

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION (L) NO. 922 OF 2015**

OZONE LAND AGRO PRIVATE LIMITED)
 a private limited Company incorporated)
 and registered under the Companies Act)
 1956 having its Registered Office at)
 4, Vaswani Mansions, 120, Dinshaw)
 Vachha Road, Churchgate, Mumbai-400020)..Petitioners

V/s

1. State of Maharashtra.)
)
 2. The Circle Officer,)
 Taluka-Mawal, District Pune)
 Maharashtra.)
)
 3. Tahsildar,)
 Taluka Mawal, District Pune)
 Maharashtra.)
)
 4. Sub-Divisional Officer,)
 Taluka Mawal, District Pune,)
 Maharashtra.)
)
 5. The Conservator of Forest,)
 Pune Forest Region,)
 Maharashtra.)
)
 6. The Chief Conservator of Forest,)
 Pune Forest Region, Maharashtra.)..Respondents

Mr. Darius Khambatta, Senior Counsel alongwith Mr. Aspi Chinoy, Senior Counsel, Mr. P.K. Dhakephalkar, Senior Counsel alongwith Mr. Kartikeya Desai alongwith Mr. Prashant Kamble, Mr. Jagdish Reddy i/b Kartikeya & Associates for the Petitioners.

Mr. J.S. Saluja for the Respondents/State.

**CORAM: V.M. KANADE &
B.P. COLABAWALLA, JJ.
DATE : 18th June, 2015**

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. Heard.
2. Rule. Rule is made returnable forthwith. Respondents waive service. By consent of the parties, Petition is taken up for final hearing.
3. By this Petition which is filed under Article 226 of the Constitution of India, Petitioners are seeking an appropriate writ, order and direction for setting aside the impugned Mutation Entry Nos. 162 and 186 in respect of the land admeasuring 323.75 hectares bearing Survey No.229, New Gut No.3 situated in Revenue Village Mormarewadi [Karanjgaon] Taluka Mawal, District Pune, more particularly

described in the Schedule annexed to the Petition at Exhibit-A.

4. The short questions which fall for consideration before this Court are :

(i) whether issuance of notice under section 35(3) of the Indian Forest Act, 1927 alone is sufficient compliance for the said land being declared as a deemed forest within the meaning of section 2(f)(iii) of the Maharashtra Private Forests (Acquisition) Act, 1975?

(ii) whether Mutation Entries which have been made can be sustained in view of the judgment of the Apex Court in *Godrej and Boyce Manufacturing Company Limited and another vs. State of Maharashtra and others*¹ and the judgment and order passed by this Court in *Satelite Developers Limited & Anr vs. State of Maharashtra and Ors*²?

5. Brief facts which are relevant for the purpose of deciding this Petition are that one Gajanan Vishwanath Karve and members of his family were owners of the said

¹ (2014) 3 SCC 430

² 2015(3) ALL MR 781

land. It appears that the Petitioners entered into development agreement and/or Deeds of Conveyance with the said Karves and Power of Attorney was also given by the said Karves to the Petitioners. The Petitioners, after making inquiry, came to know that this land was declared as forest by the government authorities and therefore filed Writ Petition in this Court being Writ Petition No.283 of 2009, challenging the said Mutation Entries.

6. Division Bench of this Court, however, held that the Petitioners have raised disputed question of facts and therefore directed the Petitioners to exhaust the alternative remedy which was available to them of challenging the said Entries before the Sub-Divisional Officer, Taluka Mawal.

7. Petitioners, being aggrieved by the said judgment and order passed by this Court dated 18/2/2010 in Writ Petition No.283 of 2009, filed Special Leave Petition (Civil) No.19347 of 2010 in the Apex Court. However, the said SLP was allowed to be withdrawn with liberty to approach the appropriate forum in accordance with law.

8. Petitioners accordingly filed an appeal being RTS/733/2012 before the Sub-Divisional Officer, Taluka Mawal. Despite the several applications being made by the Petitioners, the said appeal was not expeditiously disposed of

and is still pending.

9. In the meantime, the Apex Court in *Godrej and Boyce Manufacturing Company Limited and another vs. State of Maharashtra and others*¹ where a similar issue was raised, by its judgment and order dated 30/01/2014 in terms held that mere issuance of notice under section 35(3) of the Indian Forests Act, 1927 was not sufficient and that the procedure which was required to be followed under the said section had to be followed and it would have to be established that the said notice had been served on the owners of the said land. It therefore held that the issuance of notices contemplated under section 2(f)(iii) were live notices or pipeline notices. The Apex Court held that under the amended Section 35(4), the period of existence of such notices was limited to six months which was later on increased to one year. The Apex Court observed that in order to save such live notices or pipeline notices, section 2(f)(iii) was inserted. It further held that therefore mere issuance of notice was not sufficient and it had to be established that these notices had been sent and procedure under Section 35(3) had been followed.

The Apex Court in *Godrej and Boyce Manufacturing Company Limited (supra)* in paras 1, 54, 55, 61, 62, 63, 72, 74 has observed as under:-

¹ (2014) 3 SCC 430

"1. Leave granted. The Principal question for consideration is whether the mere issuance of a notice under the provisions of Section 35(3) of the Forest Act, 1927 is sufficient for any land being declared a "private forest" within the meaning of that expression as defined in Section 2(f)(iii) of the Maharashtra Private Forests (Acquisition) Act, 1975. In our opinion, the question must be answered in the negative. Connected therewith is the question whether the word "issued" in Section 2(f)(iii) of the Maharashtra Private Forests Acquisition Act, 1975 read with Section 35 of the Forest Act, 1927 must be given a literal interpretation or a broad meaning. In our opinion the word must be given a broad meaning in the surrounding context in which it is used. A tertiary question that arises is, assuming the disputed lands are forest lands, can the State be allowed to demolish the massive constructions made thereon over the last half a century? Given the facts and circumstances of these appeals, our answer to this question is also in the negative."

"54. Applying the law laid down by this Court on interpretation, in the context of these appeals, we may be missing the wood for the trees if a literal meaning is given to the word "issued". To avoid this, it is necessary to also appreciate the scheme of Section 35 of the Forest Act since that scheme needs to be kept in mind while considering "issued" in Section 2(f)(iii) of the Private Forests Act."

"55. A notice under Section 35(3) of the Forest Act is intended to give an opportunity to the owner of a forest to show cause why, inter alia, a regulatory or a prohibitory measure be not made in respect of that forest. It is important to note that such a notice presupposes the existence of a forest. The owner of the forest is expected to file objections within a reasonable time as

specified in the notice and is also given an opportunity to lead evidence in support of the objections. After these basic requirements are met, the owner of the forest is entitled to a hearing on the objections. This entire procedure obviously cannot be followed by the State and the owner of the forest unless the owner is served with the notice. Therefore, service of a notice issued under Section 35(3) of the Forest Act is inherent in the very language used in the provision and the very purpose of the provision."

"61. It is true, as observed above, that a word has to be construed in the context in which it is used in a statute. By making a reference in Section 2(f)(iii) of the Private Forests Act to "issue" in Section 35 of the Forest Act, it is clear that the word is dressed in borrowed robes. Once that is appreciated (and it was unfortunately overlooked in *Chintamani [Chintamani Gajanan Velkar vs. State of Maharashtra, (2000) 3 SCC 143]*) then it is quite clear that "issued" in Section 2(f)(iii) of the Private Forests Act must include service of the show-cause notice as postulated in Section 35 of the Forest Act."

"62. We have no option, under these circumstances, but to hold that to this extent, *Chintamani [Chintamani Gajanan Velkar vs. State of Maharashtra, (2000) 3 SCC 143]* was incorrectly decided and it is overruled to this extent. We may add that in *Chintamani [Chintamani Gajanan Velkar vs. State of Maharashtra, (2000) 3 SCC 143]* the land in question was factually held to be a private forest and therefore the subsequent discussion was not at all necessary."

"63. Assuming that the word "issued" as occurring in Section 2(f)(iii) of the Private Forests Act must be literally and strictly

construed, can it be seriously argued that it also has reference to a show-cause notice issued under Sections 35(3) of the Forest Act at any given time (say in 1927 or in 1957)? Or would it be more reasonable to hold that it has reference to a show-cause notice issued in somewhat closer proximity to the coming into force of the Private Forests Act, or a “pipeline notice” as Mr. Narinman puts it?”

“72. Given this factual scenario, we agree that Section 2(f)(iii) of the Private Forests Act is not intended to apply to notices that had passed their shelf life and that only “pipeline notices” issued in reasonably close proximity to the coming into force of the Private Forests Act were “live” and could be acted upon.”

“74. The fact that the Private Forests Act repealed some sections of the Forest Act, particularly Sections 34-A and 35 thereof is also significant. Section 2(f)(iii) of the Private Forests Act is in a sense a saving clause for pipeline notices issued under Section 35(3) of the Forest Act but which could not, for want of adequate time be either withdrawn or culminate in the issuance of a regulatory or prohibitory final notification under Section 35(1) of the Forest Act, depending on the objections raised by the landowner. Looked at from any point of view, it does seem clear that Section 2(f)(iii) of the Private Forests Act was intended to apply to “live” and not stale notices issued under Section 35(3) of the Forest Act.”

10. Thereafter, Division Bench of this Court in *Satelite Developers Limited & Anr vs. State of Maharashtra and Ors*¹ where also the similar issue was involved, following the

¹ 2015(3) ALL MR 781

judgment of the Apex Court in *Godrej and Boyce Manufacturing Company Limited* (supra), also held that notices which were issued in 50's and 60's and which were not served had ceased to have any effect and such notices could not be covered under Section 2(f)(iii) and therefore came to the conclusion that the land did not vest in the Government and did not become deemed forest merely on issuance of notice under Section 35(3) of the said Act.

This Court in *Satelite Developers Limited & Anr vs. State of Maharashtra and Ors*¹ has observed in paras 10 and 11 as under:-

“10. We are of the view that ratio of the said judgment would squarely apply to the facts of the present case. Therefore, merely because entries are made in the revenue records in 2006 pursuant to the directions given by this Court in PIL that by itself would not vest these lands in the State Government since, admittedly, no further proceedings as contemplated under sections 35(3), 35(4) and 35(5) were initiated. As observed by the Apex court, since the notices which were issued under section 35(3) had limited shelf life, merely because the notices were issued in 1956 issuance of these notices by itself would not vest these lands in the State Government nor these lands would be deemed to be the forest lands. We have, therefore, no hesitation in coming to the conclusion that the issue involved in this case is no loner *res-integra* and is squarely covered by the judgment of the Apex Court in *Godrej and Boyce Manufacturing*.

¹ 2015(3) ALL MR 781

Company Limited¹ (supra)."

"11. For the aforesaid reasons, the entries made in the revenue record by the revenue authorities on the basis of notices which were issued under section 35(3) of the Indian Forest Act are set aside. It is clarified that though these notices were issued under section 35(3) since there being no final Notification issued under section 35(1), provisions of section 2(f)(ii) and 2(f)(iii) of the Maharashtra Private Forests (Acquisition) Act, 1975 would not apply to the facts of the present case and these lands, therefore, would not be deemed to be the forest lands, unless the procedure prescribed under the Act is followed which, admittedly, has not been followed in this case. It has to be remembered that the State has a right to acquire the land or declare that the land vests in the State Government. Such a right can be exercised only after the procedure which is prescribed under the Act is followed. It is no doubt true that the question of environment is a burning issue and has to be taken into consideration. However, at the same time, rights of the citizens cannot be taken away without following the due process of law. In the present case, after 1956, no steps have been taken by the State Government and, therefore, we are of the view that citizens cannot be deprived of the rights in respect of the property owned by them."

11. In the present case also, the facts are almost identical. Notices under section 35(3) had been issued sometime in 50's. There is no proof of service. In the Affidavit-in-reply which has been filed by Respondent No.5 – Conservator of Forest, it has been in terms stated in various paragraphs that

¹ (2014) 3 SCC 430

notices have been issued but nowhere it is stated that the notices have been served on the owners of the land.

12. Respondents have relied on the Entries made in what is called 'Golden Register' in support of their contention that the notices have been issued. However in view of the judgment of the Apex Court in *Godrej and Boyce Manufacturing Company Limited* (supra) and of this Court in *Satelite Developers Limited* (supra), mere issuance of notice is not sufficient and therefore merely by issuance of notice, the land could not be said to be deemed forest under Section 2(f)(iii).

13. The Apex Court in its judgment in *Godrej and Boyce Manufacturing Company Limited* (supra) while overruling the judgment in *Chintamani Gajanan Velkar vs State of Maharashtra and Others*¹ has observed that this fine distinction which existed on proper reading and analysis of Section 35 was lost sight of by the Bombay High Court and the Apex Court in its earlier judgment in *Chintamani* (supra)

14. This being the legal position, when the matter was filed before this Court, the issue which has now been settled was not settled and, therefore, Division Bench of this Court relegated the Petitioners to exhaust the alternative remedy of filing the appeal before the Sub-Divisional Officer since the

¹ (2000) 3 SCC 143

question whether notice was issued or not was a disputed question of fact.

15. After the judgment was delivered in *Godrej and Boyce Manufacturing Company Limited* (supra) by the Apex Court and in *Satelite Developers Limited* (supra) by this Court, Petitioners have now approached this Court again, in view of the settled position in law which position is settled after the Division Bench of this Court had directed the Petitioners to file an appeal. It is, therefore, rightly submitted by the learned Senior Counsel appearing on behalf of the Petitioners that in view of the settled position in law which was settled after the appeal was filed before the Sub-Divisional Officer, Petitioners, again, have a right to approach this Court and seek an appropriate order and direction for quashing the said Mutation Entries. The learned Senior Counsel appearing on behalf of the Petitioners, in our view, has rightly submitted that in view of the stand which has been now taken by the State Government in their affidavit-in-reply, it appears that despite the judgment of the Apex Court in *Godrej and Boyce Manufacturing Company Limited* (supra) and of this Court in *Satelite Developers Limited* (supra), State is still sticking to their old stand and, therefore, no fruitful purpose would be served in pursuing the appeal which is pending before the Sub-Divisional Officer.

16. We find considerable force in the submissions made by the learned Senior Counsel appearing on behalf of the Petitioners. Normally, in such cases, when the Petitioners had approached this Court and this Court had relegated the Petitioners to exhaust the alternative remedy, this Court would not have entertained the Petition again and would have asked the Petitioners to exhaust that remedy first as per the directions which were given in the judgment of this Court dated 18/02/2010 passed in Writ Petition No.283 of 2009. However, in the peculiar facts and circumstances of this case and more particularly in view of the judgment of the Apex Court in *Godrej and Boyce Manufacturing Company Limited* (supra) which has finally settled the issue, we find that it would be futile to again ask the Petitioners to go back to the Sub-Divisional Officer, who, apparently, in view of the affidavit-in-reply filed by the Respondents, would continue to take the same stand. We are of the view that, normally, State is expected to take a fair and reasonable stand and follow the law which is laid down by the Apex Court which is binding on all the parties in the country. However, we are surprised by the fact that same stand which was earlier taken in Chintamani is continued to be taken here in the reply filed by the Respondents to this Petition.

17. Both the questions in para 4 above are accordingly answered in the negative.

18. In the facts and circumstances of this case, therefore, we are inclined to entertain this Petition and pass the orders which are claimed by the Petitioners in terms of prayer clause (a) of the Petition. Petition is allowed in terms of prayer clause (a) of the Petition. Rule is made absolute accordingly.

(B.P. COLABAWALLA, J.)

(V.M. KANADE, J.)