

ORDERS

Learned APP has filed memo and seeking transfer of pending case to Special court constituted under the Karnataka Land Grabbing Prohibition Act-2011.

2. Per contra, Learned counsel for accused has filed objections to the memo contending that, offence U/Sec.192-A of Karnataka Land Revenue Act-1964 does not attract in the case. It is stated in the chargesheet that, the accused persons have encroached Government land to an extent of 7 acre 35 guntas. But, in mahazar it is stated that, accused No.5 has encroached to an extent of 36x63 feet space. There are bushes in the alleged encroached area as per the mahazar. Thus, the question of encroaching the area does not arise. Further, Learned counsel for accused contended that, as per Karnataka Land Grabbing Prohibition Act-2011, only civil suits shall stand transferred to the special court. The criminal cases cannot be transferred to the special court. The accused persons have not encroached any Government land. Hence, the memo maintained by the prosecution is not maintainable either in law or on facts and same is liable to be dismissed.

3. Head and perused the records.

4. Badanavalu police chargesheeted the accused persons for the offences P/u/s.192-A of Karnataka Land Revenue Act-1964 and U/s.447 of IPC. The brief facts of the prosecution case is as follows:

That on, 16.01.2012 and earlier to said date the accused persons illegally trespassed into the Government land (ಸರ್ಕಾರಿ ಕೆರೆ) bearing Sy.No.435 of Badanavalu Village and encroached to an extent of 7 acre 35 guntas. Thereby, the accused persons have committed the offences U/Sec.192-A of Karnataka Land Revenue Act-1964 and U/s.447 of IPC.

5. As per the provisions of Sec.7 of Karnataka Land Grabbing Prohibition Act-2011, a special court has been constituted. The said special court enquire into any alleged act of land grabbing, and trial of cases in respect of the ownership and title to, or lawful possession of, the land grabbed and those offences specified in chapter XIV-A of the Karnataka Land Revenue Act,1964. The offence P/u/s.192-A of Karnataka Land Revenue Act,1964 falls under chapter XIV-A of the Act.

6. At this stage, it is worthwhile to refer Sec.2(d) of Karnataka Land Grabbing Prohibition Act, 2011 which defines land, Sec.2(d) reads as follows:

(d) "Land" includes,—

2[(i) Land falling in all urban areas of the State and also land falling within 18 kms from the Bruhat Bengaluru Mahanagara Palike limits, land falling within 10 kms from the city limits notified under the provisions of the Karnataka Municipal Corporations Act, 1976, land falling within 5 kms from the City Municipal Council limits, land falling within 3 kms from the Town Municipal Council limits and Town Panchayat limits belonging to the Government, Wakf or the Hindu Religious Institutions and Charitable Endowments, a local authority, a statutory or non-statutory body owned, controlled or managed by the Government:

Provided that, excluding the land specified above in all other areas the cases pending related to land grabbing shall stand abated forthwith.]

(ii) rights in or over land, benefits to arise out of land, and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth;

3[Provided that 'land' shall not include lands in respect of which applications for grant are

pending on the date of commencement of this Act,

—

(a) under Sections 94-A, 91-B, 94-C and 94-CC of the Karnataka Land Revenue Act, 1964 (Karnataka Act 12 of 1964);

(b) under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);]

7. In this case, the land in Sy.No.435 of Badanavalu Village is not falling within 5 kms from the City Municipal Council limits of Nanjangud. Furthermore, learned APP submitted that as per google map, the land in question i.e., landed property in Sy.No.435 of Badanavalu village is 11 Kms away from Nanjangud, City Municipal Council limits. Further, on enquiry the accused persons submitted that Badanavalu village is 11 kms away from Nanjangud City.

8. In amended Act, 2022, Sec.1 (2) says that, it shall come into force at once. Since, no date is fixed for commencement of the Amendment Act, applying the principle of all amendments dates back to the date of original Act, this amendment Act, 2022 is also having retrospective effect. Apart from that, proviso to Sec.2(d) says that, excluding the land specified above in all other areas the cases pending related to

land grabbing shall stand abated forthwith. Since, the land in question does not come within the purview of Sec.2(d)(i) of the Act, the case cannot be transferred to a Special Court constituted under the Karnataka Land Grabbing Prohibition Act, 2011. Accordingly, the memo filed by the prosecution is liable to be dismissed. Hence, I proceed to pass following...

ORDER

The memo filed by the prosecution is hereby dismissed.

I Addl. Civil Judge and J.M.F.C.,
Nanjangud

Re issue ss to Cw2 and 3 R/by:
28.08.2024.

I Addl. Civil Judge and J.M.F.C.,
Nanjangud