

Varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 594 OF 2022**

Vishram Vishwanath Kunte ...Petitioner
Versus
The State of Maharashtra through Revenue &
Forest Department & Ors ...Respondents

Mr Kailas Dewal, i/b Yash Dewal, for the Petitioner.
Mr PG Sawant, AGP, for the Respondent-State.

**CORAM G.S. Patel &
 Gauri Godse, JJ.**
DATED: 16th September 2022

PC:-

1. Rule. Rule made returnable forthwith and the Petition is taken up for final hearing.

2. The Affidavit in Reply to this Petition filed by one Sanjay Nivrutti Waghmode, Assistant Conservator of Forest, Alibag District Raigad seems to us to exemplify a very peculiar stand taken in almost all matters arising under the Maharashtra Private Forest (Acquisition) Act 1975 (“**the Maharashtra Act**”). Consistently, the State Government and its various officers in the Forest Department file affidavits to the effect that the decision of the Supreme Court in *Godrej and Boyce Manufacturing Company Ltd & Anr v State of*

*Maharashtra and Others*¹ is limited to the facts of that case, is restricted to the 19 petitioners or applicants before the Supreme Court and lays down no law. This is precisely the stand taken in the present Affidavit in Reply in Paragraph 9 at page 86. We reproduce paragraph 9 in its entirety from pages 86 and 87:

“9. With reference to Para No.6 to 9 of the Petition, I strongly deny the contention of the petitioner as on appointed day, dated 30.8.1975, the MPF(A) Act, 1975 came into force, the suit land in petition being a “Private Forest” was vested in Government as per Section 3 of the MPF(A) Act, 1975, free from all encumbrances as it is ‘Deemed Reserved Forest’. Thus it is Government property, all the Revenue record of the suit land should be mutated in the name of Government. I further submit that the MPF(A) Act, 1975 is a special Act, placed in the Ninth Schedule as a land reform Act, and it makes a straight provision of deemed acquisition of private forest and its vesting in the State Government on the appointed day i.e., 30.08.1975. By virtue of Section 3(1) and 3(3) of the Maharashtra Private Forests(Acquisition) Act, 1975, the said land stood deemed ‘Reserved Forests’ vested in the Government from appointed day i.e. 30.08.1975. There is no provision under this act to issue the notice, so question of service of notice does not arise.

It is submitted that, the land in question has forests cover since long back till today. The photographs, Google Imageries and seven twelve extracts of the suit land produced from record show that, the suit land is uncultivated. These respondents claims that, the suit land is acquired under the provisions of the MPF(A) Act, 1975, therefore the ratio laid down in Judgment and Order dated 30.01.2014 by the Hon’ble Supreme Court in the case of

1 (2014) 3 SCC 430

Godrej and Boyce Co. Ltd V/s State of Maharashtra and Others (reported at AIR 2014 SC 1446 and other connected Civil Appeals) and the orders issued by this Hon'ble Court does not provide any exemption to the Petitioner in this case.”

3. The case of the Petitioner is simple. He claims to own a tract of land bearing Gat No. 201 Old Survey Nos. 89/15 and 89/16 of about 1 Hectare 90 Ares at Mouje Bamangaon, Taluka Alibaug, District Raigad. The Petitioner says that he is in actual possession and is cultivating this land.

4. There is a Mutation Entry No. 377 of 28th June 2001, a copy of which is at page 26 which purported to say that the land was forest land, and that an enquiry under Section 22A of the Maharashtra Act was pending. Four years later came a Mutation Entry No. 455 of 27th May 2005 saying that the Petitioner's land was subject to provisions of Maharashtra Act. According to the Petitioner, while a notice under Section 35(3) of the Indian Forests Act, 1927 may have been “issued”, it was never served. The Petitioner therefore says that for the purposes of Section 2(f)(iii) of the Maharashtra Act, there was no effective notice and that the land did not stand vested in the State Government under the Maharashtra Act. Mr Dewal points out that the Supreme Court's decision in *Godrej and Boyce* in terms laid down as a matter of law that mere issuance of notice is insufficient. That notice must be served.

5. The Affidavit in Reply takes a contrary stand. In paragraph 7 at page 84 the assertion is that a notice of 18th January 1961 was “issued” to the then Khatedar, one Laxman Vishnu Kunte for these lands. A copy of that notice is annexed. There is no averment that the notice was ever served. The next submission is that because the notice was issued, and simply on account of that issuance, the land stood vested in the State Government. This is directly contrary to and in the teeth of the ratio of the Supreme Court decision in *Godrej and Boyce*.

6. On the basis that the land was vested, according to this affidavit, proceedings were taken under Section 22A for restoration for some or all of this land. Paragraph 11 of the Affidavit says that approval of the Central Government has been received under Section 2 of the Forest (Conservation) Act, 1980 but a final order is yet to be passed by the State Government. That approval is of 7th July 1995. This means that for almost 30 years the State Government sat on this approval and did nothing but continued to treat the land as private forest land vested in the State Government.

7. The stand taken on sworn affidavit by the Assistant Conservator of Forest is directly to contrary to settled law. To our mind, this constitutes continued defiance of the law laid down by Supreme Court in *Godrej and Boyce*. It is not open to the State Government to contend that the decision in *Godrej and Boyce* lays down no law, or is restricted to the facts of the case or is limited to the parties who are before that Court. Under Article 141 of the Constitution of India the law declared by Supreme Court is binding on all Courts. It is certainly binding on all authorities. This

continued defiance of the Order and Judgment of the Supreme Court and of the law laid down by the Supreme Court will need to be dealt with for once and for all.

8. As a matter of courtesy, we are today directing that a copy of this order be placed before the Learned Advocate General. At the same time, we are making it clear that if this stand is repeated once more in any affidavit in any matter after this, we will issue contempt proceeding suo moto against the officer who has filed such an affidavit.

9. Mr Sawant on behalf of State Government makes a request that the affidavit may be allowed to be withdrawn and replaced with what he calls a proper affidavit. We would have considered that immediately but for the fact that this is the stand that the Government takes in every single matter involving the Maharashtra Act.

10. To put it plainly: once the ratio in *Godrej and Boyce* is applied, as it must be, then the lands must be released from any acquisition and all mutation entries will stand quashed. There is simply no answer to this. As a result, there would be no question of the application of the Maharashtra Act or any proceeding under Section 22A of that Act or of any order by the Central Government. The order of the Central Government is not annexed but presumably the restoration within the frame of Section 22A is on the basis that the land is under cultivation. Some photographs annexed to the Rejoinder and the Panchanama are relied on by the Petitioner in this

regard. The entire application under Section 22A is predicated upon the land being validly and lawfully vested in the State Government under the Maharashtra Act. Following the decision of the Supreme Court in *Godrej and Boyce*, if there was no such vesting in the State Government to begin with, then the question of any action under Section 22A cannot, could not and does not arise.

11. Having regard to these circumstances, we make Rule absolute in terms of prayer clauses (a) and (b). Mutation Entry Nos. 377 and 455 are quashed and set aside in regard to the subject lands. The necessary mutation entry showing the Petitioner's rights as an agriculturist over these lands is to be effected within four weeks from today. We clarify that we have not examined the aspect of whether under any other provision of Section 2(f) of the Maharashtra Act the land can be deemed to be a private forest. If such a provision exists, the Government is at liberty to proceed in accordance with law.

12. Rule is made absolute in these terms with no order as to costs.

13. A copy of this order is to be forwarded to the Learned Advocate General.

(Gauri Godse, J)

(G. S. Patel, J)