IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10338 OF 2014

Nana Govind Gavate (Since deceased)
through legal heirs A to J & Ors. ...Petitioners
Versus
State of Maharashtra,
Through its Principal Secretary,
Revenue & Forest Department & Ors. ...Respondents

WITH
WRIT PETITION NO. 7240 OF 2006

Chintamani Gajanan Velkar ...Petitioner
Versus
State of Maharashtra & Ors. ...Respondents

WITH
WRIT PETITION NO. 7594 OF 2006

Shankar Gajanan Velkar ...Petitioner
Versus
State of Maharashtra & Ors. ...Respondents

WITH
WRIT PETITION NO. 11262 OF 2014

Pavna Agro Farms (P) Ltd. & Anr. ...Petitioners
Versus
State of Maharashtra & Ors. ...Respondents

Dr. Milind Sathe, Senior Counsel with Mr. Saket Mone, Mr. Bhushan Deshmukh, Mr. Vishesh Kalra, Mr. Anish Singh, Mr. Subit Chakrabarti I/b Vidhii Partners for the Petitioners in WP/10338/2014

Mr. Milind Sathe with Mr. Murari Madekar, Mr. Sachin Kudalkar I/b Madekar & Co. for the Petitioner in WP/11262/2014

Mr. Kevic Setalvad, Sr. Counsel with Mr. Yashodeep Deshmukh, Mr. Hilla Bootwalla i/b M/s. Nanu Hormasjee & Co. for the Petitioners in WP/7240/2006 & WP/7594/2006

Mr. V. B. Thadani, A.G.P for the Respondent-State in all the Petitions

Mr. Rui Rodrigues with Mr. N. R. Prajapati for Union of India in all the Petitions

CORAM : V. M. KANADE &
REVATI MOHITE DERE, JJ.
THURSDAY, 7TH JANUARY, 2016

P.C. :

1. Heard.

2. All these petitions can be disposed of by common judgment since the issue which has been raised by the petitioners in all these petitions, is identical.

3. The short question which falls for consideration before this Court is: whether merely by issuance of notices under Section 35(3) of the Indian Forest Act, 1927, the land would vest in the State Government by virtue of the provisions of Section 2(f)(3) of the Private Forest Act, 1975.

4. The facts in all these cases are almost identical. The State Government in all these cases had issued notices to the petitioners under Section 35(3) of the Indian Forest Act, 1927. However, thereafter, the procedure which is required to be followed under Section 35(3), (4) and (5) and issuance of notification under Section 35(1) has not been followed. In the affidavit-in-reply, it is stated that notice under Section 35(3) was issued after 1950. However, no specific averment is made that thereafter, procedure for giving hearing to the petitioners was followed or not.

5. Shri Sathe, learned Senior Counsel appearing on behalf of the petitioners in two petitions and Shri Setalvad, learned Senior Counsel appearing on behalf of the petitioners in other two petitions have invited our attention to the Judgment of the Apex Court in the case of ***Godrej & Boyce Manufacturing Company Ltd. & Anr. v. State of Maharashtra & Ors.***[1] and it is submitted that the Apex Court in no uncertain terms has held that merely issuance of notices under Section 35(3) will not be sufficient for the purpose of vesting the lands in the State Government. It is

1 (2014) 3 SCC 430

submitted that the Apex Court also in terms has given a wider meaning to the word "issue", which is found in Section 35(1) of the said Act. Our attention is invited to the observations made by the Apex Court in the said case.

6. In the present case, it is an admitted position that revenue entries were made in the revenue records on the basis of direction given by this Court in a PIL directing the State Government to make an entry in the revenue records that all these lands are forest lands. In view of the direction given by this Court, the State Government made an entry in the revenue record in 2006 that these lands are deemed to be forest lands under the Maharashtra Private Forests Act, 1975.

7. It is further submitted that in two other petitions, this Court after relying on the judgment in the case of ***Godrej & Boyce Manufacturing Company Ltd. & Anr. (supra),*** had come to a conclusion that the entry made on the basis of notices issued under Section 35(3) alone would not vest the land in the State Government. Our attention was invited to the judgment of this Court in the case of ***Satelite Developers Ltd. & Anr.***

vs. State of Maharashtra & Ors.[2] decided on 26th November, 2014 and also in another judgment delivered by this Court in the case of ***Ozone Land Agro Pvt. Ltd. v. State of Maharashtra & Ors.***[3] decided on 18th June, 2015.

8. Mr. Sathe, learned Senior Counsel appearing on behalf of the petitioners in Writ Petition No. 11262 of 2014 submitted that in addition to the aforesaid facts in the said case, the land was acquired by the State Government in 1964 and on 10th October, 1973, the Government of Maharashtra had decided to return the land to the petitioners. He also invited our attention to the letter dated 9th October, 1998. The Chief Conservator of Forests (Conservation) wrote a letter stating that the lands which were acquired prior to 1972 as agricultural lands were now being returned and would not be subject to the provisions of Maharashtra Private Forests (Acquisition) Act, 1975.

9. Shri Setalwad, learned Senior Counsel appearing on behalf of the other petitioners submitted that in fact, the petitioners were cultivating the said lands and this fact has been acknowledged by the Revenue

2 Writ Petition No. 2084 of 2013
3 Writ Petition (Lodging) No. 922 of 2015

Authority. It is submitted that, therefore, the contention of the State that the said land is deemed to be declared as forest, even otherwise, was erroneous.

10. On the other hand, Shri Vishal Thadani, learned A.G.P appearing on behalf of the State submitted that the petitioners have an alternate efficacious remedy of filing an appeal against the revenue entry, which has been made and this Court therefore, should not entertain the petitions and should relegate the petitioners to exhaust the alternate remedy which is available to them. It was then submitted that even otherwise, the State Government would still have a right to initiate proceedings under the Maharashtra Private Forests (Acquisition) Act, 1975.

11. In our view, the question which falls for consideration before us is no longer *res integra* and is squarely covered by the Judgments of the Apex Court in the case of ***Godrej & Boyce Manufacturing Company Ltd. & Anr. (supra).*** The Apex Court in para 1, has observed as under:

> "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 Indian 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 Indian 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."

12. The ratio of the said Judgment, therefore, would squarely apply to the facts of the present case. Similarly, this Court in two other petitions namely in the case of ***Satelite Developers Ltd. & Anr. (supra)*** and ***Ozone Land Agro Pvt. Ltd. (supra)*** following the Supreme Court decision, has taken a view that mere issuance of notice under Section 35(3) is not sufficient for vesting of land in the State Government under Section 2(f)(iii) of the Forest Act and therefore the C-1(3) and the lands would not vest in the State Government under Section 3(1) of the Maharashtra Private Forests (Acquisition) Act, 1975.

13. It is an admitted position that the judgment given by the Apex Court in the case of ***Chintamani Gajanan Velkar v. State of Maharashtra***[4]

4 2000 (3) SCC 143

and order of this Court in the case of ***Bombay Environment Action Group v. State of Maharashtra***[5]***,*** as a result of which, the State of Maharashtra has made an entry in the revenue records in 2006, were set-aside by the Apex Court in the case of ***Godrej & Boyce Manufacturing Company Ltd. & Anr. (supra)*** and the judgments in the cases of ***Chintamani Gajanan Velkar (supra)*** and ***Bombay Environment Action Group (supra)*** were, therefore, overruled.

14. We have, therefore, no hesitation in coming to the conclusion that the entry made by the State Government in the revenue record of the petitioners will have to be set-aside and quashed.

15. Though it is true that normally if an alternate efficacious remedy is available, this Court is slow in entertaining a writ petition under Article 226 of the Constitution of India, it is also well settled that merely existence of an alternate remedy alone cannot be considered as a bar for entertaining a writ petition under Article 226 of the Constitution of India. The judgment and order passed by the Apex Court is binding on all

5 PIL 17/2002

Authorities in India and act as a legal precedent binding on everyone. That being the position, no fruitful purpose would be served in again relegating the petitioners back to the Sub-Divisional Officer for the purpose of exhausting alternate remedy of filing an appeal. We, therefore, do not accept the submission made by the learned Counsel appearing on behalf of the petitioners.

16. A similar submission was made by the learned Counsel appearing on behalf of the State Government in the case of ***Ozone Land Agro Pvt. Ltd. (supra)*** in Writ Petition (Lodging) No. 922 of 2015 and in the said case, the Division Bench of this Court has observed in para 16 as under :

> *"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. For the aforesaid reason, we are not inclined to accept the submission made by the State.

18. Moreover, as rightly pointed out by Shri Sathe, learned Senior Counsel appearing on behalf of the two petitioners and Shri Setalvad, learned Senior Counsel appearing on behalf of the other two petitioners, in addition to the facts mentioned hereinabove, it is the case of the petitioners in Writ Petition No. 11262 of 2014 that land in fact was acquired by the State Government and was thereafter returned and there is a correspondence between the revenue authorities as well as the forest authorities, which clearly reveal that they have admitted that the land of the petitioners was wrongly included in the list of the forest lands. Similarly, in the case of the petitioners for whom Shri Setalvad is appearing, there also, the land was cultivated and there is material evidence on record to

establish this fact. For the aforesaid reasons, writ petitions are allowed. The entry made by the revenue authorities in the revenue records that the land is a forest land and it vests in the State Government is quashed and set-aside. Needless to state that the State Government always has a right to acquire these lands in accordance with law, if so advised.

19. Writ petitions are allowed and disposed of in the aforesaid terms.

REVATI MOHITE DERE, J. ***V. M. KANADE, J.***