

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11257 OF 2011

Shri Vasant Ramchandra Naik & Anr.)... Petitioners
V/s.
The State of Maharashtra, through Secretary)
Revenue & Forest Department & Ors.)... Respondents

Mr.V.A.Gangal a/w Mr. Anup N.Deshmukh for petitioners.

Ms.S.S.Bhende AGP for respondent/State.
Mr.Rajiv Chauhan, Ms.Rutuja Ambedkar a/w Mr.A.D.Kango for
respondent no.4.

**CORAM: ANOOP V.MOHTA &
K.R.SHRIRAM, JJ.**

DATED : 16th April, 2015.

P.C. :

1 Rule, returnable forthwith. Heard finally by consent of parties.

2 The petitioners, the owners of survey no.23/4A and survey no.23/4B of village Yeoor, Tal & Dist. Thane of land admeasuring 1.9670 hectares within the limits of Thane Municipal Corporation have filed the present petition and basically prayed as under :-

“(a) This Hon'ble Court be pleased to issue appropriate writ order and direction and hold and direct by appropriate writ, order or direction, that the petitioners land being survey no.23/4A and survey no.23/4B of

village Yeoor, Tal and Dist. Thane admeasuring 1.9670 Hectares within the limits of Thane Municipal Corporation are not the private forest within the meaning Maharashtra Private Forest (Acquisition) Act, 1975 ;

(b).....

(c).....

(d) This Hon'ble court be pleased to issue a writ of certiorari and/or any other appropriate writ and quashed and set aside the entry made in the other Right columns in respect of the 7/12 extract of the Record of Right in respect of the Petitioner's land survey no.23/4A and survey no.23/4B of village Yeoor, Tal and Dist. Thane admeasuring 1.9670 Hectares within the limits of Thane Municipal Corporation, "Forest" and also Mutation Entry No.614 as applicable to the Petitioner's above mentioned land."

3 Heard learned counsel appearing for the parties. The learned AGP on instructions also makes a statement that the issue so raised in the petition is covered by a judgment of the Supreme Court in Godrej & Boyce Mfg. Co. Ltd. & Anr. Vs. The State of maharashtra & Ors. (Civil Appeal No.1102 of 2014 arising out of SLP (C) No.10677 of 2008) and a Division Bench judgment of this court dated 26.11.2014 in Satelite Developers Limited and Anr. Vs.State of Maharashtra & Ors. (Writ Petition No.2084 of 2013).

4 We have also noted that the land area in question is less than 2 hectares. The notice dated 29.8.1975 under Section 34(3) of the Indian Forest Act was issued. However, the said section itself was deleted on 30.8.1975. Therefore, there was no question of

proceeding further by the parties based upon the said notice. There was no necessity even of any hearing to decide the issue about the private forest as contemplated under the Maharashtra Private Forest (Acquisition) Act 1975. It was not therefore decided against the petitioners. The Apex Court decision therefore, squarely covered the case of the petitioners and so also by the Division Bench judgment of this court (supra). The learned AGP also, as recorded, conceded to this position on law as well as on facts. Therefore, we are inclined to allow the petition in terms of prayer clauses-(a) and (d).

Rule made absolute accordingly. No costs.

(K.R.SHRIRAM, J.)

(ANOOP V.MOHTA,J)