

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13737 OF 2016

Vimla M. Khanna & Others .. Petitioners.
Vs.
The State of Maharashtra & Others .. Respondents.

Mr.Sukand R. Kulkarni for the Petitioners.
Mr.A.B. Vagyani, G.P. with Mr.Manish Pabale AGP for Respondent
Nos.1 and 2.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 30TH MARCH, 2017

P.C.

1. On an earlier date, the parties were put to notice that the petition will be disposed of at the stage of admission.

2. The petitioners are claiming to be the owners of the land bearing Survey No.16 admeasuring 9 Hectares and 96 R situated at village Dudhivare, Taluka Maval, District Pune (for short 'the said land'). The prayer in this petition under Article 226 of the Constitution of India is for a declaration that the provisions of Maharashtra Private Forest (Acquisition) Act, 1975 (for short 'the said Act of 1975') have no application to the said land.

3. The petitioners in paragraph 3 of the petition have set out as to how they acquired the title to the said land. Paragraph 4 refers to mutation entry No.795 dated 8th November, 2005 made in the revenue record in respect of the said land. The said mutation

is of 'Private Forest' in the other rights column in the 7/12 extract of the said land which suggests that the provisions of the said Act of 1975 will apply to the said land.

4. The learned counsel appearing for the petitioners relied upon a decision of the Apex Court in the case of Godrej and Boyce Manufacturing Co. and Anr. vs. State of Maharashtra (2014) 3 SCC 430. He relied upon a decision of this Court on 3rd February, 2015 passed in Writ Petition No.7235 of 2013 (Sinhagad Technical Education Society vs. Deputy Conservator of Forest and Others). The specific submission is that no notice under sub-section (3) of section 35 of Indian Forest Act, 1927 (for short 'the said Act of 1927') was issued in respect of said land and a notification contemplated under sub-section (1) of section 35 of the said Act of 1927 has not been issued in respect of said land. The contention of the petitioner is that the said land is not a private forest within the meaning of clause (f) of Section 2 of the said Act of 1975.

5. The learned Government Pleader relied upon the affidavit in reply filed by Mr. Madhukar Bappurao Telang, Assistant Conservator of Forest, Pune Forest Division, Pune. He urged that a notification under Sub-Section (1) of Section 35 of the said Act of 1927 may not have been issued in respect of said land, but if a notice is issued under Sub-Section (3) of Section 35 of the said Act of 1927, the said land excluding an area not exceeding two

Hectares in extent as the Collector may specify in this behalf will become a “private forest” under sub-section (iii) of clause (f) of section 2 of the said Act of 1975. He urged that in any case, the said land is a reserved forest.

6. The only question which arises for consideration is whether the said land is a private forest within the meaning of clause (f) of Section 2 of the said Act of 1975. There is no dispute that the law laid down by the Apex Court in the case of Godrej and Boyce Manufacturing Co. Ltd. (supra) still continues to hold the field.

7. By the said decision, the Apex Court held that mere issuance of a notice under the provisions of Section 35(3) of the said Act of 1927 is not sufficient for any land being declared as a “private forest” within the meaning of Sub-Clause (iii) of Clause (f) of Section 2 of the said Act of 1975. A question was framed by the Apex Court in the second paragraph of the judgment which reads thus :

“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.”

The Apex Court held that the word “issued” cannot be construed to mean that it amounts to service of said notice. The Apex Court overruled its earlier view in the case of Chintamani Gajanand Velkar vs. State of Maharashtra in (2000) 3 SCC 143 wherein it was held to contrary. The Apex Court held that Chintamani's case (supra) does not lay down the correct position of law.

9. In the present case, going by the reply filed by the State Government, it is not even the case of the State Government that a notice under Sub-Section (3) of Section 35 of the said Act of 1975 was issued in respect of the said land. The respondents have not relied upon any such notice. In absence of any notice issued under Sub-Section 3 of Section 35 of the said Act of 1927, reliance cannot be placed by the State Government on Sub-Clause (iii) of section (f) of clause 2 of the said land of the Act of 1975. The submission of Government Pleader was that in view of clause Sub-Clause (iii) clause (f) of section 2, the said land will fall in the category of the “private forest” even if notice under Sub-Section (3) of Section 35 of the Act of 1927 is issued.

10. In paragraph 68, the Apex Court dealt with a similar contention raised before it. Ultimately, in paragraph 73 the Apex Court held that :

“73. The fact that the Private Forests Act repealed some sections of the Forest Act, particularly Sections 34A 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 land owner. 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.”

11. In the present case as stated earlier, the State Government has not come out with the case that a notice under Sub-Section (3) of section 35 of the said Act of 1927 was ever issued. Therefore, reliance cannot be placed on Sub-Section (iii) of clause (f) of Section 35 of the Act of 1975. No other provision under the said Act of 1975 is pressed into service for showing that the said land is a private forest. Therefore, the case made out by the State Government that the said land is a private forest within the meaning of said Act of 1975 cannot be accepted. Accordingly, we

hold that there was no warrant to make the mutation entry for recording that the provisions of said Act of 1975 are applicable to the said land.

12. We may, however, make it clear that we have examined only one question in this petition. The said question is whether the provisions of the said Act of 1975 are applicable to the said land in the context of clause (f) of Section 2. We have made no adjudication on the question whether the provisions of the said Act of 1927 or the provisions of the Forest Conservation Act, 1980 are applicable to the said land. We have also made no adjudication on the question whether the said land constitutes a forest. All these questions are specifically kept open.

13. Accordingly, the petition must succeed. We pass the following order :

(a) Rule is made absolute in terms of prayer clauses (b) and (c).

(b) The action of deletion of entry made in other rights column in respect of the said land shall be taken within a period of two months from the date of the judgment and order is uploaded.

(c) No orders as to the costs.

(A.K. MENON, J.)

(A.S. OKA, J.)