

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 443 OF 2019

WITH

CIVIL APPLICATION NO. 367 OF 2019

1. Sai Services Pvt. Ltd.
Through its authorized signatory
Shri. Vivek Shankar Nene,
Age : Adult, Occu.: Service,
Office at : Tungarphata, Satavali, Vasai
(East), Tal. Vasai, Dist. Palghar **Petitioner**
- Versus**
1. State of Maharashtra
Through the Principal Secretary
Revenue and Forest Department,
Mantralay, Mumbai – 400 023
[Summons to be served on the learned
Government Pleader appearing for State
of Maharashtra under Order XXVII, Rule
4 of the Code of Civil Procedure, 1908]
2. The Divisional Forest Officer
Mandvi, Dist.: Palghar
[Summons to be served on the learned
Government Pleader appearing for State
of Maharashtra under Order XXVII, Rule
4 of the Code of Civil Procedure, 1908]
3. The Assistant Conservator of Forest
(Region-1), Boriwali,
[Summons to be served on the learned
Government Pleader appearing for State
of Maharashtra under Order XXVII, Rule
4 of the Code of Civil Procedure, 1908]
4. Union of India
[Summons to be served on the learned
Government Pleader appearing for State
of Maharashtra under Order XXVII, Rule
4 of the Code of Civil Procedure, 1908]
5. The National Commission for Scheduled
Tribes, Government of India, New Delhi

6. Atmaram Sukrya Mahali
Age : 41 years, Occu.: Agriculturist & Labour
7. Bistari Navasha Mahali alias Mrs. Parvati Yashvant Sambare,
Age : 61 years, Occu. Housewife
8. Changuna Shankar Mahali
Age : 64 years, Occu.: Housewife
9. Barku Shankar Mahali
Age : 38 years, Occu.: Agriculturist & Labour
10. Ankush Shankar Mahali
Age : 36 years, Occu.: Agriculturist & Labour
11. Babu Shankar Mahali
Age : 34 years, Occu.: Agriculturist & Labour
12. Narmada Kashtya Mahali
Age : 46 years, Occu.: Housewife
13. Sangita Kashtya Mahali
Age : 35 years, Occu.: Housewife
14. Madhukar Kashtya Mahali
Age : 32 years, Occu.: Agriculturist & Labour
15. Devji Shankar Mahali
Age : 42 years, Occu.: Agriculturist & Labour
16. Ananta Shankar Mahali
Age : 44 years, Occu. : Agriculturist & Labour

Respondents

Mr. A. V. Anturkar, Senior Advocate, a/w Mr. S. M. Phatak,
for the Petitioner.

Mr. Vedchetan Patil, for the Applicant in CA No.367/2019 and
for Respondent nos.6 to 16 in WP No.443/2019.

Mr. P. P. More, AGP for the State/Respondent nos.1 to 3.

Mrs. Girija Desai, Sub-Divisional Forest Officer, Mandvi
(Thane), present.

**CORAM: R. M. BORDE &
N. J. JAMADAR, JJ**

DATED: 22nd APRIL, 2019

ORAL JUDGMENT:- (Per R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith. With the consent of the Counsels for the parties heard finally.

2. The Petitioner is objecting to the order passed by the Range Forest Officer at Mandvi on 9th January, 2019, calling upon him to remove the alleged encroachment committed by him on the land survey no.41/1 and 41/2, which is classified as a private forest. It is recorded in the order that the directions are being issued in pursuance to the order passed by the Commissioner, National Commission for Scheduled Tribes, on 26th November, 2018. Although, it is recorded in the order that the direction has been issued by the Commissioner to remove the encroachment and to demolish illegal construction, on perusal of order passed by the Commissioner on 26th November, 2018, it does not appear that such direction has been issued by the Commission. In paragraphs 3 and 4 of the order issued by Commission dated 26th November, 2018, it is recorded thus:

“3. The Commission observed that Agricultural land was registered in the name of Scheduled Tribe persons in the year 2005 which has been converted as private forest land by the concerned department which appears to be against rules. After detailed discussion, the Commissioner recommendation's as under-

- (a) It was informed during the sitting that the land in question was mutated in the name of the tribal petitioners as a agricultural land and then, how the

land use of this land has been changed to private forest. The Revenue Department has to give the clarification.

- (b) When there is no provision to lease private agricultural lands of tribals, how department gave person to lease the land for 30 years.
 - (c) How the forest department notified the said land as a private forest without knowledge of revenue department? Forest Department to provide all documents relating to it.
 - (d) The Revenue Department should take necessary action to demolish all construction in the disputed land.
 - (e) The commission will make a spot visit after 13th December, 2018, and look into the matter again.
4. Compliance/action taken report should be submitted to the Commission within 15 days from the receipt of the proceedings.”

3. The Petitioner contends that it would be beyond the jurisdictional authority of the Commission to issue such directions as has been recorded in the order dated 26th November, 2018. Article 338-A(5) of Constitution of India specifies the duties of the Commission. Sub-Article (5) of Article 338-A reads thus:

“338-A. National Commission for Scheduled Tribes –

(1)..... (2)..... (3)..... (4).....

(5) It shall be the duty of the Commission:-

- (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;
- (c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

- (d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes; and
- (f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.”

4. It is the contention of the Petitioner that the directions issued or report presented by Commission is recommendatory in nature and the observations made by the Commission in its report do not constitute an executable order. In the instant matter, the Range Forest Officer, without application of mind to the record of the case and without independently assessing the merits and demerits of the proceedings directed the Petitioner to remove the alleged encroachment committed by him. The Petitioner contends that he has not been extended an opportunity of hearing by the Range Forest Officer before issuing the direction on 9th January, 2019.

5. Mr. More, the learned AGP as well as Mr. Patil the learned Counsel for Respondent nos.6 to 16 have invited our attention to the order passed by the Assistant Conservation Officer on 28th August, 2015, whereby one Mr. Himanshu Narendra Shah

has been directed to remove the encroachment committed by him on the subject land. It is recorded in the order that it would be open for aggrieved party to raise challenge to the order by filing appropriate proceedings of appeal under Section 22(a) of the Maharashtra Private Forests (Acquisition) Act, 1975. It is informed that the appeal presented by Mr. Shah is withdrawn and, as such, the directions issued by the Assistant Conservation Officer on 28st August, 2015 have attained finality and these are executable. It is further contended that since Petitioner claims his entitlement through Himanshu Shah, the directions issued by Asst. Conservator of Forest are equally enforceable against him.

6. We do not propose to consider the merits and demerits of claims and it would be open for the concerned parties including the Petitioner to raise appropriate contentions in an appropriate proceedings. The learned Counsel appearing for Respondent nos.6 to 16 contends that since the Petitioner herein has been extended hearing in the proceedings of enquiry conducted by the Assistant Conservator of Forest, the order passed against Mr. Himanshu Shah is equally enforceable and has attained finality against the Petitioner.

7. As has been recorded above, since the order impugned in the instant petition does not make any reference to the earlier proceedings and the concerned authority i.e. Range Forest Officer has not independently assessed the material and has not extended an opportunity of hearing to all the parties concerned, it would be desirable for the said authority to consider the submissions of the Petitioner in reference to earlier order passed by the Assistant Conservator of Forest and pass appropriate order as permissible in law. It would also be appropriate for the said authority to extend opportunity of hearing to Respondent nos.6 to 16 herein.

8. The order impugned in this petition dated 9th January, 2019 is thus quashed with liberty as specified above.

9. The Writ petition is accordingly disposed of. There shall be no order as to costs.

10. Rule is accordingly made absolute.

11. In view of disposal of the petition, the Civil Application does not survive and is disposed of accordingly.

[N. J. JAMADAR, J.]

[R. M. BORDE, J.]