

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

WRIT PETITION NO. 5586 OF 2021

Rajmachi Rural Aid and Development Programme	]	...Petitioner
(Trust Registered under the	]	
Bombay Public Trust Act, 1950)	]	
Through its Hon. Secretary	]	
Shri Amogh Moreshwar Ghaisas	]	
R/at: A-27 Bhaveshwar Dham,	]	
85, Dr. Rafi Ahmed Kidwai Road,	]	
Wadala (West), Mumbai – 400 031.	]	

vs.

1. The State of Maharashtra	]
Through the Secretary,	]
Revenue and Forest Department,	]
Room No. 456/461 Annex,	]
Hutatma Rajguru Chowk,	]
Madam Cama Road, Mantralaya,	]
Mumbai 400 032.	]

2. The Additional Principal Chief Conservator of Forest (Conservation)	]
3 rd Floor, Van Bhavan,	]
Ramgiri Road, Civil Lines,	]
Nagpur – 440 001.	]

3. The Chief Conservator of Forest (Territorial)	]
Pune Division,	]
Van Bhavan, Bhamburda Van Vihar,	]
Gokhle Nagar, Pune – 411 016.	]

4. The District Collector, Pune	]
New Collector Office Building,	]
Station Road,	]
Opposite Sasoon Hospital,	]
Pune, Maharashtra – 411 001.	]

5. Tehsildar,	]
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Taluka Maval,]
 Tehsildar Office Building,]
 Old Mumbai – Pune Highway,]
 Near Vadgaon – Maval Railway Station,]
 Maval, Pune – 412 106.]

6. Talathi (Khandala)]
 Market Road, Near Jain Temple]
 Khandala – 410 301.] ...Respondents

Mr. Sangramsingh R. Bhosale, Ms. Aarti D. Bhonsale, Ms. Samridhi S. Jain, Mr. Abhishek Salian, Ms. Pushkara A. Bhonsle and Ms. Aarti D. Gaikwad i/by Vidhi Partners - Advocate for the Petitioner

Mr. Vasant S. Gokhale - 'B' Panel - Advocate for the Respondent-State

CORAM : **R. D. DHANUKA AND**
S. M. MODAK, JJ.

RESERVED ON : 01st MARCH, 2022
PRONOUNCED ON : 29th April, 2022

JUDGMENT (PER S. M. MODAK) :-

1. This Court had come across various petitions involving a grievance that land in question is not a private forest under the provisions of Maharashtra Private Forest (Acquisition) Act, 1975 hereinafter referred to as 1975 Act. It is predominantly for the reason that there are defects in the notice and notification issued under Section 35 of 1975 Act. In this Petition also we are supposed to deal with the grievance about :-

- a) Defect in the notice issued under Section 35 (3) of 1975 Act.
- b) Defect in the notification issued under Section 35(1) of 1975 Act.
- c) Whether these defects are sufficient so as not to vest land in the State Government and so also there is an issue of general apathy of

Department of Forest in not implementing the provisions of 1975 Act and also an issue of general apathy of Revenue Department in granting the permission mechanically.

2. On this background, we have heard Mr. Sangramsingh R. Bhosale, Advocate for the Petitioner and Mr. Vasant S. Gokhale, AGP for the Respondent-State.

3. The relevant facts for deciding the controversy are narrated below. The original owner of the land in question is one Bhiwa Shiwa Waghmare. He has entered into an agreement for sale on 15/05/1984 and executed a registered sale deed with the Petitioner on 06/01/1986 The Petitioner is claiming ownership on the basis of said sale deed. His main thrust of argument is that he has purchased the land in question after following the procedure and after taking due care. According to him, the contention of Respondents about vesting of the land is without basis and there are so many lacunaes and defects in the notice and notification. The details are as follows:

Description of land	Gat No. 16 (Old survey No. 3, Hissa No. 2	Admeasuring 8 h. 3 R	Situated at Village Udhewadi (Rajmachi), Tal. Mawal, District Pune
Land purchased	4 H. 20.02 R	–	--
Date of show cause notice under Section 35 (3) of 1975 Act.	16 th August 1956	Issued to Shiwa Bhiwa Waghmare	–
Date of Notification under Section 35(1) of 1975 Act	Issued on 23/01/1959	Published in the gazettee on 05/02/1959	Out of 48 lands described in the schedule, the land at Sr. No. 1, 36 and 46 shown in the name of

			Shiwa Bhiwa Dhakol
Bhiwa Shiwa Waghmare purchased the land old survey no. 3, Hissa No. 2	From Gangadhar Narayan Deshpande	Registered Sale deed dated 02/12/1948	–
The Petitioner entered into an agreement for sale with Bhiwa Shiwa Waghmare	On 15/05/1984	For Rs. 8,600/-	Page No 86
Permission to sale above land to the Petitioner	Under section 36A (1) of MLR Code.	Page 91	–
Registered sale deed in between the Bhiwa Shiwa Waghmare and the Petitioner	06/01/1986	Survey No. 3 Hissa No. 2, 4 H 20 R	Page 93

4. The Respondents contend that when 1975 Act came into force on 30/08/1975, the land in question was a forest land and as such it has vested in the Government as per the provision of Section 3 of 1975 Act. So according to the Respondents, the sale deed relied upon by the Petitioner is not valid sale deed in the eyes of law. Whereas according to the Petitioner proper procedure as contemplated under Section 35 of Indian Forest Act was not followed and as such the law as interpreted in case of *Godrej & Boyce Manufacturing Co. Ltd. and Anr. Vs. State of Maharashtra and Ors.*¹ will be applicable. The sum and substance of the grievances are as follows:-

- a) Notice dated 16/08/1956 was issued to “Shiwa Bhiwa Waghmare” and not to owner in his right name as “Bhiwa Shiwa Waghmare”.
- b) Even there are two defects in the final notification and the

1 (2014) 3 SCC 430

same mistake in the name of the owner has continued alongwith one more mistake of describing the surname as Dhakol (and not Waghmare).

- c) In view of the defects in the notice, there is no question of serving the notice and for want of service of notice the entire further proceedings is illegal.

5. Apart from this the Petitioner relied upon negligent and callous attitude of Department of forest in implementing the provisions of 1975 Act. The Petitioner relied upon following circumstances :-

- a) mutation entry number 225, dated 14th April 2004. As per that entry remark is made in other rights of 7/12 extract of the land in question that the land is reserved as per 1975 Act.

- b) The panchnama dated 27th July 2018 and receipt for possession. It is dated 27th July 2018. These documents mentioned that the department of forest has taken possession of the land in question on the basis of notifications issued as per Section 35 of the Forest Act 1927.

6. Apart from these documents, in order to show his possession over the suit land and activities carried out by the Petitioner on the land in question and in order to show the proper procedure has been followed, the Petitioners relied upon followings documents :-

- (a) Copy of permission dated 5th October 1985, given by the Additional collector Pune under the provisions of Section 36 (A) of Maharashtra Land Revenue Code. As the original owner Bhiwa Shiwa Waghmare was a member of Adiwasi Community said permission was given.
- (b) The mutation entry number 579 thereby taking note of the sale deed.
- (c) Photographs showing certain structures in demolished state.
- (d) A copy of a notice dated 31st January 1997 issued by the Sarpanch of village Rajmachi, Udaywadi thereby asking Mukund Gondhlekar to stop the construction work as it is carried out without permission of the Grampanchayat and Collector Pune.
- (e) The copies of Assessment extracts for various periods ranging from 2006-07 up to the year 2019-20 thereby recording the Petitioner as owner in respect of the house structures.
- (f) Copies of the house tax receipts for various periods.

7. In order to buttress his contention about the possession of the Petitioner over the land in question, the learned Advocate for the Petitioner also relied upon a Panchnama carried out on 4th June 2020. By which the damage caused to the shades due to natural storm has been carried out. Apart from this, there are also correspondence filed by the Petitioner to suggest that the department of forest has taken action against the Petitioner for carrying out construction on the forest. One notice was issued on 6th April 2021, thereby calling the explanation of the Petitioner. The said notice is also challenged in this Petition. There are also various correspondence made by the Petitioner addressed to various authorities including Principal Secretary Forest dated 8th June 2021, there are also inter Departmental correspondence in between officers of the forest department. On their perusal it reveals that the Section officer of department of the Revenue and Forest has called for the opinion of additional Conservator of forest. In turn the opinion of Chief Conservator has also been called for.

8. By way of reply learned Additional Government Pleader Shri Gokhale submitted that it is true that the Forest Department has not taken any action on the basis of Notification issued under Section 35 (1) of the Forest Act. But he invited our attention to the various orders passed by this Court in a PIL filed by Bombay Environmental Group. On there

perusal, it is clear that the department of Forest has not taken any action including making necessary entries on the revenue record of the land which is deemed to be a Forest under 1975 Act. It is also true that this Court is required to intervene particularly when the department of Forest has not taken any action so as to implement 1975 Act.

Law on the point of service of notice

9. Respondents heavily relied upon the provisions of Section 3 of 1975 Act. As per the said provisions, all private forest in the State shall stand acquired and vests in the said Government on the appointed day i.e. 30/08/1975. Prior to that it must be a private forest as defined in Section 2 (f) of the said Act. There are in all six categories in which it is said that a forest land is a private forest. For deciding controversy before us Clause Nos. (ii) and Clause No. (iii) of Section 2(f) are relevant. For ready reference, it is reproduced below :

- “2. (f) “private forest” means any forest which is not the property to Government and includes, -
- (ii) any forest in respect of which any notification issued under sub-section (1) of section 35 of the Forest Act, is in force immediately before the appointed day;
 - (iii) any land in respect of which a notice has been issued under sub-section (3) of section 35 of the Forest Act, but excluding an area not exceeding two hectares in extent as the Collector may specify in this behalf.”

10. So the forest in respect of which there is a notification issued under Section 35(1) of the Indian Forest Act and which is in force immediately before the appointed day will be a private forest. So also any land in respect of which notice has been issued under Section 35 (3) of the Forest Act (with certain exemption) will be a private forest. Both these contingencies are mutually exclusive and need not be satisfied at the same time. It will be relevant to consider the provisions of Forest Act, 1927.

Provisions of Forest Act, 1927

11. Section 35 is included in Chapter V relating to “the control over forest and lands not being the property of the Government”. Section 35 (1) empowers the State Government to regulate or prohibit certain activities in any forest or waste land. The word “Waste land” was deleted by provincial Government. There is rider to Section 35(1) of 1975 Act. There is pre-condition of issuing notice under Section 35(3) prior to issuing Notification under Section 35(1). The purpose of issuing notice is also prescribed. It is for the purpose of giving an opportunity to hear an objection. Section 35(3) uses the word “until after the issuance of a notice to the owner of such forest or land”. It no where uses the phrase “notice must be served”. This is the controversy decided by the Hon’ble Supreme Court in case of *Godrej & Boyce*.

Facts of Godrej and Boyce case

12. The facts and the controversy raised in that case needs to be understood clearly. The Godrej company was a permanent lessee of the land situated in Vikhroli. It was described as Waste land. The purpose of lease was to cultivate the said land. The controversy pertains to 133 acres and 38 gunthas. Godrej was issued with a notice under Section 35(3) of the Forest Act and it was published in the gazette on 06/09/1956. Godrej came with a grievance about non-service of the said notice and getting a knowledge about it subsequently. This notice was challenged before this Court. The grievances put forth were as follows :-

- a) Said notice was not served on Godrej.
- b) The provision of 1975 Act are not applicable to the said land.
- c) There was consent decree in between them and the Government & Government has agreed that the land was appropriated or brought under cultivation by Godrej before, 14/08/1951.
- d) This decree was drawn in a suit filed by Godrej thereby challenging the decision of the Government to bring back the land from Godrej for the reason that it was not cultivated prior to 14/08/1951.
- e) This action was taken by the Government in view of enactment of Salesutte Estates (Land Revenue exemption abolition) Act 1951.

13. This Court rejected the contention of Godrej. The Hon'ble Supreme Court decided the appeal and after considering the provisions of law, the

views expressed in earlier judgment has accepted the contention of Godrej.

14. While deciding the *Godrej & Boyce* case, the Hon'ble Supreme Court has considered various aspects. Various provisions of Maharashtra Private Forest Act and views expressed by the Hon'ble Supreme Court in earlier judgments were considered. In *Godrej & Boyce* case one of the fact which Hon'ble Supreme Court considered was that after issuing a notice under Section 35 (3) of 1975 Act, for 18 years no decision was taken on the said notice [in other words, it has not resulted into issuance of notification under Section 35 (1)]. The Supreme Court emphasized on inaction of the Government to take decision on said notice. Furthermore, there is a factual observation that the land in question cannot be considered as a forest or a waste land. The Hon'ble Supreme Court interpreted the meaning of the word 'issued' appearing in Section 35(3) of 1975 Act as 'served'. It means to say that merely because the word served is not used in Section 35(3), it cannot be said that the purpose will be achieved only by issuing a notice. For that purpose, the Hon'ble Supreme Court also considered other sub-sections of Section 35 as per the Bombay amendment.

15. The Hon'ble Supreme Court was pleased to differ with the view taken by Hon'ble Supreme Court in the case of '*Chintamani*'. In that case,

it was observed that when notice is issued, there is a compliance of Section 35(3) of the said Act. The Hon'ble Supreme Court also considered the background in which the *Chintamani* has been decided. In that case the Revenue authorities have already observed that land is a forest. On this background, the Hon'ble Supreme Court in case of *Godrej & Boyce* has observed that there was no need for the Apex Court to go into the question of the meaning of the word 'issued'. Furthermore, the Hon'ble Supreme Court observed that the amended provisions of Section 35 effected by State of Bombay were not brought to the notice of the Hon'ble Supreme Court in case of *Chintamani*. In nutshell, we have to consider that not only issuance of notice is sufficient but service of notice is also a very important.

Other Judgments

16. These observations were considered by this Court in various judgments. They were quoted by both the sides before us. It will be material to consider those observations. They are as follows:

Judgments relied upon by the Petitioner are as follows.:-

- 1) Shree Maruti Sansthan Trust & Ors. Vs. The State of Maharashtra & Anr.²
- 2) M/s Global Estate Developers Vs. State of Maharashtra & Ors.³

² 2015 SCC Online Bom 7074

³ 2017 SCC Online Bom 8345

- 3) Shri Shashikant Kantilal Pokhama Vs. The State of Maharashtra & Ors.⁴
- 4) Ozone Land Agro Pvt. Ltd. Vs. State of Maharashtra & Ors.⁵
- 5) Nana Govind Gavate (since deceased) through Legal heirs A to J & Ors. Vs. State of Maharashtra, through its Principal Secretary, Revenue and Forest Department and Ors.⁶
- 6) Lalit A. Sangtani through his Power of Attorney Rajiv L. Sangtani Vs. State of Maharashtra⁷

17. We have perused all these judgments very minutely. On reading them, we may find that in almost all the Judgments, the issue was about validity of the notice issued under Section 35(3) of 1975 Act. There was grievance raised that notice under Section 35(3) of the said Act has not been served and the question cropped up was whether it can be said that land in question is deemed to have vested in the State Government after enactment of 1975 Act. In all these judgments, this Court has considered the observations made by the Hon'ble Supreme Court in case of *Godrej & Boyce*. On this background, it has been held that when notice under Section 35(3) of 1975 Act was not served, there cannot be vesting of the land in State Government.

4 2017 SCC Online Bom 1221

5 2016 (1) MahLJ 483

6 2016 SCC Online Bom 340

7 2016 SCC Online Bom 248

18. It is important to note that in the judgments relied upon by the Petitioner delivered by Division Bench of this Court has considered the observations in case of *Godrej and Boyce*, still in some of those judgments, it has been observed that :-

“They have not dealt with the issue about the applicability of Maharashtra Private Forest Act or Indian Forest Act or Forest Conservation Act.”

19. These judgments are in case of *Shree Maruti Sansthan Trust and Ors. Vs. the State of Maharashtra and Anr., M/s Global Estate Developers Vs. State of Maharashtra and Anr. and Shri Sashikant Kantilal Pokhama Vs. The State of Maharashtra & Ors.*

20. On the other hand learned AGP Shri Gokhale, relied upon the observations of this Court in case of *Devkumar Gopaldas Aggarwal and Ors. Vs. State of Maharashtra in WP No. 4814 of 2016* and other connected Writ Petitions. In case of *Devkumar* case also this Court has considered the observations of the Hon’ble Supreme Court in case of *Godrej & Boyce*. On facts, it has been held that the observations in case of *Godrej & Boyce* are not applicable in the *Devkumar Aggarwal* case. It is submitted before us on behalf of the Petitioners that the judgment in case of *Devkumar Aggarwal*, is challenged before the Hon’ble Supreme Court and the matter is pending. He brought to our notice an Order passed by

the Hon'ble Supreme Court in *Special Leave Petition Civil diary No. S-12533 of 2019*. In that matter the Hon'ble Supreme Court has stayed the effect of the judgment given by this court in case of *Devkumar Aggarwal*.

Forest Conservation Act 1980

21. In order to buttress his submission about the applicability of the Forest Conservation Act the learned advocate for the Petitioner relied upon following judgments:-

- (i) In Re: Construction of Park at Noida near Okhla Bird Sanctuary, Anand Arya and Anr. Vs. Union of India and Ors.⁸
- (ii) Rakesh Saini Vs. Ministry of Environment Forest and Climate Change and Ors.⁹
- (iii) B. S. Sandhu Vs. Government of India and Ors.¹⁰
- (iv) Chandra Prakash Budakoti Vs. Union of India and Ors.¹¹

22. We have read those judgments. It is true that Hon'ble Supreme Court and National green tribunal has dealt with the issue when it can be said that it is forest and when it can be said that the provisions of Forest Conservation Act 1980 will be applicable. In case of *Anand Arya Case*, there was an issue about the relevancy of document. On one hand the department of forest relied upon the satellite images to show that it's a forest. On the other hand, the Petitioner relied upon the Government

⁸ (2011) 1 SCC 744

⁹ 2020 SCC Online NGT 1478

¹⁰ (2014) 12 SCC 172

¹¹ (2019) 10 SCC 154

records. It has been observed that the records of the Government have to be given due credence since they pertain to time when project was not even in any one's imagination and its proponents were nowhere on the scene.

23. Whereas in case of Rakesh Saini, National Green Tribunal also dealt with a similar issue whether land was an agricultural land or whether it was a forest land. The purpose for drafting Forest Conservation Act 1980 was also reiterated. It was for the purpose of furthering deforestation which ultimately results into ecological imbalance. As far the provisions of Section 2 of Forest Conservation Act, the State Government is restrained from doing certain acts unless approval of the Central Government is obtained.

24. Whereas in case of B. S. Sandhu, Hon'ble High court has given a finding that the land is a forest land. It was set aside by Hon'ble Supreme Court and the matter is remanded back to the High Court. Hon'ble Supreme Court emphasized on the aspect of the effect of treating the land as a forest land on the legal rights of several villages, agriculturist, farmers, shop owners and inhabitants. There were certain inconsistent documents. The Forest department contend that the land in question was under their control whereas revenue record suggest that it is an agricultural land. The Expert committee report suggested that the lands

are deleted from the list. On this background, the matter was remanded back to a High Court for fresh consideration.

25. Whereas in case of Chandra Prakash Budakoti Hon'ble Supreme Court has opined which are the relevant factors for considering the land as a forest land or not. The National Green Tribunal has directed the Regional Office of Ministry of Environment and Forest at Dehradun to visit the site and give a report, whether it is a forest land or not. On those lands, the constructions of Villas was under way. One direction pertain to certain survey numbers was confirmed because the Ministry of Forest opined that it was Private forest.

26. Whereas learned AGP replied upon judgment in case of *State of Maharashtra Vs. Rajaram Gawas in Writ Petition No. 3943 of 1991*, in the said case, the issue involved before Division Bench of this Court was about the legality of the Order passed by the Sub- Divisional officer revenue thereby returning the land for the reason that it was not a private land. This Court considered the effect of passing the Forest Conservation Act. This Court also considered the observations of the Hon'ble Supreme Court in case of *T. N. Godavarman Thirumulpad Vs. Union of India* in WP No. 202 of 1995. After taking overview of the situation, it has been observed that it was not permissible to return the land under Section 22 (A) of the 1975 Act in view of the provision of Section 3 of the Forest Conservation

Act, unless the approval of the Central Government was obtained. In that case this Court considered the observations of Hon'ble Supreme Court in case of *Chintamani*. It is on the point of what is the meaning of the phrase issuance of a notice used in Section 35 (3) of the Forest Act. It is also true that these observations are set aside by Hon'ble Supreme Court in case of *Godrej & Boyce*. Certainly the observations in case of *Rajaram Gawas* on the point of issuance of notice does not hold good. However the other observations on the point of application of Forest Conservation Act still can be considered. It has further been submitted that this judgment was challenged before Hon'ble Supreme Court and Apex Court has refused to interfere in those observations.

27. In Rajaram Gawas's case this Court also considered the meaning of different clauses given in Section 2(f) of 1975 Act. This Court also considered the two parts of Section 2(f). The first part indicates what Private forest means. Whereas second part indicates what is included within the meaning of the word private forest. This is discussed in para no. 8 of the said judgment. There is also elaboration about Clause number 2 (f) (iii) of 1975 Act. It only says about issuance of a notice under Section 35(3) of Indian Forests Act. If such notice is issued and when 1975 Act came into force, it may happen that the procedure about hearing of objection has not taken place. Because as per Section 24 of 1975 Act,

Section 35 of Indian Forest Act as (amended by provincial Government) stand repealed. So there may be a case wherein a notice is issued under Section 35(3) of the Indian Forest Act, but the further procedure about hearing of objection has not taken place and in the meantime, 1975 Act came into force and Section 35, as amended by State of Bombay stand repealed. It may also happen that only notice under Section 35 (3) of the Forest Act was issued, but further procedure about hearing of objection and issuance of a notification under Section 35(1) of the Indian Forest Act has not taken place. This has been discussed in the said paragraph. It is also true that in that case it was admitted fact that notice under Section 35 (3) of the Indian Forest Act was not served. On this background it has been held that it is not proper for the revenue authorities to restore the land.

28. It is true that now in view of the pronouncement in case of *Godrej & Boyce*, the interpretation of Section 35(3) about the meaning of the word issue has changed. As such the observations in the said judgment of *Prabhakar Gawas* will not be applicable now. Still the other observations about interpretation of Section 2 (f) of 1975 Act and so far as application of Forest Conservation Act will still hold good. It will be material to see to what extent they are applicable.

Conclusion

29. It is important to note that after considering the observations in case of *Godrej and Boyce* and the judgments given by Division Bench of this Court, we may find that there is a material difference in the provision of Section 35 (1) on one hand and the provisions of Section 35 (3) on the other hand of 1975 Act.

30. As per Section 35 (3) issuance and the receipt of a notice is important and such land will become a private forest on the appointed day. Whereas when Notification is issued under Section 35(1) and if such Notification is in force on the appointed day, such land will become a private forest land and will vest in the Government. We may find that legislature while drafting Section 2 (f) of the 1975 Act has taken precaution to include various contingencies wherein, it can be said that the land/forest vests in the Government.

31. It is important to note that in case of *Godrej and Boyce*, the Hon'ble Supreme Court interpreted the provisions of Section 35 (3) of Indian Forest Act. After reading the judgment, we do not find that the issue of validity of Notification under Section 35 (1) of the Indian Forest Act was involved before the Hon'ble Supreme Court. It was neither the case of Forest Department nor the case of *Godrej and Boyce* that the Notification under Section 35 (1) of the said Act was issued. So Hon'ble Supreme Court had no occasion to deal with the effect of Notification under Section

35 (1) of the Indian Forest Act and on the claim that such land vest in the Government. So also A perusal of the judgments relied upon by the Petitioner delivered by a Division Bench of this Court indicates that in those judgments also the issue of Notification under Section 35 (1) of the Indian Forest Act had not arisen. At this juncture, we are not making an observation in so far as the case of *Devkumar Aggarwal* is concerned for the simple reason that those observations have been stayed by Hon'ble Supreme Court.

32. So in this case, the facts are different. There is not only a notice issued under section 35 (3) of the Indian Forest Act, but the stage has gone ahead, and even the respondents claim that Notification under Section 35 (1) of the Indian Forest Act has been issued. In our view in case of *Godrej and Boyce* such contingencies had not arisen before Hon'ble Supreme Court. None of the parties have relied upon any judgment dealing with a case wherein notification under Section 35 (1) of Indian Forest Act is issued, and it was in force when 1975 Act came into force.

Defects in Notice and Notification

33. For the above discussion, we will have to decide this case on the basis of facts of this case. Now we will deal with the claim of the

Petitioner that there are defects in the notice and defects in the Notification. Can it be said that now Petitioner being the purchaser of the land from the original owner is justified in raising those grievance about defects in the notice? Whether such objections can be raised after a long period? Whether such defects result into quashing the notification in question?

34. The Petitioner claims that there are defects in the Notice and Notification as reproduced above. They are issued to one Shiva Bhiwa Waghmare, whereas on record the name of the owner is Bhiwa Shiwa Waghmare. Even the Respondents does not dispute that Notice and Notification mentions the name of the owner in the respect of land in question as Shiwa Bhiwa Waghmare. There is a consensus amongst both the parties. During oral arguments learned AGP submitted that this is a typographical error. It is important to note that Petitioner has impleaded Bhiwa Shiwa Waghmare as a Respondent. He submitted that even though he was served, he has chosen not to appear. Now the question before us is whether we should decide the controversial issue in a writ jurisdiction or whether to relegate that issue to be decided by the concern authorities. The Respondents do admit that there is a defect in the notice and in the notification so to say that the proper name of the owner is not mentioned. It ought to have been “Bhiwa Shiwa Waghmare” whereas it is mentioned

as “Shiwa Bhiwa Waghmare”. At one point of time on the basis of available documents, we could have certainly decided this issue. However, before us both the parties have only argued about defects in the notice and notification and in view of that, the land does not vest in the Government as per Section 3 of 1975 Act. However, it is also important to note that apart from the issue of vesting, it is also important to decide the issue as to whether the land in question is a forest land or not. The circumstances compel us to make certain observations on that issue.

35. It is true that Dividend Bench of this Court in the judgments referred earlier have not expressed any view so far as the applicability of Forest Conservation Act and whether the land in question is a forest land or not. But what we feel is that we should not hesitate in passing certain observation on that issue. The reason is if that issue is kept unanswered, there will be a certain complications in future. The reason is that the approach of the department of forest may be casual and even they may be negligent, but the situation does not prevent us in making certain comment. Everyone is worried about reduction in the forest cover. We are also aware about the global warming. Hence we are inclined to make certain comment.

36. It is true that even though 1975 Act was passed, department of

forest has not taken any steps to make necessary entries on 7X12 extracts of the land in question. The result was that the land continued to be in the name of the owners. At the same time, we also feel that the officers of the department of Revenue have also not taken the precaution while granting the permission to Bhiwa Shiwa Waghmare in selling that land. The learned AGP pointed out to us certain correspondence made by the Forest department to the Revenue department. These documents include

- (a) a copy of a register maintained in respect of Notices issued under Section 35(3) of the Forest Act on 16th August 1956,
- (b) the Google images of the said land,
- (c) correspondence made by Divisional Forest officer Pune Division to Collector on 30th August 1976, thereby informing him to de-mark the land which is acquired as per 1975 Act (in which the village Udhaywadi is mentioned and survey No. 3 is also mentioned)
- (d) one interdepartmental correspondence of the Forest department asking the concerned officers to collect information in respect of a land which is acquired as per the Notification under Section 35 of the Forest Act. It is dated 16th October 1995.

37. In our view there are disputed questions of fact. It is a settled law that in the Writ Jurisdiction, disputed questions of fact cannot be decided. The provisions of Section 6 of 1975 Act are material.

38. From all these documents referred herein above at different stages

by us, it discloses that at some point of time the department of Forest has taken steps in implementing Maharashtra Forest Act. However it was not taken to its logical conclusion. At the same time, the Collector office before granting permission for sale of the land to the Petitioner, seems not to have seen the record. It is pertinent to note that the various villages from Mawal Taluka were declared as a reserved forest in view of the provisions of 1975 Act. So the concerned Revenue authorities must be aware that the land in question is a forest land. It is important to note that whenever any permission is granted by Revenue Officers whether it be under Section 36(A) of Maharashtra Land Revenue Code or under other Sections, inquiry is conducted at the ground level. If the concerned Revenue Officers would have pointed out that this land is a Forest land, probably the permission under Section 36(A) would not have been granted. Be that as it may, the situation persuaded the Petitioner to purchase this land.

39. It is important to note that in case of *Godavarnam case* the issue arisen before Hon'ble Supreme Court was which land could be considered as a forest land, whether the dictionary meaning is to be given or not. There were certain directions issued to all the State Governments. The State Governments were directed to constitute a Committee consisting of experts. The Committee was further directed to survey the land in their

respective States and to give opinion which of those lands are the forest lands or not. This must have been done in our state. However, none of the parties have pointed out to us whether the Expert Committee for our State have opined about the land in question. We are taking cognizance of this direction for the simple reason that in a Petition before us not only the issue about vesting of land is relevant but also the issue whether land in question is a forest land or not. As none of the parties have argued that issue before us, it does not detain us from dealing that issue.

40. We deem it proper to relegate that issue to be decided as per Section 6 of Maharashtra Private Forest Act. As per Section 6, the Collector is required to decide two questions:-

“First, Whether a land in question is a Private forest or not, and

Second, whether it vest in the Government.”

41. At the same time, the observations of Hon’ble Supreme Court in the few of the judgments relied upon by Petitioner on the point of interpretation of Forest Conservation Act were also important. Certain guidelines have been given by the Hon’ble Supreme Court how to deal with the said issue. We feel that the concerned Collector (who is the Competent Authority under Section 6 of 1975 Act) may also decide the issue whether land in question is a forest land or not. If it is a Forest land, the question will arise whether the sale deed of the Petitioner in question

can withstand the test of law.

42. Even though belatedly the Forest Department has prepared a panchnama in the year 2018 thereby taking possession of the land in question, at this juncture also, we find that there is a lapse on the part of department of Forest. Because in the year 2004, they made entries on 7/12 extract of the land in question about the private forest however they took possession in the year 2018. If such an attitude continues it is difficult to opine what will happen to our existing forest. If the Collector comes to a conclusion that the land in question is a forest land, then the Petitioner's claim as to ownership on the basis of sale deed will not survive.

43. There is an objection raised on behalf of the Government about maintainability of Petition. It is true that the Original owner has not raised any issue at any time. He has not appeared before this Court. When the Collector decides the issue under Section 6 of the Said Act, he will also bear in mind that the original land owner has not raised this issue till date. He may also verify whether at any point of time this issue was raised by the original owner. The Respondents are at liberty to produce the materials before the Collector to the effect that the Petitioner has not raised any issue or has raised it but that has been decided against him.

44. It is true that the Petitioner has purchased the land by executing a registered sale deed. It is also true that land in question stands in their

name on 7X12 extract. It is also true that they have filed various documents showing their possession and carrying out certain activities. It is also true that they have planted various trees with the help of social Forest department. It is also true that they have received a recommendation from the Deputy Conservation of Forest for collecting samples from State of Karnataka. The Petitioner can very well rely upon all these events. It is true that the department of forest has issued a notice dated 06/04/2021 thereby asking the Petitioner to stop the work of construction. When we have relegated the issue to the Collector till the issue is decided that Petitioner can not carry out any work on the land in question. There is also panchnama to suggest that department of forest has taken the possession of the land in question. For this discussion, we are inclined to relegate the issue to the Collector under Section 6 of 1975 Act. It is true that in *Whirlpool Corporation* the Hon'ble Supreme Court has dealt with some of the contingencies wherein the Writ Petition under Article 226 of the Constitution of India is maintainable. There cannot be dispute about the said proposition. We are not inclined to entertain this Petition as disputed questions of fact are involved. We pass the following order :-

ORDER

- (i) Writ Petition is partly allowed.
- (ii) The Collector Pune is directed to decide following issues under

Section 6 of Maharashtra Private Forest Act as to:-

- (a) Whether there exist of forest on the land in question and
- (b) Whether land in question has vested in the Government on the appointed day.
- (iii) Both the parties are directed to appear before the Collector on 18th May 2022 at 11 a.m..
- (iv) Both the parties are at liberty to file pleading and to file documents on the record.
- (v) The Collector is directed to decide the issue within the period of six months.

45. In the view of above observations, Writ Petition stands disposed of.

No Order as to costs.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]