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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9491 OF 2011

Smt. Asha Pravin Agarwal through
Constituted Attorney Mr. Ratanlal Parsarampuria ... Petitioner
Versus
State of Maharashtra & Ors. ... Respondents

Mr. Drupad S. Patil a/w. Mr. Suyash S. Sule i/b. Mr. Prashant
Parsurampur for the Petitioner.
Ms. M.S. Srivastava, AGP for the Respondent/State.

CORAM : M.M. SATHAYE, J.

DATE : 8th SEPTEMBER, 2026

P.C. :

1. Heard learned counsel for the parties. Invoking Articles 226 and 227 of the Constitution of India, the Petitioner is challenging the order dated 12.04.2010 passed by Maharashtra Revenue Tribunal, Mumbai ('the Tribunal' for short) in Review Application No.35/C/2009, confirming the order dated 16.12.2008 passed by the Tribunal in Appeal No. 3-A/2000 modifying the common order in Private Forest Case No. 45/1999 dated 11.10.1999 passed by the Collector of Raigad-Alibaug. The said order of Collector had held that the property in question is lawfully taken in possession by the Forest Department and it vests with the Government as reserved forest. This was modified only to hold additionally that all the owners concerned are entitled to retain 2 Hectares portion from Survey Nos.7 to 11 to be specified by the Collector and enquiry to the extent was directed.

2. Petitioner's case in short is as under:-

2.1 That Petitioner is concerned with Plot No.5 from Survey Nos. 8 to 10 situated at Village Devatalia, Taluka: Alibaug District: Raigad, which were amalgamated and divided into 71 plots. One Mr. Nilang Desai was permitted to construct farm house with certain conditions. The Petitioner purchased Plot No.5 from Mr. Nilang Desai by registered document dated 24.08.1995 and Mutation entry No. 137 was effected in favour of the Petitioner.

2.2 That notices came to be issued by the Deputy Conservator of Forest under Sections 53, 54 and 54A of The Maharashtra Land Revenue Code, 1966 ('the Code' for short) stating that the property is forest and alleging that provisions of Forest Act have been flouted. Show cause notice was issued to which the Petitioner sent reply. According to the Petitioner, without hearing her, the Range Forest Officer took possession of the lands along with bungalows, swimming pools, pathways etc.

2.3 The Petitioner filed Writ Petition No. 269 of 1998 and other similar situated owners of the plots also filed other writ petitions being Writ Petition No.6015 of 1997 and Writ Petition No.324 of 1998. This Court passed orders sometime in October/November 1998 directing the Deputy Collector, Alibaug to conduct inquiry under Section 6 of the Maharashtra Private Forest (Acquisition) Act, 1975 ('MPFA Act', for short). This led to the Collector passing an order dated 11.10.1999 under Section 6 of MPFA Act holding that the land including the Petitioner's plot is Private Forest and also held that it

vests in the government. The Petitioner challenged the said order, by filing appeal in the Tribunal under Section 15 read with section 6 of the MPFA Act.

3. In December 2008, the Tribunal clubbed 4 such appeals filed by various plot owners including Petitioner and disposed of them by common order dated 16.12.2008 by passing following order.

“1. Appeal Nos. 3-A-2000, 4-A-2000, 5-A-2000, and 358-2008 are partly allowed.

The order of the Collector that the lands S.Nos. 7 to 11 stand vested to the State Government is confirmed, subject to the modification that the land owners are entitled to retain 2 Hectares portion of land in S.Nos. 7 to 11 to be specified by the Collector.

Collector, Raigad is directed to hold enquiry and specify the extent of 2 Hectare portion of land in disputed S.Nos. to be retained by the land owners (Appellants). after giving opportunity of hearing to the appellants as well as respondents.

Parties are directed to appear before the Collector on or before 20th January, 2009.

Record and proceeding be sent back to Lower Courts.

2. No order as to the cost.

3. Parties should be informed accordingly.”

4. The Petitioner filed review application seeking review of the above order passed by the Tribunal which came to be dismissed under impugned order dated 12.04.2010.

5. The present petition was admitted on 07.03.2012 by passing following order, which is self explanatory.

“1 Heard Mr. Desai for the Petitioner.

2 This Writ Petition challenges the Orders dated 16th

December, 2008 and 12th April, 2010 passed by the learned President of MRT, Mumbai in several Appeals and Review Petitions. One Nilang Desai had filed W.P. NO. 1177 of 2011 in this court for challenging the same orders. The learned single Judge S.C. Dharmadhikari, J. has dismissed the said W.P. No. 1177 of 2011 by Judgment and Order dated 19th July, 2011.

3 Another Petition No. 1178 of 2011 filed by Mr. Sachin Gupta and others was also dismissed. Aggrieved by these Orders Nilang Desai and Sachin Gupta and others filed LPA Nos. 229/2011 and 230/2011 and both the Appeals have been admitted by the Division Bench by order dated 30th August, 2011. Hence, the controversy involved in this Petition is sub-judice before the Division Bench in the aforesaid two Appeals.

4 On this ground alone the Writ Petition is admitted. Rule. Mr. Rayrikar, learned AGP waives service on behalf of the Respondent Nos. 1, 3 and 4. Respondent No.2 is a formal party. Until further orders, the parties will maintain status-quo. Liberty to the Respondents to apply for vacating interim reliefs and/or for disposal of the Writ Petition after the aforesaid two LPA Appeals are decided.”

6. It can be therefore gathered that at the relevant time, the present impugned order (passed common in 4 appeals) was also challenged by Mr. Nilang Desai and Mr. Sachin Gupta, which were dismissed by this Court (Coram: Shri. S. C. Dharmadhikari J) and the challenge was pending under Letters Patent Appeals.

7. During pendency of this petition, the issue involved herein about service of notice under Section 35(3) of the Indian Forest Act, 1927 ('IFA' for short) was considered by the Hon'ble Supreme Court in a batch of appeals with lead matter of **Rohan Vijay Nahar and Ors. Vs. State of Maharashtra and Ors. [2025 SCC Online SC 2366]**. The Hon'ble Supreme Court after considering the said issue has held

under:

“13. We have gone through the comprehensive material on record, the submissions of the learned counsel for the appellants and for the respondent-State, as well as the Impugned order of the High Court. Having done so, we are of the considered view that the Impugned judgment of the High Court cannot be sustained for the following reasons:

13.1. In our opinion, the controlling legal position is settled. For vesting to occur under Section 3(1) of the MPFA Act on the footing of Section 2(f) (III), a notice under Section 35(3) of the IFA must not only be issued but must also be served upon the landholder. The expression "issued" in Section 2(f) (III) of the MPFA Act comprehends due service on the owner, because service alone triggers the owner's right to object, including the jurisdictional plea that the land is not a forest within Section 2(c-i) of the MPFA Act, and obliges the State to consider such objection. We are unable to agree with the High Court that the reproduction of a draft text of Section 35(1) beneath a Section 35(3) show cause in the Gazette amounts to a concluded notification under Section 35(1) of the IFA. A notice that grants time for objections cannot coexist with a final decision under Section 35(1) without rendering the statutory hearing illusory. Mutation entries are ministerial in nature and cannot perfect an acquisition that lacks the statutory predicates. They neither create title in the State nor divest title from the private owner.”

(emphasis supplied)

8. Therefore, it is clear that the Hon’ble Supreme Court has held that for the vesting to occur under Section 3(1) of the MPFA Act, a notice under Section 35(3) of the IFA must not only be issued but must also to be served upon land holder and expression ‘issued’ under Section 2(f)(iii) of the MPFA Act comprehends due service on the owner, because such service alone triggers the owner’s right to object including jurisdictional plea that the land is not a forest within

the meaning of said Act and obliges the State to consider such objection.

9. The said law laid down in **Rohan Vijay Nahar (Supra)** has since been followed by this Court in the Judgment dated 14.01.2026 of the Division Bench of this Court in Writ Petition No.10584 of 2024, **Rasik Narsingh Chauhan & Ors. Vs. State of Maharashtra through its Secretary, Forest Dept. & Ors. 2025 SCC Online Bom 5508.**

10. Recently thereafter in a batch of writ petitions with lead Writ Petition No. 1536 of 2017 in the matter of **Valuable Properties Pvt. Ltd. Through the Director and Anr. Vs. The State of Maharashtra through its Secretary and Ors.** and many other writ petitions and various Letters Patent Appeals, the Division Bench of this Court (Coram: Smt. Bharati Dangre & Smt. Manjusha Deshpande, JJ.) in a judgment pronounced on 23.07.2026, has held as under:

“ **(K) LPA NOS.229/2011 AND 230/2011**

69. Heard learned counsel Mr. Vishal Kanade for the appellant in the two Letters Patent Appeals which are filed being aggrieved by the judgment of the learned Single Judge in Writ Petition No.1177/2011 and WP No. 1178/2011.

The learned Single Judge decided the Writ Petitions filed under Articles 226 and 227 of the Constitution of India, which raise a challenge to the order dated 12/4/2010 passed by the Maharashtra Revenue Tribunal in Review Petitions seeking review of the judgment delivered on 16/12/2008 passed in connected Appeals.

The proceedings involve the provisions of the Maharashtra Private Forests (Acquisition) Act, 1975 and on coming into effect of the Maharashtra Private Forest Act w.e.f. 30/8/1975, and the Forest Department alleged that it took possession of the lands on 17/2/1977, but the fact was seriously disputed by the petitioners who claimed to be in physical possession of the lands.

70. In the sequence of events, when the Collector initiated an inquiry under Section 6 of the Act, and concluded the same by holding that except the land on which the house was constructed, all other lands were lawfully taken in possession of the Forest Department and they vested in the State as Forest land.

Being aggrieved by the said order, an Appeal was filed before the Maharashtra Revenue Tribunal under Section 13 of the Forest Act and the same was dismissed. Review Petition was also filed which was also dismissed, the Writ Petition was instituted before the said Court.

When it was urged before the Court that the order of the Tribunal is erroneous as it did not take into consideration that the petitioners' land were under lawful cultivation on the appointed date, and they should be excluded from acquisition in its entirety, and in particular, a contention was advanced that while a notice under Section 35(3) of the Indian Forest Act was issued, but it was not received and the procedure not followed, the learned Single Judge in paragraph no.20 to 22, recorded thus:-

"20. What is crucial is the issuance of notice and not its receipt. It is to enable to the Court to find out as to whether, the finding recorded concurrently that such notice was issued in the instant case, is consistent with the record, that I called for the original record.

21. The Collector in his order has held that the notice under Section 35(3) was issued. He has referred to the documents which were produced before him and held that the notice was issued on 12.10.1964 to Randive. As far as the Tribunal is concerned, in its judgment and order dated 16.12.2006, the Tribunal is concerned, in its judgment and order dated 16.12.2008, the Tribunal referred to the record and held thus:-

"9. The crucial and relevant aspect is issuance of the notice under Section 35(3) of the Forest Act and not its service. If a notice has been issued under section 35(3) before appointed day, the land covered by such notice becomes private forest irrespective of the fact whether such notice has been served upon the addressee or not. Considering the fact of the case further it has been held that the notice which was non sealed cannot be said to be bad in law. However, the Apex Court while granting the leave in SLP No. 398/99 held that the notice which is neither signed nor dated nor bore the requisite seal cannot be considered to be valid notice. Admittedly in the present case the person to whom the notice was addressed did not challenge the notice. The original notice issued to then landlord is not produced on record. SO it is very difficult to conclude that notice was not signed or do not bear the date or stamp. On the basis of the office copy of the notice retained by the

Forest Department it cannot be concluded that notice sent to the addressee, the landlord, was undated or not signed nor sealed. Office copy produced on record bears the date of issuance of notice as well as stamp signature of the officer who has issued the same. The office copy also gives all details of the land in relation which the notification u/s 35(1) was proposed to be issued. It also shows that forms of notice were printed and space was kept blank for mentioning the name of the officer as well as the name of the addressee and the place where the objection was to be submitted. Office copy bears stamp and date i.e. 12.11.64 and No. K-8232 is also handwritten. Name of the officer with designation of the Conservator of Forest from Thane circle is also handwritten. The schedule is also found filled in by ink and handwritten. Name of Yashwant Randive landowner was also written. All these details will not found in case of non issuance of notice. As stated above the original notice is not before us, which was sent to the landowner. The office copy retained by the department and produced in the proceeding gives every details, so it cannot be said that it is not a notice in compliance to the provisions of Order V of CPC. The facts before Lordship of the Apex Court in the case of Ankush Bowledkar as referred in the Judgment were admitted that the notice produced was found neither signed nor dated nor bore requisite seal and in view of said admitted facts Lordships held that such a notice is not produced to show that it does not comply requirements of Order V of CPC. Office copy retained by the Department mention the name of the Officer, name of the Landlord and also bears the date and also the signature. So this notice cannot be said to be invalid."

22. Thus, it concluded that the issuance of valid notice is established."

71 As a result of the aforesaid, the Writ Petitions were dismissed against which the Letters Patent Appeal were filed.

Since the basis of the dismissal of the two Writ Petitions is the observation in paragraph nos.20 to 22, which now, no longer is valid in the wake of the decision of the Apex Court in *Godrej and Boyce and Nahar (supra)*, the impugned judgment deserve to be quashed and set aside, as now it is clearly held that the term 'issue' in sub-section (3) of Section 35 necessarily contemplate a notice being received by the owner and the notice being served in the manner which is prescribed under the Code of Civil Procedure or by the publication in sub-section (5) of Section 35.

In the wake of the aforesaid, the impugned judgment is set aside and the Writ Petition is made absolute in terms of its prayer clause, by quashing and setting aside the impugned orders including the order passed by the Maharashtra Revenue Tribunal in

Appeal as well as the order passed by the Collector.”

11. It is therefore clear that, under above Judgment, the present impugned orders passed by the Tribunal and Collector (common orders) are set aside, *albeit* at the instance of other plot owners whose LPA has been considered and allowed.

12. Learned counsel for the Petitioner, by inviting attention of the Court to all the aforesaid orders, has submitted that since inquiry under Section 6 of MPFA Act, by the Collector as well as the impugned orders passed by the Tribunal were passed under common order considering larger subject matter property Survey Nos.7 to 11, and since the impugned order of the Tribunal has been set aside, following the law laid down in **Rohan Vijay Nahar (Supra)**, the present petition deserves to be allowed in respect of Petitioner’s plot No. 5 which is admittedly part of said larger property and the concerned mutation entry deserves to be set aside.

13. On the other hand, learned AGP appearing for the Respondent-State has supported the impugned orders contending *inter alia* that in order to vest the property with the government, it is not necessary that notice under Section 35(3) of the IFA must be served on the landholder. It is however fairly accepted that no affidavit-in-reply is filed in the present petition.

14. Having considered the rival submissions and after going through the order of the Collector dated 11.10.1999 and impugned orders passed by the Tribunal, it is seen that on the premise that by mere issuing notice under Section 35(3) of the said Act, the property

changes into private forest to be deemed reserved and vested with the State Government, the Collector has passed the order. Perusal of the impugned order dated 16.12.2008, especially paragraph Nos. 8 and 9 thereof would indicate that Tribunal has also proceeded on the footing that mere issuance of notice under Section 35(3) of IFA is sufficient for vesting of the property in government and not its service. The Tribunal, on facts, found that issuance of notice has been established and hence impugned orders are passed.

15. As indicated above, one of the plot owners had filed Writ Petition No. 1177 of 2011, which was heard and dismissed by this Court under order dated 19.07.2011 and which decision was then challenged in the Letters Patent Appeal No. 229 of 2011. Perusal of the paragraph Nos.12 & 15 of the judgment (in Writ Petition No. 1177 of 2011) clearly establishes that in case of the present subject matter lands (Survey Nos. 7 to 11) the landholder/owner at the relevant time was one Mr. Yashwant Ranadive was not served with the notice under Section 35(3) of the IFA. It further appears that though an erroneous statement was made in the affidavit-in-reply, it was fairly conceded before the Court that no acknowledgment by Mr. Ranadive was produced and notice was not received by Mr. Ranadive.

16. In that view of the matter, even in the present petition, involving the same impugned orders and same notice to the land owner, there is no service of notice under Section 35(3) of the IFA.

17. For the aforesaid reasons, the impugned orders cannot be sustained in view of the law laid down by the Hon'ble Supreme Court

in **Rohan Vijay Nahar (Supra)**. Since notice under Section 35(3) of the IFA is not shown to be served upon the land owner, the subject matter land cannot vest in the government.

18. The petition therefore succeeds. The impugned orders dated 11.10.1999, 16.12.2008 and 12.04.2010 are quashed and set aside only to the extent they relate to the Petitioner Smt. Asha Pravin Agarwal and her Plot No.5. The Appeal No.3-A/2000, so far as it relates to the Petitioner Smt. Asha Pravin Agarwal, is allowed thereby setting aside the order dated 11.10.1999 in Private Forest Case No. 45/1999, to the extent it applies to Petitioner Smt. Asha Pravin Agarwal.

19. Consequently the Respondents are directed to cancel Mutation entry No. 180 dated 15.01.2003 so far as it relates to Petitioner Smt. Asha Pravin Agarwal and to the subject matter plot No.5, within a period of 6 weeks from today.

20. **Petition is disposed of and Rule is made absolute in above terms. No order as to costs.**

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

(M.M. SATHAYE, J.)