

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 382 OF 2002

The State of Maharashtra and Ors.

...Petitioners

Versus

1. Anandibai Shivram Amle

2. Lakshman Shivram Amle

3. Shivram Bango Amle

...Respondents

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Ms. M.S. Bane, AGP for the Petitioner/State.

Mr. Ajit Pitale a/w Mr. Siddharth Pitale and Mr. Ameya Pitale for Respondents.

CORAM : M.M. SATHAYE, J.

DATE : 15th OCTOBER, 2026

P.C. :

1. Heard learned AGP for the Petitioners/State and learned Counsel for the Respondents.

2. The Petitioner/State is challenging the Judgment and order dated 29.03.1996 passed by President, Maharashtra Revenue Tribunal, Mumbai ('the Tribunal' for short) in Rev. Forest No. 2 of 1993. By the said impugned order, appeal filed by the Respondents under section 13 of Maharashtra Private Forests (Acquisition) Act, 1975 ('MPFA' for short) is allowed, thereby setting aside the order dated 17.02.1993 passed by Deputy Collector (Private Forests) Shahapur Forest Division, District. Thane.

3. The Deputy Collector had passed an order dated 17.02.1993 under Section 22A of MPFA, thereby restoring area of Area of 4.49.1 H-

R out of survey No. 177 to the owner and retaining 4.16.9 H-R area of the said survey number with the Forest Department. The amount of payment along with interest was directed to be paid to the owner.

4. Survey No. 177 at village Veluk, Taluka- Shahapur, District - Thane is 'subject matter land'.

BACKGROUND

5. According to the Petitioner/State notice under Section 35(3) of The Indian Forest Act, 1927 ('IFA' for short), was issued. Thereafter, enquiry under Section 22A of the MPFA was initiated. Various issues pertaining to holding of land and its extent on the appointed day (30.08.1975) and whether the holding has become less than 12 hectares, were framed. Issue regarding issuance of notice under Section 35(3) of IFA was also framed.

6. On appreciation of evidence the learned Deputy Collector held that the issue of notice under Section 35(3) of IFA is not disputed by the owner. Therefore, the objections raised by the owner was considered and the said survey number was partially retained by the State as forest and partially restored to the owner.

7. The Respondents filed Rev. Forest No. 2 of 1993 which is allowed by the Maharashtra Revenue Tribunal under impugned order.

8. In these circumstances, the Petitioner/State has filed this writ petition. The petition is admitted on 16.06.2007. No interim relief was granted. On 20.02.2008 this Court directed the parties to maintain *status quo* in respect of the subject matter land and the Respondents were restrained from creating third party interest and parting with

possession, during pendency of the petition.

9. The Petitioner/State has filed additional affidavit through the Assistant Conservator of Forest, Shahapur. Apart from asserting that notice under Section 35(3) of IFA has been duly issued to the owner, it is contended that State legislation such as MPFA is controlled and overridden by the mandate of Section 2 of the Forest (Conservation) Act, 1980 and no order of restoration or divestment can be passed without prior approval of the Central Government. A panchnama dated 04.09.2008 is relied upon to contend that the land in question is forest land and not under cultivation. It is contended that the impugned order is not sustainable in view of Section 2(i) of Forest (Conservation) Act, 1975 and Circular dated 30.09.2019 issued by the State on the foundational mandate of said section.

10. Respondent No. 2 has filed affidavit-in-reply opposing the petition on merit and relying upon the judgment of **Rohan Vijay Nahar and Ors Vs. State of Maharashtra and Ors. (2026) 2 SCC 182**. It is contended, without prejudice, that during pendency of the petition, some of the forest produce such as wooden logs, herbs, bushes and combustible trees were cut by the Respondents and action was initiated by the forest department and wooden logs were confiscated with direction to auction the same and deposit the proceeds of the auction with State Government. It is contended that Respondents have made various representations personally and through *Sangathana*, however, the forest department has not refunded the amount.

SUBMISSIONS

11. Learned AGP appearing for the Petitioner/State submitted that

the Tribunal was not justified in entertaining the appeal against an order passed by Deputy Collector under Section 22A of the MPFA. She submitted that no such appeal/revision is provided to the Tribunal and the order is passed by Tribunal without jurisdiction. She submitted that revision is provided to the Commissioner or State Government under Section 22A (4) of the MPFA, against an order passed under Section 22A and therefore, the impugned order suffers from clear jurisdictional error. She submitted that the aspect as to whether notice under Section 35(3) of IFA was served or not can be considered by the State Government in Revision provided under 22A (4) of MPFA. She submitted that under the said provision, appeal is specifically barred and only the Commissioner or State Government can call for record and pass appropriate order.

12. On the other hand, learned counsel for the Respondents submitted that there is nothing to indicate that notice was duly served upon the Respondents or their predecessors under Section 35(3) of IFA, as is required as per settled law under -

(i) Godrej and Boyce Manufacturing Company Limited & Anr. V/s. State of Maharashtra & Ors. (2014) 3 SCC 430.

(ii) Rohan Vijay Nahar (Supra)

(iii) Valuable Properties Pvt. Ltd. through the Director and Anr. V/s. The State of Maharashtra through its Secretary and Ors. (WP No. 1536 of 2017 decided on 23.07.2026 of Bombay High Court).

He submitted that the Tribunal has heard the appeal because the Respondents are tribal who are not familiar with the provisions of the

law and they had requested to amend the appeal. He submitted that if the impugned order is interfered with or set aside, it will amount to revival of the order of the Deputy Collector, which cannot be passed unless it is demonstrated that the notice under Section 35(3) of IFA was duly served upon the Respondents or their predecessors. He submitted that even the Deputy Collector in its order dated 17.02.1993 has considered the said issue and therefore the order of the Deputy Collector must be construed as one passed under Section 6 of the MPFA (settlement of dispute as to whether any forest is private forest or not) and therefore the appeal entertained by the Tribunal under Section 13 of MPFA is maintainable. He also relied on paragraph No. 30 of the judgment of *Vijayalaxmi S. Panditrao Vs. Dy. Conservator of Forest, Kolhapur Division & Ors (Bombay High Court Writ Petition No.1284 of 2020 Judgment pronounced on 23.08.2023)*.

REASONS AND CONCLUSION

13. I have considered the rival submissions and perused the record.

14. First of all, let us consider the nature of the order that was impugned by the Respondents before the Tribunal. It was passed by Deputy Collector with opening paragraph clearly indicating that it is on enquiry under Section 22A of MPFA. In order to pass orders under MPFA, it was necessary for the authority to verify whether the notice under Section 35(3) of IFA was duly issued. Therefore, Issue No. 1 seems to have been framed properly by the Deputy Collector. The Deputy Collector has held that the 'owner has not disputed issuance of notice' under Section 35 of IFA and therefore further discussion is not made. Therefore, it is clearly seen that on due verification about

issuance of notice, the Deputy Collector proceeded to consider enquiry under 22A of MPFA. It is clear as sunshine from issues framed by the Deputy Collector. For the sake of clarity, the issues framed under order dated 17.02.1993 are reproduced below.

“ISSUES

- 1) Whether the issue of the notice under Section 35(3) of the Indian Forest Act, 1927 issued period to the appointed date i.e. 30th August 1975 to treat the suit land as a private forest as defined by Section 2(F) (iii) of the Maharashtra Private Forests (Acquisition) Act 1975 is disputed or otherwise?
- 2) What is the total holding of land of the owner on the day immediately preceding the appointed day i.e. 29th August 1975?
- 3) Whether the holding became less than twelve hectares on appointed day i.e. 30th August 1975 on account of acquisition of his forest land under this Act?
- 4) If the total holding of the owner became less than twelve hectares are on account of acquisition:
 - (i) If so, what is its area and situation and with effect from what date the land should be cased to be a reserved forest and should be deemed to be regarded to and revested in the owner?
 - (ii) Whether the whole of the forest land acquired from the owner or what portion thereof should restored to him however that his total holding of land on the appointed day should not twelve hectares.
 - (iii) Within what period the possession thereof should be restored to the owner land;
 - (iv) What is the area and situation of the forest land that stand acquisition and vested in the State Government after that restoration?
 - (v) What is the amount if any payable to the owner of

private forests which stand acquired and vested in the State Government under Section 7 of the Maharashtra Private Forests (Acquisition) Act, 1975 after the order of restoration of the appropriate portion of his forest land, if any, is given effect to?"

15. Therefore, it is clear that the order dated 17.02.1993 was an enquiry under Section 22A and not a dispute under Section 6 of MPFA. Also, it is rightly pointed out by the learned AGP that under Section 2(34) of Maharashtra Land Revenue Code, 1966, 'Sub-Division Officer' means and Assistant or Deputy Collector who is placed incharge of a particular Sub-Division. Once this factual position is clear, it will have to be seen how the Tribunal has entertained appeal under Section 13 of MPFA.

16. Perusal of the impugned order indicates that the Tribunal has stated in the beginning as follows:

“ This is appeal filed under section 13 of the Maharashtra Private Forests (Acquisition) Act, 1975, hereinafter referred to as the Private Forests Act, against the order of Deputy Collector (Private Forests), Shahapur, in Enquiry No. 437/81.

2. The facts of this case in short are as under:

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The Deputy collector has passed an order under Section 22A of the Forest Act and after deducting 12 Hectors has declared 4 Hectares 16 Ares from Survey No. 177 as surplus land under the Private Forest Act. Since, the appellants are Tribal and not familiar with the Private Forest Act, they had filed an appeal under Section 22A of the Private Forest Act. Hence, as per their request they were allowed amend their appeal and now they have rightly filed appeal under Section 13(3), 5 and 6.

xxxx.”

17. Therefore, it is obvious that the Tribunal was well aware of the fact that the order under challenge is passed under Section 22A of the MPFA. Section 22A(4) of MPFA starts with *non-obstante* clause and it bars an appeal against the order passed by the Collector under that section. Also, revision is not provided to Tribunal.

18. In the teeth of such situation, the Tribunal was not justified to assume jurisdiction of entertaining appeal or revision on a spacious premise that ‘Respondents are tribals and they are not familiar with the provisions of MPFA and their request should be allowed.’

19. I have perused the memo of petition. The Petitioner/State has taken clear ground in paragraph No. 17 that the Tribunal has erred because under Section 22A(4) of MPFA, the State Government or the Commissioner are the only competent authorities to entertain the challenge. The Respondents have filed affidavit-in-reply affirmed on 23.03.2026. However, the argument advanced on behalf of the Petitioner/State about Tribunal lacking jurisdiction is not at all answered.

20. Various other documents are placed on record and the judgment of **Rohan Vijay Nahar (Supra)** is relied upon to contend that the subject matter land cannot vest in the Government unless the notice is shown to be served upon Respondents or their predecessor. Be that as it may.

21. Since the impugned order is clearly found to be passed

without inherent jurisdiction, it is not possible to sustain the same. Therefore, it is not necessary to consider the dispute and rival contentions of parties on merits including the contention about service of notice under Section 35(3) of IFA or other disputes as sought to be raised by the Respondents in affidavit-in-reply about confiscation of wood and refund of auction money etc.

22. It is true that unless the notice issued under Section 35(3) of IFA is shown to have been served or is admitted to have been served upon the owner, as interpreted by Hon'ble Supreme Court in the judgments of **Godrej and Boyce (Supra)** and **Rohan Vijay Nahar (Supra)**, the vesting cannot take place. However, said argument ought to have been raised by the Respondents by following provisions of law which is filing revision under Section 22A(4) to the Commissioner or State Government.

23. Reliance is placed by learned counsel for Respondents on the judgment of **Vijayalaxmi S. Panditrao (Supra)** especially paragraph No.30. Perusal of the said judgment shows that this Court considered various provisions of the MPFA and in paragraph 30 has held that it is the utility of dispute resolution mechanism provided in Section 6 of the MPFA, where the Collector is enjoined to decide disputes whether or not any forest is private forest or whether or not any private forest or portion thereof as vested in the State Government and the decision of the Collector, subject to decision of the Tribunal, is final. There is no dispute about this proposition of law. However, the facts of the present case are clearly distinguishable as explained above. The order of the Deputy Collector (in the present case) is not under Section 6 of MPFA but was passed under Section 22A thereof. No jurisdictional issue is

shown to be involved in the said judgment, as is involved in the present case. Hence, the said judgment will not advance the case of the Respondents.

24. For reasons indicated above, the petition succeeds partly by passing following order :

(A) Impugned order dated 29.03.1996 passed by the Tribunal in Rev. Forest No. 2 of 1993 is quashed and set aside.

(B) However, the Respondents are at liberty to adopt appropriate proceedings as permissible under law to challenge the order passed by the Deputy Collector dated 17.02.1993. All contentions in that regard on merits are kept expressly open, to be decided in accordance with law. Considering that the Respondents were prosecuting wrong remedy before the Tribunal, which decision remained pending in this petition filed by the State till today, the time spent by the Respondents before the Tribunal as well as before this Court, shall be considered for exclusion while considering the delay condonation application that may be filed by the Respondents. If any such proceedings are filed, the same shall be decided expeditiously.

25. Rule is made absolute in above terms. No order as to costs.

26. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)