivation of cardamom, no absolute ownership over trees, are conditions regulating enjoyment. They do not prohibit the transfer of the limited estate.

32.16.I am also persuaded by the fact that the Government itself conducted the 1926 auction and sold the property. If the tenure were truly non-transferable, the Government could not have auctioned it. Having sold the property, collected the consideration, and allowed the purchaser to remain in possession, the Government is estopped from now contending that the property was non-transferable. The



principles of promissory estoppel, as explained in ***Manuelsons Hotels case***, squarely apply.

32.17. Accordingly, I hold that the transfers from the auction purchaser to subsequent transferees, including the Petitioners, are valid and legally sustainable. Each transfer conveyed the limited estate comprising the Jamma Malai rights, subject to the limitations defined in the judicial pronouncements. The transferees stepped into the shoes of their predecessors, acquiring the same rights and being subject to the same limitations.

32.18. I answer Point No.5 by holding that the transfers from the auction purchaser to subsequent transferees, including the Petitioners, are valid and legally sustainable.



33. **Answer to Point No.6: Whether the nature and extent of rights in the petition lands stand conclusively determined by the judgments in O.S. No. 4 of 1978, RSA No. 466 of 1980, W.P. No. 4013 of 2007 and W.A. No. 375 of 2011, and whether the Respondents are precluded from re-agitating those issues?**

33.1. Sri.Kamalacharan, learned counsel for the Petitioners, submits that the nature and extent of rights in the petition lands have been conclusively determined by the following judicial pronouncements: (a) O.S. No. 4 of 1978, wherein the Trial Court recognised the right to hold the land and cultivate cardamom; (b) RSA No. 466 of 1980, wherein this Court confirmed the limited right of cultivation and rejected the claim of absolute ownership over trees; (c) W.P. No. 4013 of 2007, wherein a Co-ordinate Bench held that the lands are outside the forest area and quashed the orders of the Deputy Commissioner; and (d) W.A. No. 375 of 2011, wherein the Division Bench



directed that the State's name be entered as owner while preserving the Petitioners' right to cultivate cardamom.

33.2. Learned counsel submits that the doctrine of res judicata and the principles of judicial propriety preclude the Respondents from contending contrary to or in defiance of the judgments of this Court. The right of the Petitioners having been dealt with by this Court in RSA No. 466 of 1980 and in W.P. No. 4013 of 2007, the Respondents could not have held otherwise.

33.3. It is further submitted that once a court of competent jurisdiction has determined a question of fact or law, and such determination has attained finality, the parties are bound by it. The Respondents participated in all the earlier proceedings. They contested the suits



and writ petitions. They raised their contentions. The Courts considered those contentions and rendered findings. Those findings are binding.

33.4. Learned counsel relies upon the decisions in ***State of U.P. v. Johri Mal***, and ***G.J. Fernandez v. State of Mysore***, to submit that statutory provisions govern the field and executive instructions or departmental guidelines cannot override statutory law or judicial determinations.

33.5. Sri.Pradeep C.S., learned AAG, submits that insofar as Prayer-B in the writ petition is concerned, the order dated 15.03.2009 passed in W.P.No.4013 of 2007 was set aside in Writ Appeal No.375 of 2011, and therefore no further relief can be claimed on that basis.



33.6. It is submitted that the Division Bench in W.A. No.375 of 2011 directed that the name of the State Government be recorded as owner in respect of the petition lands measuring 468 acres and 72 cents. The Division Bench further directed that in Column No.11, the rights of the Petitioners are to be recorded only to the extent of cultivation of cardamom. The Division Bench left it open to the competent authority to examine the question of whether the Petitioners have any right to inherit the land or claim cultivation rights on the strength of sale deeds.

33.7. Learned AAG submits that in W.P.No.4013 of 2007, this Court only held that the lands are not part of a reserved forest. There was no finding that the lands are not protected forests. The Respondents have consistently maintained that the lands are protected forest, and this question remains open.



33.8. This Point requires careful analysis of the earlier judicial pronouncements and their binding effect on the present proceedings.

33.9. O.S.No.4 of 1978: The suit was instituted by Sri.Emmanuel Thomas Rampuram against the Government. The Trial Court declared that Sri Emmanuel Thomas Rampuram was entitled to enjoy the lands as a Malai holder and could cultivate cardamom and exercise rights as a Mallegar. The Court declined to declare him absolute owner of tree growth. This decree defined the nature of rights in the holding. The Government was a party. The matter went through the appellate process up to this Court in Second Appeal.

33.10.RSA No.466 of 1980: This Court allowed the Second Appeal filed by the Government and restored the Trial Court's decree. The effect was



to confirm that the rights were limited to cultivation and enjoyment as Jamma Malai holder, without absolute ownership over tree growth. This judgment attained finality. A Special Leave Petition before the Supreme Court was dismissed. The legal position as determined in this judgment is binding on the parties.

33.11. The findings in RSA No.466 of 1980 are conclusive on the following points: (a) the lands are Jamma Malai lands; (b) the holder has a right to cultivate cardamom; (c) the holder does not have absolute proprietary rights over tree growth; (d) the holder's right of cultivation was recognised and not denied. These findings were rendered after full hearing and appellate review. They constitute *res judicata* between the parties.



33.12. W.P. No. 4013 of 2007: A Co-ordinate Bench of this Court examined the actions of the Deputy Commissioner, who had invoked Section 136 of the Karnataka Land Revenue Act, 1964, and directed deletion of the Petitioner's name from revenue records. This Court held that: (a) the change of entries was illegal; (b) it lacked statutory authority; (c) it was unsupported by material evidence; (d) the Chief Secretary's report, insofar as it concerned the Petitioners' lands, was contrary to record and made without proper enquiry. The Court observed that the lands were not part of the reserved forest, and quashed the orders of the Deputy Commissioner.

33.13. W.A. No. 375 of 2011: The Division Bench partly modified the order of the learned Single Judge. The Division Bench directed that: (a) the name of the State Government be entered as



owner; (b) the Petitioners' right to cultivate cardamom be recorded in Column No. 11 in terms of RSA No. 466 of 1980; (c) it was left open to the competent authority to examine the question of transferability.

33.14. The learned AAG is correct that the Division Bench left open the question of transferability. However, the Division Bench did not hold that the lands are forest lands. It did not reverse the finding of the learned Single Judge on the nature of the lands. The Division Bench's direction was limited to the manner of recording entries in revenue records and the preservation of the right to cultivate cardamom.

33.15. The cumulative effect of these judgments is as follows. First, the nature of the tenure, Jamma Malai, is conclusively established by O.S. No. 4 of 1978 and RSA No. 466 of 1980. Second, the



right to cultivate cardamom is confirmed and cannot be denied. Third, the finding that the lands are not reserved forest stands affirmed. Fourth, the question of whether the lands are protected forest was not conclusively determined by the earlier judgments, but as held under Points No. 1 and 2 above, the Respondents have failed to establish that the lands are protected forest.

33.16. The principles laid down in ***State of U.P. v. Johri Mal case***, are relevant. The Hon'ble Supreme Court held that statutory provisions govern the field, and that executive instructions, manuals or departmental guidelines cannot override statutory law. The Legal Remembrancer's Manual, being merely a compilation of executive orders, does not constitute "law" within the meaning of Article 13 of the Constitution. Applying this principle,



the Respondents cannot rely upon departmental circulars, forest working plans, or executive instructions to override the rights confirmed by judicial pronouncements.

33.17. Similarly, in ***G.J. Fernandez v. State of Mysore***, the Hon'ble Supreme Court categorically held that administrative instructions issued under executive power do not have the force of statutory rules unless framed under a specific statutory or constitutional provision conferring rule-making authority. The Court clarified that Article 162 of the Constitution defines only the extent of executive power and does not confer rule-making power. A breach of such administrative instructions does not confer enforceable rights and may, at best, give rise to internal administrative consequences.



33.18. In the present case, the Respondents' attempt to rely upon the Karnataka Forest Manual, 1976 and departmental practices to curtail or extinguish the Petitioners' rights is directly contrary to the principles in ***Johri Mal*** and ***G.J. Fernandez***. The Manual does not have statutory force. It is only a compilation of executive instructions. Under Article 13 of the Constitution, only law having statutory force can restrict property rights. The rights of the Petitioners flow from judicial pronouncements that have attained finality. Such rights cannot be diluted by executive interpretation.

33.19. Accordingly, I hold that the nature and extent of rights in the petition lands stand largely determined by the earlier judgments. The tenure as Jamma Malai land, the right to cultivate cardamom, and the finding that the lands are not reserved forest, are conclusively



established. The Respondents are precluded from re-agitating the question of the nature of the tenure and the subsistence of cultivation rights. The Respondents cannot, by administrative action or executive interpretation, override these judicial determinations.

33.20. I answer Point No. 6 by holding that the earlier judgments conclusively determine the essential features of the Petitioners' rights, and the Respondents are precluded from re-agitating those settled questions.

34. **Answer to Point No. 7: Whether the Respondent authorities had jurisdiction to initiate the impugned enquiry, invoke the provisions of the Karnataka Forest Act, 1963, and demand lease rental or treat the tenure as a lease?**

34.1. Sri. Kamalacharan, learned counsel for the Petitioners, submits that Respondent No.3 (Conservator of Forests) was neither a party to the PIL proceedings in W.P. No. 36630 of 2003



nor expressly authorised by the Court to undertake independent adjudicatory proceedings affecting the Petitioners' rights. Any such unilateral exercise of power amounted to the assumption of jurisdiction not conferred either by statute or by judicial mandate.

34.2. Learned counsel contends that the direction to pay lease rental by treating Jamma Malai tenure as a lease is unsustainable. Historically, Jamma Malai lands were subject only to concessional assessment. No lease rent was ever paid. Even under the Coorg Land and Revenue Regulations, concessional assessment alone was levied. At no point during the entire period of possession spanning nearly a century was any lease rental demanded or paid.

34.3. It is submitted that the Respondents are attempting to take over the property by



introducing a new theory of lease rental, which was never raised in earlier proceedings. This issue was not raised in O.S.No.4 of 1978, R.A.No.7 of 1978, RSA No.466 of 1980, or W.P.No.4013 of 2007. Principles analogous to Order II Rule 2 of the Code of Civil Procedure apply, and issues not raised earlier cannot now be introduced.

34.4. Learned counsel submits that the invocation of Section 82 of the Karnataka Forest Act, 1963, which pertains to forfeiture or cancellation of leases or grants, is wholly misplaced. This provision presupposes that the land is forest land and that the holder is a lessee or grantee under the Forest Act. Neither condition is satisfied in the present case. The lands have not been shown to be forest lands, and the tenure is not a lease.



34.5. Sri. Pradeep C.S., learned AAG, submits that the Conservator of Forests, being a competent forest officer, had jurisdiction to conduct enquiry and pass appropriate orders. He refers to Section 99(1)(d) of the Karnataka Forest Act, 1963 read with Rule 69 of the Karnataka Forest Rules, 1969, and submits that a Forest Officer not below the rank of a Forest Ranger is authorised to conduct an enquiry under the Act and the Rules. The present Enquiry Officer is above the rank of Forest Ranger and is therefore fully competent.

34.6. Learned AAG submits that since the land is a protected forest, the Conservator of Forests had jurisdiction under Section 64(a) of the Karnataka Forest Act, 1963. The forest authorities are competent to exercise jurisdiction in respect of such lands.



34.7. It is further submitted that the Petitioners have planted coffee in a portion of the land, despite having no right to do so. The limited right available to a Jamma Mallegar is confined to the cultivation of cardamom and does not extend to planting coffee. Such planting of coffee amounts to unauthorised use of forest land and constitutes a violation of the Karnataka Forest Act and the Forest (Conservation) Act, 1980.

34.8. Learned AAG refers to Rule 22 of the Karnataka Forest Rules, 1969 to submit that the scheme clearly demonstrates that lands classified as village forests or protected forests are subject to regulatory control. He also refers to Rule 141, which restricts cutting of certain valuable trees without permission of the Deputy Conservator of Forests.



34.9. The question of jurisdiction is fundamental and goes to the root of the matter. If the Respondent authorities lacked jurisdiction to initiate the impugned proceedings, the orders passed therein are nullities, irrespective of their merits.

34.10. The jurisdiction claimed by the Respondents is derived from the Karnataka Forest Act, 1963 and the Rules framed thereunder. However, the applicability of these provisions presupposes that the land in question is forest land. As held under Points (i) and (ii), the petition lands have not been validly declared as either Reserved Forest or Protected Forest. If the lands are not forest lands, the entire jurisdictional foundation of the proceedings collapses.

34.11. The Respondents rely on Section 99(1)(d) of the Karnataka Forest Act, 1963 read with Rule



69 of the Karnataka Forest Rules, 1969. However, the authority to hold an enquiry under these provisions presupposes that the land falls within the Act. If the land is not lawfully established as forest land, the enquiry itself is without jurisdiction, regardless of the rank of the enquiry officer. Competence of the officer is a question of personal jurisdiction; the threshold question is whether the subject-matter falls within the Act at all. Since the lands are not established as forest lands, the provisions of the Karnataka Forest Act do not apply to them, and the enquiry is without subject-matter jurisdiction.

34.12. Respondent No.3 invoked Section 82 of the Karnataka Forest Act, 1963. This provision pertains to the forfeiture or cancellation of leases or grants in cases of breach of conditions or unauthorised occupation. The invocation of



Section 82 is predicated on two assumptions: first, that the land is forest land; and second, that the Petitioners hold under a lease or grant from the Forest Department. Both assumptions are erroneous. The lands have not been established as forest lands. The tenure is not a lease but a limited estate recognised by judicial pronouncements. No lease deed was ever executed. No lease rent was ever demanded or paid. The attempt to treat the Jamma Malai tenure as a lease for the purpose of invoking Section 82 is an attempt to fit the facts into a statutory provision that was not designed for such a situation.

34.13. The demand for lease rental is also without a legal basis. As discussed earlier, the tenure has historically been subject only to concessional assessment under the Coorg Land and Revenue Regulations. At no point in nearly a century of



possession was lease rent demanded. The introduction of a demand for lease rent at this stage, based on a novel re-characterisation of the tenure, is not supported by any statutory provision or earlier judicial determination.

34.14. The Respondents' reliance on Rule 22 of the Karnataka Forest Rules, 1969 is misplaced. Rule 22 governs the management of village forests transferred to or vested in Village Panchayats. The petition lands were never vested in a Village Panchayat. Therefore, Rule 22 does not apply to the present case. It is surprising that this Rule was relied upon, given that it has no connection to the facts at hand.

34.15. As regards Rule 141 of the Karnataka Forest Rules, 1969, which restricts cutting of certain valuable trees on lands assigned before 1865, the Petitioners do not claim unrestricted timber



rights. This Rule does not convert the land into forest land, nor does it vest the Forest Department with jurisdiction to conduct forfeiture proceedings. It merely imposes a restriction on tree-felling, which is a different matter altogether.

34.16. The reliance on Section 2(iv)(a) of the Forest (Conservation) Act, 1980 is also premature. The Explanation to Section 2 defines "non-forest purpose" to include cultivation of coffee. However, this provision applies only to forest land. Unless it is first established that the land is forest land, the provisions of the Forest (Conservation) Act cannot be invoked. As held under Points No.1 and 2, the lands have not been established as forest land. Therefore, the cultivation of coffee, even if it has taken place, does not attract the provisions of the Forest (Conservation) Act.



34.17. Furthermore, it is pertinent to note that the Petitioners' counsel has specifically submitted that coffee is cultivated in about 20 acres in Sy.No.154/2 (now Sy.No.154/2B). This land is Paradeena Banne land. It is neither Jamma land nor Jamma Malai land. It has always been treated separately. The Chief Secretary's report does not classify Sy.No.154/2 as Jamma Malai land. The Jamabandi Register describes this land as unredeemed Paradeena land. A registered sale deed in favour of Petitioner No.1 evidences title to this land. The list of Jamma lands produced by the Forest Department for Kodagu District does not include Sy.No.154/2. As such, the Petitioners have freehold rights over this land, and there can be no restriction on its use.

34.18. The Petitioners' counsel has further contended that the impugned proceedings amount to an



indirect attempt to nullify the effect of the order dated 15.03.2009 passed in W.P. No. 4013 of 2007. While the Division Bench in W.A. No. 375 of 2011 modified certain aspects of that order, the core finding regarding the nature of the lands remains undisturbed. The forest authorities cannot achieve through administrative proceedings what the earlier judicial process did not accomplish.

34.19. Accordingly, I hold that the Respondent authorities lacked jurisdiction to initiate the impugned enquiry, invoke the provisions of the Karnataka Forest Act, 1963, demand lease rental, or treat the tenure as a lease. The entire proceedings were without a jurisdictional foundation. Since the lands are not forest lands, the Karnataka Forest Act has no application. The tenure not being a lease, Section 82 of the Act could not be invoked. The



demand for lease rent has no statutory or historical basis.

34.20.I answer Point No.7 by holding that the Respondent authorities had no jurisdiction to initiate the impugned enquiry or invoke the provisions of the Karnataka Forest Act, 1963.

35. **Answer to Point No.8: Whether the impugned order dated 16.12.2011 and the connected proceedings are liable to be quashed as being without jurisdiction, contrary to binding judicial determinations, or otherwise unsustainable in law?**

35.1.Sri. Kamalacharan, learned counsel for the Petitioners, submits that the impugned order dated 16.12.2011 passed in Case No. Bhoomi (SL)/CR-66/2005-06 is: (a) without jurisdiction; (b) violative of principles of natural justice; (c) contrary to earlier judicial determinations; and (d) an indirect attempt to nullify the effect of the order dated 15.03.2009 passed in W.P. No. 4013 of 2007.



35.2. Learned counsel submits that Respondent No.3 recorded a finding that Jamma Malai lands fall within the ambit of "statutory forest," invoked Section 82 of the Karnataka Forest Act, 1963, declared forfeiture of leasehold rights, and directed payment of land rent. Each of these actions, according to him, is without legal authority.

35.3. It is submitted that the impugned findings are mala fide, contrary to the record, and unsustainable in law. The Respondents are raising contentions for the first time after the State failed in earlier rounds of litigation.

35.4. Learned counsel relies on the decision of the Hon'ble Supreme Court in **V.B. Rangaraj**, and submits that the writ petition is required to be allowed and the reliefs sought are to be granted.



35.5.Sri. Pradeep C.S., learned AAG, submits that the impugned order and the show cause notice issued by the forest authorities are in accordance with law and do not call for interference. According to the Respondents, the enquiry was conducted by a competent officer, the findings are based on material, and the actions are traceable to the statutory framework governing protected forests.

35.6.It is submitted that the Petitioners have no valid title to the property and have been in unlawful occupation and enjoyment. Their actions amount to a violation of Rule 22 of the Karnataka Forest Rules, 1969. Consequently, the impugned proceedings are justified and do not warrant interference by this Court in the exercise of writ jurisdiction.



35.7. The impugned order dated 16.12.2011 was passed in Case No. Bhoomi (SL)/CR-66/2005-06 must be assessed in the light of the findings rendered under Points No.1 to 7 above.

35.8. As held under Point No.1, the petition lands are not forest lands. They have not been validly declared as Reserved Forest or Protected Forest. As held under Point No.2, the notification dated 15.03.1887 did not culminate in a final and legally enforceable declaration affecting the petition lands. As held under Point No.3, the Jamma Malai tenure is a limited but transferable estate, not a lease under forest law. As held under Point No. 4, the 1926 public auction conveyed transferable rights. As held under Point No.5, the subsequent transfers are valid. As held under Point No.6, the earlier judicial pronouncements have established the essential features of the Petitioners' rights. As



held under Point No. 7, the Respondent authorities had no jurisdiction to initiate the proceedings.

35.9. The impugned order is vitiated on multiple grounds.

35.10. First, want of jurisdiction. Respondent No.3 proceeded on the basis that the petition lands are forest lands falling within the Karnataka Forest Act, 1963. This foundational premise is erroneous. The lands have not been validly declared as forest lands. Without a valid declaration, the provisions of the Karnataka Forest Act do not apply, and Respondent No.3 had no jurisdiction to conduct the enquiry or pass orders affecting the Petitioners' rights.

35.11. Second, the impugned order re-characterises the Jamma Malai tenure as a lease. This re-characterisation is contrary to the judicial



determinations in O.S.No.4 of 1978 and RSA No.466 of 1980. The Civil Court recognised the tenure as a limited estate with cultivation rights. This Court in Second Appeal confirmed that characterisation. At no point in any of the earlier proceedings was the tenure treated as a lease. The impugned order's attempt to impose a leasehold framework on an estate that has been judicially determined to be of a different character is impermissible.

35.12. Third, the demand for lease rent is without a statutory or historical foundation. No lease deed was ever executed. No lease rent was ever demanded or paid throughout the entire history of this tenure, spanning nearly a century. The introduction of a demand for lease rent at this late stage, based on a novel theory, is arbitrary and unsupported by law.



35.13. Fourth, the declaration of forfeiture under Section 82 of the Karnataka Forest Act, 1963 is equally without foundation. Section 82 applies to leases or grants under the Forest Act. The Petitioners do not hold under a lease or grant from the Forest Department. Their title traces to a Government auction sale, registered sale deeds, and judicial recognition. Section 82 cannot be applied to extinguish rights that are of a fundamentally different character.

35.14. Fifth, the impugned order effectively seeks to circumvent the earlier judicial pronouncements. The Petitioners' rights were recognised in O.S. No. 4 of 1978. The tenure was judicially characterised in RSA No. 466 of 1980. The illegal alteration of revenue entries was quashed in W.P. No. 4013 of 2007. The Division Bench in W.A. No. 375 of 2011, while modifying certain entries, preserved the Petitioners' right



to cultivate cardamom. The impugned order disregards all these judicial pronouncements and attempts to achieve by administrative action what could not be achieved through judicial proceedings.

35.15. Sixth, the principles laid down by the Hon'ble Supreme Court in ***Johri Mal***, and ***G.J. Fernandez case***, are directly applicable. Executive instructions, departmental manuals, and administrative interpretations cannot override statutory provisions or binding judicial determinations. The impugned order is essentially an exercise in administrative re-interpretation of settled judicial findings, which is impermissible.

35.16. Seventh, the principles of promissory estoppel, as explained in ***Manuelsons Hotels case***, are attracted. The State conducted the auction in



1926, accepted assessment, allowed mutations, defended litigation without pleading forest status, and did not challenge transfers for decades. This conduct created a clear and consistent assumption on which the Petitioners and their predecessors relied. The State cannot now unconscionably depart from this position.

35.17. Eighth, the decision of the Hon'ble Supreme Court in ***V.B. Rangaraj case***, also supports the Petitioners' case, the general proposition that once rights in property are established and recognised, they cannot be taken away without due process of law, and more so by contending that there is a restriction on transfer, transferability is the rule, restriction is an exception.

35.18. The contention of the learned AAG that the Petitioners are in unlawful occupation is wholly



unfounded. The Petitioners trace their title through a Government auction sale, registered sale deeds, long possession spanning nearly a century, and judicial recognition in multiple proceedings. The State accepted revenue, recognised entries, and never treated the land as forest land in earlier proceedings. To describe such possession as unlawful is to disregard the entire history of the matter and the judicial pronouncements rendered therein.

35.19. As regards the cultivation of coffee, I have already noted that coffee is cultivated in Sy.No.154/2, which is Paradeena Banne land and not Jamma Malai land. In respect of this land, there can be no restriction whatsoever. Even in respect of Jamma Malai lands, the historical position must be understood in context. The right to cultivate was not expressly confined to a single crop for all time.



The Commissioner of Coorg in his 1904 judgment, held that portions of the grant could not be excluded merely because cardamom could not physically be cultivated there. Agricultural practices evolve with time and climate. However, the specific question of whether cultivation of crops other than cardamom on Jamma Malai lands is permissible requires examination in appropriate proceedings with proper evidence. For the purpose of the present writ petition, it is sufficient to hold that the impugned order, insofar as it invokes the Forest (Conservation) Act, 1980 on the assumption that the land is forest land, is without jurisdictional foundation.

35.20. In summary, the impugned order dated 16.12.2011 and the connected proceedings suffer from: (a) want of jurisdiction; (b) erroneous re-characterisation of the tenure; (c)



contravention of binding judicial determinations; (d) absence of statutory basis for the demand of lease rent; (e) improper invocation of Section 82 of the Karnataka Forest Act, 1963; and (f) violation of the principles of res judicata and promissory estoppel.

35.21. Accordingly, I answer Point No. 8 by holding that the impugned order dated 16.12.2011 and the connected proceedings are liable to be quashed.

36. **Answer to Point No.9: What order?**

36.1. I have answered Point No.1 by holding that the lands in question are not forest lands in law. They have not been validly declared as a Reserved Forest or Protected Forest under the applicable statutory framework. The Respondents have failed to produce any valid notification under Section 28 of the Indian



Forest Act, 1878 or Section 33(4) of the Karnataka Forest Act, 1963 in respect of the petition lands. The Working Plan of the Forest Department itself does not include the petition lands.

36.2.I have answered Point No.2 by holding that the Notification dated 15.03.1887 did not culminate in a final and legally enforceable declaration affecting the petition lands. The said notification was a preliminary proposal. It was superseded by the notification dated 26.05.1902, as held by the Commissioner of Coorg in his judgment dated 07.10.1904. The final notification dated 20.04.1906 (Padinalaknad Reserved Forest) excluded the petition lands. No other valid notification has been produced.

36.3.I have answered Point No.3 by holding that the Jamma Malai tenure constitutes a limited but



transferable estate in property. It is not a purely personal cultivation right, nor is it a leasehold interest under forest law. The holder has a right to cultivate cardamom and exercise associated subsidiary rights, subject to the limitations recognised in O.S. No. 4 of 1978 and RSA No. 466 of 1980. The tenure is transferable in the absence of any express statutory prohibition.

36.4. I have answered Point No.4 by holding that the public auction conducted in 1926 under the Coorg Land and Revenue Regulations had the legal effect of transferring the Jamma Malai rights to the auction purchaser, who acquired transferable rights in the holding. The combined effect of amended Rule 109 and Section 110 of the Coorg Regulations, as interpreted in **Chief Secretary to Government of Karnataka v. Pongere Kariappa**, ILR 1999 Karn. 1023, is



that the property was sold free from prior encumbrances.

36.5.I have answered Point No.5 by holding that the transfers from the auction purchaser to subsequent transferees, including the Petitioners, are valid and legally sustainable. Each transfer conveyed the limited estate comprising the Jamma Malai rights. The Government participated in earlier proceedings without challenging the validity of the transfers. No statutory provision prohibiting transfer has been shown.

36.6.I have answered Point No.6 by holding that the nature and extent of rights in the petition lands stand substantially determined by the judgments in O.S. No. 4 of 1978, RSA No. 466 of 1980, W.P. No. 4013 of 2007 and W.A. No. 375 of 2011. The Respondents are precluded



from re-agitating the settled questions regarding the nature of the tenure and the subsistence of cultivation rights. Executive instructions and departmental manuals cannot override these judicial determinations.

36.7. I have answered Point No.7 by holding that the Respondent authorities had no jurisdiction to initiate the impugned enquiry, invoke the provisions of the Karnataka Forest Act, 1963, demand lease rental, or treat the tenure as a lease. Since the lands are not forest lands, the Karnataka Forest Act has no application. The tenure not being a lease, Section 82 of the Act could not be invoked.

36.8. I have answered Point No.8 by holding that the impugned order dated 16.12.2011 and the connected proceedings are liable to be, and are hereby, quashed. The order suffers from a want



of jurisdiction, erroneous re-characterisation of the tenure, contravention of binding judicial determinations, absence of a statutory basis for lease rent, and improper invocation of Section 82 of the Karnataka Forest Act, 1963.

36.9. In view of the findings and answers rendered above, and for the reasons discussed in detail under each Point for Determination, I pass the following

**ORDER**

- i. The Writ Petition is ***allowed***.
- ii. The impugned order dated 16.12.2011 passed by Respondent No.3 in Case No. Bhoomi (SL)/CR-66/2005-06, as per Annexure-S, is hereby quashed and set aside.



- iii. The Show Cause Notice dated 16.12.2011 issued by Respondent No.3 bearing No. Bhoomi (SL)/CR-66/2005-06, as per Annexure-T, is hereby quashed and set aside.
- iv. It is declared that the petition lands comprising Sy.No.129/3, 154/8, 154/31, 154/32, 154/33, 154/34, 154/35, 154/36, 170, 173, 174, and Paradeena land in Sy.No.154/2 of Chelavara Village, Napoklu Hobli, Virajpet Taluk, Kodagu District, have not been validly declared as Reserved Forest or Protected Forest under the applicable statutory framework.
- v. It is declared that the Petitioners are holders of the Jamma Malai lands and are entitled to cultivate cardamom and exercise the rights recognised in O.S.No.4



of 1978 and affirmed in RSA No. 466 of 1980.

- vi. It is declared that the transfers from the auction purchaser to subsequent transferees, including the Petitioners, are valid and legally sustainable.
- vii. Insofar as Sy.No.154/2 (Paradeena Banne land) is concerned, the Petitioners have freehold rights and the Respondents have no jurisdiction over the same.
- viii. The Respondents are directed to refrain from initiating any proceedings against the Petitioners in respect of the petition lands under the Karnataka Forest Act, 1963, or demanding lease rental or treating the tenure as a lease, in view of the findings rendered herein.



- ix. The Respondent authorities shall comply with the directions issued in W.A. No. 375 of 2011 in respect of recording the Petitioners' right to cultivate cardamom in Column No. 11 of the revenue records, in terms of the decree in RSA No. 466 of 1980.
- x. Pending applications, if any, stand disposed of.

SD/-  
**(SURAJ GOVINDARAJ)**  
**JUDGE**

SR  
List No.: 2 Sl No.: 59