

**BEFORE THE PROTECTION OF PLANT VARIETIES AND
FARMERS' RIGHTS AUTHORITY**

AT NEW DELHI

IN THE MATTER OF: - Revocation Application filed by
International Flower Auction Bangalore Ltd., (Revocation
Applicant) against M/s. Moerheim Roses & Trading India Pvt.
Ltd., (Registered Breeder) to revoke the registered Rose variety
denominated as MEIFLEMINGUE.

IN THE MATTER OF: -

M/s. International Flower Auction Bangalore Ltd.,

.... REVOCATION APPLICANT

-Versus-

M/s. Moerheim Roses & Trading India Pvt. Ltd.,

..... REGISTERED BREEDER

For the Revocation Applicant: - Mr. Harikrishna S Holla,
Advocate for M/s-Holla Associates.

For the Registered Breeder: Dr. Anushri Gupta, Attorney for
M/s. Anushri Gupta & Associates.

ORDER

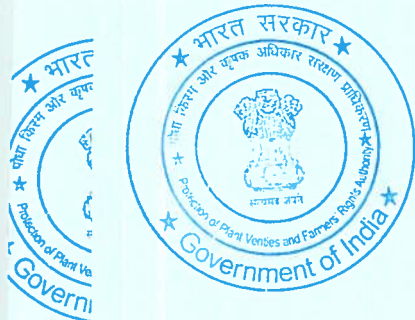
By this order I shall dispose of the PV-15 (Revocation
Application filed by the Revocation Applicant) to revoke the
registration of registered breeder's rose variety "Meiflemingue"
Pleadings and evidence are complete and the parties were heard in
detail on 30th May, 2019.

FACTS OF THE CASE: - The Registered Breeder applied for the
registration of their rose variety with denomination assigned as
"Meiflemingue" under the category extant variety about which



there was common knowledge as on 3rd April, 2012. The DUS testing of the variety was conducted during 2013. The DUS results were examined. The variety qualified the DUS testing and was advertised in PVJ dated January, 15th, 2016 and the opposition filed was rejected vide order dated 21st October 2016 of this Registry and consequently certificate of registration was granted to the registered breeder on 21st October, 2016.

CASE OF THE REVOCATION APPLICANT:- The allegation is that the Registered Breeder has obtained the certificate of registration based on incorrect information as no documents were provided for registration and the variety was being grown by farmers and that has been granted on DUS data which was not in English and Registered Breeder failed to prove novelty and that the DUS testing was conducted by the Authority without having notified DUS institutions and DUS methods for conducting DUS test for rose. Also it is alleged by the Revocation Applicant that the Registered Breeder did not deposit samples of propagules with maintainable standards of genetic purity and had claimed that they have not adopted the Trade Mark but are using Taj Mahal and Top Secret as trade marks with reference to registered variety and thus the Certificate of Registration has been granted to a person who is not eligible for registration. Meiflemingue is in public domain and it is not distinct and Registered Breeder did not provide Registrar with required documents. The Revocation Applicant denies the assignment deed in favour of the Registered Breeder and the fact of assignment. Even presuming the country of origin is France the Registered Breeder has lost their right to



apply for registration as the country has failed to file an application for registration within 12 months from the date of filing the same in the convention country. The certificate of registration was not forwarded for benefit sharing and in the application form the registered breeder has furnished the details of application made in Netherlands. However, on 10/02/2011 an application for plant variety Meiflemingue by the Registered Breeder's assignee was accepted by the Australian government and before the acceptance of registration of Meiflemingue by Australian Government. The Application dated 13.11.2007 was filed before EU and hence the certificate of registration is liable to be set aside. The Registered Breeder in WP No.119/2017 has admitted having submitted DUS of CPVO before the Registrar-General of Plant Varieties Registry and its due consideration in statement of objections filed by the Registered Breeder. The variety is in public domain and the attempt to protect it by the Registered Breeder has had a devastating impact on the floriculture sector and it affects many growers. There are several red roses with long petals in India like First Red, Grand Gala, Red Carvetee, Rhodus and Explorer. A comparative picture of rose varieties Rhodus and Explorer with Top Secret of the Registered Breeder is evident while Top Secret measures 4 cms the other variety Rhodus and Explorers in India measuring 4.5 inches and 5 cms respectively. In the application the first sale of variety Meiflemingue was mentioned as on 20th August, 2009 in Ecuador but the same was in sale in India one year before and therefore registration now granted to the said variety is liable to be revoked. On perusal of status report in respect of Taj Mahal Rose registered



TM No.1691795 in Class 31 that the said variety is used in India since 3.2.2008 and therefore by virtue of Plant variety Act the long petals variety in India since 2008 while the application has been filed by the registered breeder seeking registration in 2011 only.

CASE OF THE REGISTERED BREEDER:- The Registered Breeder namely Moerheim was established on 19.09.1997 in India under Companies Act, 1956 and owner of the same is originally a company established in Netherlands. The breeder of the species *Rosa spp.* Meiflemingue is Mr. Alain Antoine Meilland residing at Domaine de Saint-Andre, Le Cannet des Maures, 83340LE LUC en PROVENCE, France assigned the application rights of Meiflemingue rose variety to Registered Breeder namely Moerheim. By virtue of the assignment the Registered Breeder became the exclusive assignee of the Meiflemingue and Registered Breeder is producing, marketing and protecting the variety with denomination Meiflemingue in various jurisdictions like EU, Kenya, Ecuador, Colombia and Australia. The Revocation Applicant had filed opposition earlier also and the same was rejected and the Revocation Application fails in law and must be dismissed with exemplary costs.

ANALYSIS:- At the outset, it has to be seen whether the Revocation Applicant is an interested person within the meaning of Section 34 of the PPV&FR Act, 2001 to show that this application is maintainable. The Revocation Applicant is necessarily a business competitor and hence an interested person within the



meaning of Section 34 of the PPV&FR Act, 2001 and hence the Revocation Application is maintainable.

The other main allegation of the Revocation Applicant is that DUS test centre has not been notified and DUS test guidelines and centres have not been notified for the variety Rose which is blatantly false. The Central Government vide S.O.2883(E) dated 2nd December, 2010 has notified rose for registration under Section 29(2) of PPV&FR Act, 2001 and the DUS test guidelines of the same have been published with the approval of PPV&FR Authority and the DUS test centres have been mentioned in the DUS test guidelines. All the same are available on the website of the Authority www.plantauthority.gov.in which clearly exposes the incorrect information on facts relating to the notification. The Revocation Applicant states that the Meiflemingue variety has not complied with novelty and as per law it need not comply with novelty as the same has been filed under the category of Extant Variety about which there is common knowledge and hence the question of consideration of novelty does not arise. The other main allegation of the Revocation Applicant is that certificate of registration has been issued based on the DUS test report which is not in English but the fact is that DUS testing was conducted during 2013 and the results were examined and advertised in PVJ and then only certificate of registration was issued on 21st October, 2016. Hence, the allegation that DUS test report is of foreign based is totally false. The next allegation of the Revocation Applicant that the Meiflemingue variety is not distinct lacks credibility as the Meiflemingue Rose Variety has qualified DUS test and hence the argument that there are several red roses with long petals grown



in India like First Red, Grand Gala etc does not stand in view of the Meiflemingue variety qualifying DUS testing.

The other allegation of the Revocation Applicant that the trade mark associated with the variety Top Secret and Taj Mahal has been in use since 2008 but the Registered Breeder has made the application only during 2011. This per se does not affect the legal validity of the application as it has been filed under the category of extant variety about which there is common knowledge. The Registered Breeder has clearly mentioned in his application that the variety has been first sold in Ecuador on 20th August, 2009 and flowers of Meiflemingue has been sold in India since 3.10.2008. Merely because the trade mark associated with the denominations have been registered since 2008 and variety has been filed for registration since 2011 does not legally in any way affect the rights of the Registered Breeder. The other allegation that the Meiflemingue is already in public domain is false as the registration is still in force. The contention that the variety should have been applied within 12 months of the date of application in the convention country is not applicable here as there are no convention countries notified under the PPV&FR Act, 2001. Merely, because the variety is registered abroad, registration has not been granted automatically and procedure established under the law under PPV&FR Act, 2001 has been followed in granting the registration. Linking of the registration of the variety in foreign countries has nothing to do in this matter. The Registered Breeder has contended that the Revocation Applicant had earlier opposed the registration is not proper as the opposition was filed by SIFA and not by the Revocation Applicant. The contention that



the variety has not been advertised for benefit sharing is also not tenable as the same has been advertised for benefit sharing in PVJ dated January 2018.

The Revocation Applicant has made the application merely on vague allegations, conjectures and surmises and no substantial pleading or proof has been submitted which warrants the revocation of the registered variety.

Accordingly, based on the aforesaid reasonings, I hereby reject the PV-15 (Revocation Application filed by the Revocation Applicant) to revoke the registration of the rose variety Meiflemingue. However, there shall be no order as to costs. The concerned Registrar may verify if annual fee/ annual fee return form are due in respect of any year(s) and if so, suitable action may be initiated under the law.

Given under my hand and seal on 25th day of September, 2019.



K. V. Prabhu

(K.V.PRABHU)
CHAIRPERSON