

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11534 OF 2018

Theresa John D'souza & Anr. .. Petitioners

Versus

State of Maharashtra & Ors. .. Respondents

...

Mr. Vasudeo Gangal, for the Petitioners.

Mr. Karan S. Thorat, 'B' Panel Counsel a/w Mr. M. M. Pable,
AGP, for the State.

...

**CORAM: BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.**

DATE : 28th SEPTEMBER, 2026

P.C:-

1. The present Writ Petition filed by the two Petitioners, residents of Village- Chon, was inadvertently not heard with the group of Writ Petitions which were heard over a period of about three months and finally adjudicated by the Judgment dated 23.07.2026. In the said judgment, we dealt with 27 cases of Village- Chon and we have allowed the Writ Petitions with the following reasoning:

(M) THE CONCLUSION

104 We have clubbed 184 Writ Petitions and on classifying them into different categories/classes, have segregated them as above.

However, we deem it necessary to note that the exercise undertaken by us in most of the cases was nothing but applying the law laid down by the Hon'ble Apex Court as well as this Court governing the vesting of 'Private Forest' in the State, preceded by the procedure to be followed under Section 35 of the Indian Forest Act and the Indian Forest (Control Over Forests and Lands (not belonging to Government (Bombay Area) Rules, 1950, which has specifically carved out the procedure as to how the notice shall be issued to the owner.

It is really unfortunate to note that despite a clear ruling from the three Judge Bench of the Apex Court as early as in 2014 and down the line after a decade a decision being delivered in Rohan Vijay Nahar (supra), when the Apex Court reiterated its earlier verdict to the effect that for a declaration that the land vest in the State Government as 'Private Forest' under Section 3 of the Act of 1975, it is necessary to adhere to the procedure prescribed viz. issuance of notice to the land owner, with an opportunity to afford him to show cause as to why the land shall not be declared as a 'Forest' and the objections being raised to be duly considered by the Committee specifically constituted in this regard/by an Officer authorized to hear the objections and only thereafter, a Notification shall be issued under sub-section (1) of Section 35 of the Forest Act. In absentia, the deeming effect contemplated under Section 3 of the Act of 1975 resulting into vesting of 'Private Forest' in the State Government, shall not happen and the attempt on part of the State, who assume that on 30/08/1975 whichever land was a 'Forest' automatically becomes

'Private Forest' and vest in the State Government is a misconception. The State Government continued to reel under this misconception for a considerable period of time and at least for more than a decade and it repeatedly adopted the same stand when the two important decisions were delivered, first, in the year 2014 and recently in the year 2025 and we are surprised to note that even when the law declared in Godrej and Boyce (supra) is reiterated in Rohan Vijay Nahar (supra). The State continued with its obstinacy even today, which is reflected through the Affidavits filed before us.

It is a different aspect that we have repelled their contention and did not accept its plea, which is already put to rest not only by the Apex Court, but before various Division Benches of this Court, when it was categorically ruled that it is necessary to follow the procedure prescribed under Section 35 of the Indian Forest Act before a forest is declared as a 'Private Forest' and it is brought within the purview of Section 2(f)(i)(ii) of the Private Forest Act, 1975 and deemed to have been acquired and vested in the State Government, free from all encumbrances.

105 It is a matter of serious concern that despite the clear pronouncement from the Apex Court, the State Government is persistent in its stand and during the course of hearing of the Petitions, on one occasion when the learned Advocate General for the State, Dr. Milind Sathe was present, we apprised him of the volume of work that is lying in this Court because of the defiant approach of the State Government, as it is not ready to still accept the law laid down by the highest Court of this

country.

We are conscious of the fact that by virtue of Article 141 of the Constitution of India, the law declared by the Supreme Court bind all the Courts within the territory of India, but we only want to remind the State Government of yet another significant article in the Constitution viz. Article 144, which provide that all authorities Civil and Judicial, in the territory of India shall act in aid of the Supreme Court.

We only, therefore, hope and trust that the State Government shall follow the mandate laid down by the Apex Court and we must also express that though we do not take pleasure in summoning the Officers of the State Government before us and once the law has been laid down we expect the same to be followed by one and all, as no one is above law, and particularly when it is laid down by the highest Court of this Country and if it is not complied with, the Courts are not powerless to take cognizance of its breach.

106 We must express that, now once again we have not laid down any position of law, but have only followed the principle that has been laid down by the Hon'ble Apex Court in Godrej & Boyce (supra) as well as in the case of Rohan Vijay Nahar (supra).

We expect the State Government to follow the same and it shall take care that we are not burdened with more cases only because in view of the State Government, the law is not settled and it is still open for the Government to expect some novel argument to be canvassed.

107 To make things simple and effortless, we expect the State Government to constitute a Committee to

scrutinize all such cases which according to the State Government involve the issue of 'Private Forest' under the Act of 1975, covering the aspect of vesting as well as restoration of the land and before the Petitioners approach this Court, we expect the Committee under the aegis of an Officer not lower than the rank of the Deputy Conservator of Forest to scrutinize the matters.

This we say so because once the parameters are laid down by the Apex Court, the facts of the cases are to be fitted into those parameters and a solution has to be arrived at.

It is high time that the State Government should be conscious of the fact that, if a flaw lies at its end, as there is no service of notice under Section 35(3) upon the owners in the manner prescribed and there is no Notification published under Section 35(1) or even when the Notification is published without adhering to the procedure, there can be no declaration about any land to be 'Private Forest' and there is no question of the name of the State Government being mutated in the Land Records.

We also direct the State Government to scrutinize all such cases which are pending before it and if they fall within the principle of law laid down to the aforesaid effect, then appropriate directions shall be issued to the Revenue Department to correct the Revenue entries by restoring the name of owners/occupiers.

108 We request the learned Advocate General Dr.Milind Sathe to apprise the Higher-ups in the State Government, particularly involving the Revenue and Forest Department, to take such necessary steps so that we are not called upon to decide upon the said issue,

which once and for all is put to rest by us.

109 In the wake of the aforesaid, all the Writ Petitions before us are disposed of in the manner indicated in the Judgment.

No order as to cost.

In the wake of disposal of Writ Petitions, pending Interim Applications also stand disposed of.

2. Learned counsel, Mr. Gangal, makes a specific statement before us that the Writ Petition is governed by the said observation of the Division Bench, but since this Writ Petition was dismissed for want of prosecution, it was not tagged alongwith the other Writ Petitions of Village- Chon.

Upon an Interim Application being filed, the Writ Petition was restored to its file and the condition of deposit of cost of Rs.10,000/- has also been complied with.

The learned Government Advocate does not dispute that the facts in the Writ Petition are identical to the ones pertaining to Village- Chon and in regard to which the issue has been put to rest by judgment dated 23.07.2026.

In the wake of the aforesaid, the Writ Petition is made absolute in terms of prayer clause (a) and (d), for the reasons recorded in the judgment dated 23.07.2026.

(ASHISH S. CHAVAN, J.)

(BHARATI DANGRE, J.)