

GOVERNMENT OF KARNATAKA

**Principal Chief Conservator
of Forests**
Karnataka State



FOREST DEPARTMENT

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No: A5(3).GFL.GL.3583:01-02

Date: 4-2-2006

Official Memorandum

Sub: Permission for cutting of trees and using of the road to Sri. K M Nazeer, in Sy. No. 4/27 of Munrote village, Madikeri Taluk – reg.

Ref: 1. High Court Order dated 29-6-2005 in WP No. 45383/2004 (GM-FOR) between K M Nazeer and others Vs State of Karnataka and others.
2. DCF, Virajpet Dn, Order No. BGT(TSM)MM (1)VV:47/99:00 dated 15-9-2005

Preamble:

The Hon'ble High Court in its Order under reference (1) above, has directed that the request of the applicant Sri. K M Nazeer be considered and orders issued with regard to removal of the balance felled material in Sy. No. 4/27 of Munrote village, Madikeri Taluk, within 3 weeks and to dispose of the application dated 16-1-2004 within 2 months in respect of cutting of trees and use of the forest road for transporting the timber.

Accordingly, the DCF, Virajpet Division, Virajpet, issued order under reference (2) above. In his order he has stated that further felling permission will be considered only after receiving direction from the PCCF. The issue is before the PCCF for consideration. The undersigned has considered the entire issue of felling and transport of trees / timber in the above area.

1. The area in question constitutes “redeemed sagu”, as per Kodagu land tenure. According to this tenure the ownership of the land and tree growth vests with the Khabjeddar.
2. On going through the location of the above property, it is seen that it is an enclosure of 100 acres in extent situated within the Padinalknad Ghat Reserved Forest of Kodagu District, and Talacauvery Wildlife Sanctuary. The terrain is

extremely steep and forms part of the Western Ghats system which is one of the two biodiversity hotspots of India as identified by the IUCN.

3. The type of forest existing in the land in question is natural evergreen forest, receiving an annual rainfall of 3500 to 4000 mm per annum. The surrounding areas of the land in question are virgin forests located in steep slopes. At the time of forest settlement, the land in question was allowed ingress and egress through a footpath from Talacauvery.
4. Inspection of the area by the Conservator of Forests, Forest Conservation O/o PCCF, revealed that coffee is being cultivated in the area to an extent of about 30 to 40 acres, along with some pepper and cardamom among coffee trees. The rest of the area remains forest.
5. The Tree Officer (i.e., the DCF, Virajpet Division) vide his OM No. TSA.MM (1) viva 47:99-2000 dated 31-6-2000, under the provisions of the Karnataka Preservation of Trees Act, 1976, gave permission for felling and removal of 485 trees above 2 meters girth of various species for the express purpose of shade manipulation for growing coffee. The permission was subject to the approval from the PCCF for using the forest road.
6. The applicant approached the PCCF for permission to transport some cut and prepared material, for which a one-time permission was given. Since he could not transport them within the allotted time further time was allowed for another 7 days. The petitioner swore an affidavit before the Notary that no further time will be sought. However, some felled timber was still remaining untransported. To remove the same, the applicant requested for further time, but the PCCF did not give further extension to use the forest road to remove the timber. Aggrieved by the refusal, Sri. Tarikutty Haji, the GPO holder for Sri. K M Nazeer, approached the High Court vide WP No. 45383/2004 (GM-FOR).
7. The applicant argued before the High Court that it is his inherent right to use the forest road for transportation, which the Forest Department is refusing. He needs the usage of forest road to transport the remaining untransported material, and to cut and remove the balance permitted trees. The Hon'ble High Court in its order dated 29-6-2005 directed the DCF, Virajpet Division, Virajpet, to consider the application for permission to transport the balance prepared material, and to consider the application filed by the petitioner dated 16-1-2004, within 2 months. In his application dated 16-1-2004, permission was sought to fell the remaining 339 trees standing, and to use the forest path for transporting the timber that would result from the standing trees.
8. The DCF, Virajpet Division, Virajpet, while considering the case, issued an order under reference (2) above. In the above order he has considered 2 issues:

- He observed that all the remaining untransported materials which are softwood have since deteriorated and reduced to pulp, thus rendered valueless. In the circumstances, it does not serve any purpose to give the transport permission. Therefore, he refused transport permission for the balance prepared material.
- As regards felling of the remaining permitted 339 unfelled trees, the DCF ordered among other things that he shall act after obtaining the directions of the PCCF.

Hence the case is before the undersigned.

9. The undersigned considered all aspects of the case, and his analysis and directions are as under:

I. Whether it is correct on the part of the Tree Officer to have given tree felling permission under Karnataka Preservation of Trees Act 1976 in the first place?

The intention of the Karnataka Preservation of Trees Act 1976 is to check the indiscriminate felling of trees which have led to erratic rainfall, recurring famines and floods, soil erosion and consequent ecological disturbance. Tree felling permission therefore should be an exception rather than a rule in forest areas. Discretion is provided to the Tree Officer in deciding on the application to fell trees, who shall keep in mind the intention of the KPTA, while deciding.

As already stated, the area in question is part of the Western Ghats, which is one of the two biodiversity hotspots in India. Secondly, the area is very steep, and it is the natural tree growth which has preserved the eco-system there. Any removal of the trees would result in serious soil erosion, landslides, etc.

Further the Hon'ble Supreme Court in landmark judgment dated 12-12-1996 in WP (Civil) 202/1995, has expressly pointed out the importance of the evergreen forests of North-Eastern States and the need to preserve them. The Hon'ble Court has imposed a complete ban on selling of any such trees because of their significance in maintaining ecological balance needed to preserve biodiversity. The Hon'ble Court has further clarified that its order shall prevail over any order at variance made by Govt. or any authority, tribunal or court including the High Court.

As the area in question is similar to forests of North-Eastern States, tree cutting permission under KPTA 1976 has to be considered very cautiously. From the above point of view, the permission given by the Tree Officer to cut the trees

under the KPTA 1976 does not appear to be in harmony with the Forest Conservation Act 1980 and the directives of the Supreme Court.

II. What is the right of the land owner under redeemed sagu tenure?

The land in question comes under “redeemed sagu” tenure. The owner has right over the land and the tree growth. He is entitled to utilize the land for cultivation. However, when he wants to cut and remove the tree, it should pass the litmus test of the Supreme Court’s judgment. In this case the right of the owner to cultivate by making space by cutting evergreen trees standing on steep slopes of Western Ghats is superseded by the requirements of maintaining the eco-system and conservation of the biodiversity. In the given circumstances, the Supreme Court directives should take precedence over the rights of the individual to enjoy his property.

III. Does the cutting of the trees in the above area come under the provisions of section 2 of the Forest Conservation Act, or can it be permitted for the sake of shade manipulation?

Section 2 of the Forest Conservation Act mandates that approval of the Govt. of India is necessary for using the forest land for non-forestry purposes. In this particular case the purpose of tree felling is to grow coffee. The directions given by the Supreme Court in regard to similar situation in Tamil Nadu is worth examining.

In the case of Tamil Nadu, the following tenets have been established by the Supreme Court.

- (1) The felling of shade trees in coffee plantations will be limited to trees which have been planted, and not those which have grown spontaneously.
- (2) The coffee/cardamom plantation bearing areas have been differentiated into (i) those which are in active use as plantations and (ii) those parts which are not.
- (3) Expansion of plantations in tree-clad land that are not in active use as plantations is not permitted.

The area in question has been inspected by the Conservator of Forests (Forest Conservation), Bangalore. He has opined that the coffee cultivation exists only in about 30 to 40 acres, and the rest is virgin evergreen forest. The fresh felling of trees would happen in the virgin forest only. The already permitted cutting has taken place in the existing coffee bearing areas. The virgin forest where cutting is applied for has all the characteristics of the forest, and therefore, falls

within the ambit of section 2 of the Forest Conservation Act. Hence, permission under the Forest Conservation Act is mandatory. Further, the applicant cannot do shade manipulation for coffee cultivation, because the areas is not in active use under coffee cultivation.

For the reasons stated above, it may not be proper to give permission to cut the natural evergreen forest trees.

IV. What should be the stand as regards permitting the forest road to be utilized for transporting the timber in the above area?

As is has been made clear that no tree-cutting is permissible, it is irrelevant to examine whether permission to transport the resultant timber through the forest road should be given. The applicant has a right of a footpath only. The road that existed has been part of the old extraction path of the olden days. Now the entire area has come under the Protection Working Circle (i.e., the management system under which the forest will be left totally undisturbed and no extraction shall take place), and therefore, establishing or maintaining any roads will run counter to the objectives of the management of the area.

Hence the question of giving any transport permission does not arise. In the circumstances discussed above the following orders are issued:

Order

1. The tree cutting permission given by the DCF, Virajpet Division, Virajpet, in Sy. No. 4/27 of Munrote village, Madikeri Taluk shall be withdrawn. No further tree cutting in the above area is permissible.
2. As the already extracted timber has totally deteriorated, there is no question of giving any transport permission through the forest road.

Sd/-

Principal Chief Conservator of Forests

Communicated to:

1. The Conservator of Forests, Kodagu Circle, Madikeri.
2. The Dy. Conservator of Forests, Virajpet Division, Virajpet.
 - for further action at their end. They may communicate a copy of this order to the applicant.

Copy to:

All Territorial CFs and DCFs working in the Western Ghats zone.

- they shall go through Official Memorandum carefully. While clearing any application under KPTA 1976, they shall be strictly guided by the clarifications contained in this memorandum.

Sd/-

Principal Chief Conservator of Forests