

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 698 OF 2015**

Shree Maruti Sansthan Trust & Ors.	...Petitioners
<i>Versus</i>	
The State of Maharashtra & Anr.	...Respondents

Mr. Suneel D. Mogre, for the Petitioners.
Mr. V.P. Malvankar, AGP, "A" Panel, for Respondent Nos. 1 & 2.

**CORAM: A. S. OKA & G.S. PATEL, JJ.
DATED: 8th December 2015**

PC:-

1. On 14th August 2015, a notice for final hearing was issued. The only question which arises for consideration in this Petition is whether the land held by the Petitioner which is the subject matter of this Petition is a Private Forest within the meaning of sub- Clause (iii) of Clause (f) of Section 2 of the Maharashtra Private Forests (Acquisition) Act, 1975 (for short "Private Forests Act). The contention raised by the Respondents is that the land which is more particularly described in paragraph 3 of the Petition has become a Private Forest with effect from 30th August 1987 by virtue of sub-clause (iii) of Clause (f) of Section 2 of the Private Forests Act.

2. As held by the Apex Court in case of *Godrej & Boyce Manufacturing Company Limited & Anr. v. The State of*

Maharashtra & Ors.,¹ the condition precedent for the applicability of sub-clause (iii) of clause (f) of Section 2 of the Private Forests Act is the service of notice under sub-Section 3 of Section 35 of the Indian Forest Act, 1927 (for short “the Forest Act) to the owner of the subject land.

3. There is a reply filed by Mr. Satyajeet Madanmohan Gujar, the Deputy Conservator of Forests. In the reply, a reliance has been placed on a notice under sub-section 3 of Section 35 of the Forest Act issued to the predecessor in title of the Petitioners. Exhibit “B” to the said Affidavit is a copy of an extract of register which shows that a notice under sub-Section 3 of Section 35 of the Forest Act was issued to one Dagdu Dhondu Ghardale and others. As the said Affidavit does not contain an averment that the notice was duly served to the then holders of the land, by order dated 20th November 2015, time was granted to the learned AGP to produce the record. We directed the Deputy Conservator of Forests to personally remain present in the Court to produce the record, if any, to show that service of notice under sub-Section 3 of Section 35 of the Forest Act was actually effected.

4. Today, the learned AGP states that except the golden register which contains the entry of issue of a notice, there is no material available on record to show that the notice under sub-section 3 of Section 35 of the Forest Act was served to the predecessors of the Petitioners or the then land holders. Hence, the law laid down by the Apex Court in the case of *Godrej and Boyce (Supra)* will squarely apply.

¹ 2014 (3) SCC 430

5. In view of this admitted position, we dispose of the Petition by passing the following order:

- (a) As admitted, there is no evidence on record to show that a notice under sub-Section 3 of Section 35 of the Forests Act was served to the predecessors of the Petitioners or to the then land holders in respect of the land which is the subject matter of this Petition;
- (b) We hold that Sub-clause (iii) of Clause (f) of Section 2 of the Private Forests Act is not attracted as far as the land, which is the subject matter of this Petition is concerned;
- (c) We further make it clear that we have made no adjudication on the question whether the land, which is the subject matter of this Petition, is otherwise a forest under the Forest Act or a private forest under the Private Forests Act. The said contentions are expressly kept open.
- (d) The Petition is partly allowed on the above terms.

(G. S. PATEL, J.)

(A. S. OKA, J.)