

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

WRIT PETITION NO. 83 OF 2015

Madhav Vishwanath Pendse
Since deceased, through LRS
1-a) Neelesh Madhav Pendse ... Petitioner
Versus
State of Maharashtra and another ... Respondents
.....
Mr. Amit B. Borkar for the Petitioner.
Mr. Y. S. Khochare, AGP for the Respondents.
.....

CORAM : A. S. OKA AND M. S. SONAK, JJ.

DATE : 05th OCTOBER, 2018.

ORAL JUDGMENT (Per A. S. Oka, J.):

1. Heard the learned Counsel appearing for the petitioner and the learned AGP for the respondents.
2. Rule. Rule is made returnable forthwith and heard finally by consent of the parties.
3. On the last date, the parties were put to notice that the petition will be taken up for final disposal at admission stage. In this petition, we are concerned with the lands more particularly described in paragraph 2 of this petition. For the sake of

convenience, we are referring to the said lands as the subject lands. An adjudication was made by the District Collector under Section 6 of the Maharashtra Private Forests [Acquisition] Act, 1975 (for short 'Private Forests Act'). The adjudication was in respect of the subject lands as well as the land bearing Survey No.110/1 of the same village which was claimed by the petitioners. It appears that the adjudication was made by the Collector on the question whether the subject lands are vested in the State Government under Sub-section (1) of Section 3 of the Private Forests Act. By the judgment and order dated 31st March, 1992, a clear finding was recorded by the Collector in paragraph 8 holding that the same did not vest in the State Government under Sub-Section (1) of Section 3 of the Private Forests Act on the appointed date. It appears that reliance was placed by the petitioners before the Collector on Sub-Section (2) of section 3 of the Private Forests Act by contending that the said lands comprising in a private forest were under lawful cultivation on the appointed date and the area of the subject lands was not in excess of ceiling area provided under Section 5 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. As regards

Survey No.110/1, the Collector did not grant relief to the petitioners. In paragraph 9 of the said order, the Collector held that if any of the lands forming a part of the subject lands were in possession of the Forest Department, the same should be placed in possession of the petitioners. It is observed that for giving possession, the provisions of the Forest Conservation Act, 1980 (for short 'said Act of 1980'), will not come in the way as the subject lands never vested in the State Government.

4. It appears that two appeals were preferred before the Maharashtra Revenue Tribunal (for short 'MRT') against the said judgment and order of the Collector. One appeal preferred by the petitioners was confined to the land bearing Survey No.110/1 and the other appeal preferred by the State Government was confined to the subject lands. Both the appeals were disposed of by a common judgment passed by the learned Member of the MRT on 3rd January, 1996. As far as the appeal preferred by the petitioners is concerned, an order of remand was passed in respect of Survey No.110/1. The appeal preferred by the State was dismissed by specifically confirming the findings of the Collector. As far as the subject lands are concerned, it appears that the petitioners made

an application for grant of possession of the subject lands on the basis of the aforesaid Judgment and order of the Collector.

5. In earlier writ petition being Writ Petition No. 5350 of 2010, a permission was granted to the writ petitioners to make representation to the State Government for grant of possession. Accordingly, a representation was made, a copy of which is at Exhibit-“L” to this petition. The said representation was decided by the Hon'ble Minister of Forest Department by an order dated 31st January, 2012. The Hon'ble Minister purported to set aside the order dated 31st March, 1992 passed by the District Collector and the order dated 3rd January, 1996 passed by the MRT. The order of the Hon'ble Minister was challenged by the petitioners by filing Writ Petition No.2824 of 2014. By a judgment and order dated 7th October, 2014 the order of the Hon'ble Minister was set aside by this Court by holding that the Hon'ble Minister had no jurisdiction to set aside the orders of the Collector and the learned Member of the MRT which had attained finality. This Court directed the State Government to pay costs quantified at Rs.50,000/- to the petitioners. This Court directed the State Government to decide the representation afresh. By the order

impugned dated 29th October, 2014 (Exhibit-“S” to the petition), the representation praying for a direction to hand over possession of the subject lands was rejected by the Chief Conservator of Forests. Firstly, reliance was placed on the order dated 10th October, 2001 in Writ Petition No. 2980 of 2001 under which direction was issued to the Collectors in the State not to grant certificate under Section 6 of the Private Forests Act without obtaining prior approval of the Central Government under Section 2 of the said Act of 1980. A direction was issued to initiate proceedings for recall/cancellation of all such certificates which have been issued in breach of Section 2 of the said Act of 1980. It was further observed by a circular dated 16th December, 2004, the State Government directed that all such orders passed under Section 6 of the Private Forests Act, need revision. The representation was rejected on the ground that the order of the Collector dated 31st March, 1992 ought to have been recalled.

6. The learned Counsel appearing for the petitioners submitted that as the finding of the Collector that the subject lands never vested in the State Government under Sub-Section (1) of Section 3 of the Private Forests Act has attained finality, by relying upon

circular dated 16th December, 2004 the petitioners cannot be deprived of the possession as the ownership of the petitioners over the subject lands is not disputed.

7. The learned AGP relied upon the reply filed by Shri Madhukar Balwant Chandanshive, Assistant Conservator of Forest, Panvel. He submitted that the subject lands are forest and therefore, in view of Clause (f) and Clause (c-i) of Section 2 of the Private Forests Act, the subject lands become private forest which vest in the State Government with effect from 30th August, 1975 (i.e. the appointed day). He submitted that the judgment and order of the Collector dated 31st March, 1992 shows that reliance was placed on a *panchnama*. He submitted that requirement of Sub-Section (2) of Section 3 is that the owners must be in cultivation of the lands on the appointed date which is 30th August, 1975. He submitted that the *panchnama* made after the said date is completely irrelevant, and therefore, Sub-Section (2) of Section 3 had no application. He relied upon the circular dated 16th December, 2014 and pointed out that as per the said circular, the order of the Collector dated 31st March, 1992 ought to have been revised or recalled. On a query made by this Court

he did not dispute that the State has not challenged the judgment and order dated 3rd January, 1996 passed by the learned Member of the MRT as well as the judgment and order dated 7th October, 2014 in Writ Petition No. 2824 of 2014, by which the order of Hon'ble Minister dated 31st January, 2012 was set aside. He would further submit that as Sub-Section (2) of Section 3 was not attracted, no case is made out for holding that the subject lands did not vest in the State on the basis of Sub-Section (1) of Section 3 of the Private Forests Act.

8. We have considered the submissions. On plain reading of order dated 31st March, 1992 passed by the Collector by exercising powers under Section 6 of the Maharashtra Private Forests Act, it cannot be disputed that the Collector came to the conclusion that Sub-Section (2) of Section 3 of the Private Forests Act was applicable to the subject lands and therefore, there was no automatic vesting of the subject lands in the State Government under Sub-Section (1) of Section 3 of the Private Forests Act. For ready reference, we reproduce Section 3 of the Private Forests Act, which reads thus :-

“3. (1) Notwithstanding anything contained in any law for the time being in force or in any settlement, grant, agreement, usage, custom or any decree or order of any Court, Tribunal or authority or any other document, with effect on and from the appointed day, all private forests in the State shall stand acquired and vest, free from all encumbrances, in, and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State Government, and all rights, title and interest of the owner or any person other than Government subsisting in any such forest on the said day shall be deemed to have been extinguished.

(2) Nothing contained in sub-section (1) shall apply to so much extent of land comprised in a private forest as is held by an occupant or tenant and is lawfully under cultivation on the appointed day and is not in excess of the ceiling area provided by section 5 of the Maharashtra Agriculture Lands (Ceiling on Holdings) Act 1961, for the time being in force or any building or structure standing thereon or appurtenant thereto.

(3) All private forests vested in the State Government under sub-section (1) shall be deemed to be reserved forests within the meaning of the Forest Act.”

(Underline added)

9. The effect of applicability of Sub-Section (2) is that there is no automatic vesting of a private forest in the State Government by virtue of Sub-Section (1) of Section 3.

10. It is also not in dispute that the said finding of the Collector in order dated 31st March, 1992 was confirmed by the learned Member of the MRT in an appeal preferred by the State Government. As noted earlier, the Hon'ble Minister of the Forest Department purported to set aside both the orders of the Collector and the MRT by the judgment and order dated 31st January, 2012. The said order was set aside by this Court by the order dated 7th October, 2014 in Writ Petition No. 2824 of 2014 and both the said orders were restored. The order of this Court dated 7th October, 2014 has admittedly become final.

11. Perusal of Section 6 the Private Forests Act shows that the Collector is empowered to decide two questions whether or not any forest is a private forest and whether or not, any private forest or portion thereof has vested in the State Government.

12. Perusal of the order of the Collector dated 31st March, 1992 shows that the petitioners contended that in view of Sub-Section (2) of Section 3, the subject lands cannot be vest in State Government under Sub-Section (1) of Section 3. Those contentions are recorded in paragraph 1 of the said judgment. In

paragraph 3, the Collector reiterated that the only question before him was whether Sub-Section (2) of Section 3 was applicable to the subject lands. Thus, the predecessor of the petitioners did not dispute that the subject lands are private forest, but their contention was that Sub-Section (1) regarding vesting was not applicable in view of the applicability of Sub-Section (2) of Section 3.

13. We must also note that in paragraph 9 of the order of the Collector dated 31st March, 1992, a specific direction was issued that the possession in subject lands shall be restored to the applicants before the Collector. Even this part of the order of the Collector has been confirmed by the learned Member of the MRT.

14. When this Court directed the State to consider the representation of the petitioners for restoration of the subject lands, all that was required was the examination of the orders of the Collector and MRT which have become final. The affidavit in reply of the State and the submissions made by the learned AGP indicate that notwithstanding the fact that the orders of the Collector and MRT had become final, the State wants to urge that

Sub-Section (2) of Section 3 is not applicable to the subject lands and that there is a vesting under Sub-Section (1) of Section 3.

15. It will be necessary to advert to Section 21 of the Maharashtra Private Forests Act. Section 21 reads thus:-

- “21.** (1) *Wherever it appears to the State Government that any tract of land not being the property of Government, contains trees and shrubs, pasture lands and any other land whatsoever, and that it should be declared. in public interest and for furtherance of the objects of this Act. to be a private forest, the State Government shall publish a notification in the Official Gazette—*
- (a) *declaring that it is proposed to declare such tract of land to be a private forest; and*
 - (b) *specifying, as nearly as possible, the situation and limits of such tract.*
- (2) *On the publication of such notification, the Collector or any other officer authorised in this behalf by the State Government shall issue a notice to the owner of such tract of land and to all other persons having an interest in such tract of land calling on them to show cause, within a reasonable period to be specified in such notice, why such declaration should not be made.*
- (3) *After hearing the objections if any, of the owner and other persons and considering any evidence that they may produce in support of the same, the Collector, or as the case may be, the authorised officer shall submit his report to the State Government, along with the objections, proceeding and his opinion whether the tract of land should or should not be declared to be a private forest.*

- (4) *After taking into consideration the objections, proceeding and report and the opinion of the Collector, or as the case may be of the authorised officer, the State Government shall decide, whether such tract of land or any part thereof should or should not be declared to be a private forest, and such decision shall be final.*
- (5) *If the State Government decides to declare such tract of land or any part thereof to be a private forest, it shall publish such decision by a notification in the Official Gazette.*
- (6) *Upon publication of the notification under sub-section (5), the tract of land in question or any part thereof shall be deemed to be private forest and thereupon, all the provisions of this Act shall apply thereto, subject to the modification that the appointed day in relation thereto shall be deemed to be the date of the issue and publication of the notification in the Official Gazette under sub-section (5) in relation thereto.*
- (7) *If the State Government decides not to declare such tract of land or any part thereof to be a private forest, it shall communicate its decision to all persons interested in such tract of land or any part thereof.*
- (8) *On the publication of a notification under sub-section (1) in respect of any tract of land, it shall not be lawful for the owner of such tract of land or any other person to do therein, except with the previous permission in writing of the Divisional Forest Officer, any of the following things, for a period of one year from the date of such publication, or till the date of the publication of the notification under sub-section (5), or as the case may be, till the date of communicating the decision under sub-section (7), whichever period expires earlier, namely :---*

- (a) *the breaking up or cleaning of the land for cultivation;*
 - (b) *the pasturing of cattle;*
 - (c) *the felling or cleaning of the vegetation ;*
 - (d) *the girdling tapping or burning of any tree of the stripping off the bark or leaves from any tree;*
 - (e) *the lopping and pollarding of tree;*
 - (f) *the cutting, sawing, conversion and removal of trees and timber; or*
 - (g) *the quarrying of stone or the burning of lime or charcoal or the collection or removal of any forest produce or its subjection to any manufacturing process.*
- (9) *If any person contravenes the provision of sub-section (8), he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.”*

16. Even in case of a land which is not the property of the State Government and which does not fall in the definition of private forest, it is possible for the State Government to exercise powers under Section 21 by declaring it as a private forest. In the present case, the petitioners themselves relied upon Sub-Section (2) of Section 3 thereby accepting that the subject lands are private forest. Therefore, the petitioners cannot contend that the subject lands are not private forest within the meaning of the Private Forests Act. As the subject lands are private forest, by virtue of Section 2 of the said Act of 1980 and considering the decision of

the Apex Court in the case of ***T. N. Godavarman Thirumulkpad Vs. Union of India and others***¹, the subject lands will be a forest and all constraints under Section 2 of the said Act of 1980 will apply to the subject lands.

17. The question before us is very limited. The question is, as the subject lands are not vesting in the State Government under Sub-Section (1) of Section 3, whether the State Government can continue to retain the possession of the subject lands. In the impugned order dated 29th October, 2014, reliance is placed on directions issued by this Court on 10th October, 2001 and the circular issued dated 16th December, 2004 to initiate proceedings of revision against the orders of the Collector passed under Section 6 of the Private Forests Act, without getting approval of the Government of India under Section 2 of the said Act of 1980. In the present case, the circular and the decision of this Court will have no application inasmuch as the order of the Collector dated 31st March, 1992 has become final which continues to bind the State Government for the reasons which we have recorded earlier.

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18. Therefore, there is no option for the State Government but to place the petitioners in possession of the subject lands. However, we propose to grant longer time to give possession, so that in the meanwhile, State can take recourse, if it so desires, to the provisions of law for acquiring the subject lands. We, therefore, propose to grant time of six months from the date on which this judgment is uploaded to the State Government to deliver possession.

19. Accordingly, we dispose of the petition by passing the following order :-

- (i) The impugned order dated 29th October, 2014 is quashed and set aside. We direct the first respondent to place the petitioners in possession of the subject lands within a period of six months from the date on which this order is uploaded;
- (ii) We clarify that the subject lands constitute a private forest within the meaning of Private Forests Act and that Section 2 of the said Act of 1980 will apply to the said lands. Therefore, directions issued by the Apex Court in the case of ***T. N. Godavarman Thirumulkpad (supra)*** will continue to apply to the subject lands;

- (iii) Within the period of six months provided under this order, it will be always open for the State Government to take steps for acquisition of the subject lands in accordance with law. Needless to add that if acquisition proceedings are completed in accordance with law within the stipulated period of six months, the direction of this Court to place the petitioners in possession of subject lands will cease to operate. If the acquisition is not complete, on the expiry of the aforesaid period of six months, the first respondent shall be under obligation to place the petitioners in possession of the subject lands;
- (iv) We also make it clear that it will be always open for the petitioner to challenge the acquisition proceedings, if any, in accordance with law.
- (v) Rule is made absolute in the aforesaid terms with no order as to costs.

(M. S. SONAK, J.)

(A. S. OKA, J.)

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