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REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10724 OF 2017**

1. **SUNIL SHAMRAO PATIL,**
Adult, Occup: Business, R/o 134/4/8,
Ashok Nagar, Pune - 411007
2. **ANUPAMA SUNIL PATIL,**
Adult, Occ: Business, R/o 134/4/8,
Ashok Nagar, Pune-411007

... PETITIONERS

~ VERSUS ~

1. **THE STATE OF MAHARASHTRA,**
Through its Principal Secretary,
Revenue & Forest Department, Govt.
of Maharashtra, Mantralaya, Mumbai-
400032.
2. **CHIEF CONSERVATOR OF
FOREST,**
Govt. of Maharashtra, Mantralaya,
Mumbai - 400032.
3. **DEPUTY CONSERVATOR OF
FOREST,**
Alibag, Dist. Raigad.
4. **THE COLLECTOR, RAIGAD,**
Having office at Raigad.

... RESPONDENTS

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5. **SUB DIVISIONAL OFFICER,**
Alibag Division, Alibag, Dist. Raigad.
6. **THE TAHSILDAR, PANVEL,**
Dist. Raigad
7. **THE CIRCLE OFFICER,**
Having Charge of Lonivali Village,
office at Panvel, Taluka Panvel,
Dist. Raigad

APPEARANCES

FOR THE PETITIONER	Mr Jagdish Reddy, for the Petitioner.
FOR RESPONDENT- STATE	Mr K S Thorat AGP, for the State.

**CORAM : G.S.Patel &
Gauri Godse, JJ.**

RESERVED ON : 2nd August 2022

PRONOUNCED ON : 11th August 2022

JUDGMENT (Per Gauri Godse J):-

1. **Rule.** By consent, Rule is made returnable forthwith.
2. In this Petition, relief is sought of quashing and setting aside mutation entry No. 1736 dated 23rd July 2001 in respect of Petitioners' property bearing survey No. 28/1/A, 68, 69 and 70 ("**the said land**") situated at village Lonivali, District Raigad. By the said mutation entry, the name of the Government of Maharashtra was entered in other rights column by treating the said

land as a private forest. It is further prayed in the Petition that by exercising powers under Article 226 of the Constitution of India, the Respondent Nos. 2 and 3 be directed to take immediate steps to implement the order dated 10th April 2003 passed by Respondent No. 4 - Collector, District Raigad, in Private Forest Case No. 1 of 2003. By the said order dated 10th April 2003, the Collector has passed a reasoned order under Section 22A of the Maharashtra Private Forest (Acquisition) Act, 1975 (“**the MPFA**”). By the said order, the Collector directed Forest Department to send the necessary proposal to the Central Government in view of the spirit of the legislation while enacting Section 22A of the MPFA.

3. The Petitioners claim to be the owners of the said land which earlier belonged to Bandya Dadya Pawar, Bhanvnnya, Tukaram Genu Balekar and Vithu Kushaba Dhanavade. Thereafter, said land was transferred in the name of Bandya Pawar and others from whom the Petitioners purchased some portion being 991.90 Gunthas from survey No. 69 and 822.40 Gunthas from survey No. 70 by way of registered sale deed dated 13th January 2011 and Deed of Rectification dated 25th November 2013. The Petitioners also claimed that there was an agreement for sale dated 31st January 2011 executed by the original owners in respect of survey No. 28/1/A and survey No. 68 for an area of 1166.25 Gunthas and 7125.40 Gunthas respectively. The Petitioners stated that their names were entered in the revenue records in respect of survey Nos. 69 and 70 and that they are also in physical possession of the said land. The Petitioners further stated that in other rights column, name of the Forest Department of the Government of Maharashtra is entered, which shows that inquiry under Section 22A of the MPFA is pending.

4. On making enquiries, the Petitioners were informed that the Government of Maharashtra through the Deputy Conservator of Forest, Alibag had filed Private Forest Case No. 1 of 2003 contending that notices under sub-Section 3 of Section 35 of the Indian Forest Act, 1927 (**“the Forest Act, 1927”**) were issued. However, in the said proceedings, the Forest Department failed to prove that notices were in fact anytime served upon the erstwhile owners of the said land. After considering the documentary evidence on record, the Collector had passed a reasoned order holding that no evidence was produced by the Forest Department to show that notices under sub-Section 3 of Section 35 of the Forest Act, 1927 were served upon the erstwhile owners. Thus, by the said order, the Collector issued necessary directions for sending the necessary proposal to the Central Government in view of spirit of the legislature while enacting Section 22A of the MPFA.

5. In spite of the said order dated 10th April 2003, no steps were taken by the office of the Conservator of Forest and even today, the revenue records in respect of the said land record that land belongs to the Forest Department of the Government of Maharashtra, in view of mutation entry No. 1736. The Petitioners also relied upon information received under the Right to Information Act, 2005. The said information reveals that the office of the Deputy Conservator of Forest does not have any document to show whether notices under sub-Section 3 of Section 35 of the Forest Act, 1927 were served upon erstwhile owners. The Petitioners thereafter made an application dated 24th July 2017 to the Forest Department requesting for implementation of the aforesaid order dated 10th April 2003 passed in Forest Case No. 1 of 2003. However, no action has

been taken on the application filed by the Petitioners. With such submissions, the Petitioners relied upon the Judgment of the Supreme Court in case of *Godrej & Boyce Mfg Co Ltd & Anr v The State of Maharashtra & Ors.*¹

6. Thus, it was submitted on behalf of the Petitioners that said land was excluded from the purview of the MPFA as no notices under sub-Section 3 of Section 35 of the Forest Act, 1927 were served upon the erstwhile owners of the said land. Hence, in absence of service of such notice, the declaration of the said land as a private forest under the MPFA was untenable and is required to be set aside.

7. Learned Advocate for the Petitioners has relied on the Judgment dated 27th July 2022 passed by this Court in Writ Petition No. 319 of 2019. This Judgment squarely covers the submissions made by the Petitioners in support of their contentions regarding applicability of the decision of the Supreme Court in the case of *Godrej & Boyce.*

8. In response to the submissions of the Petitioners, an Affidavit in Reply has been filed on behalf of the Respondent nos. 1, 2 and 3. It is sought to be contended in the said Affidavit in Reply that the status of the said land is as 'Forest' is irrespective of notice or notification under Section 35 of the Forest Act, 1927. It is contended that as on appointed day i.e. 30th August 1975, the MPFA came into force and all the 'Private Forests' stood vested in the Government as

1 (2014) 3 SCC 430.

per Section 3 of the MPFA. Thus, the acquired forests are Government property and the land records need to be mutated in the name of the State Government. In the said Affidavit in Reply, reliance is placed on register which is known as ‘Golden Register’ having all the entries of ‘Private Forest’ with respect to notices issued to the erstwhile owners. It is thus stated that as per the entry in the golden register, a notice was issued in April 1958 to the then owner Mahadu Bhavna Bhalekar, however, copy of the notice was not found in the record.

9. For the purpose of considering the submissions of both the parties, it is necessary to refer to the relevant provisions of the Indian Forest Act, 1927 which reads thus:

“35. Protection of forests for special purposes. — (1) The State Government may, by notification in the Official Gazette, regulate or prohibit in any forest or waste-land

- (a) the breaking up or clearing of land for cultivation;
- (b) the pasturing of cattle; or
- (c) the firing or clearing of the vegetation;

when such regulation or prohibition appears necessary for any of the following purposes:—

- (i) for protection against storms, winds, rolling stones, floods and avalanches;
- (ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of land slips or of the formation of ravines, and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

(iii) for the maintenance of a water-supply in springs, rivers and tanks;

(iv) for the protection of roads, bridges, railways and other lines of communication;

(v) for the preservation of the public health.

(2) The State Government may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government.”

10. The Supreme Court in the case of *Godrej & Boyce* held that service of notice under sub-Section 3 of Section 35 of the Forest Act, 1927 was mandatory. The Supreme Court has considered the expression ‘issue’ and held that the word ‘issue’ should be read in its wider perspective and would entail that mere issuance of notice under sub-Section 3 of Section 35 of the Forest Act, 1927 is not sufficient for any land to be declared as a ‘Private Forest’ within the meaning of Section 2(f)(iii) of the MPFA.

11. Learned AGP while opposing the Petition has relied upon the record maintained by the State Government which is referred to as ‘Golden Register’. Though a reference to the said land in the

Golden Register is relied upon, there is no record produced to show that notices under sub-Section 3 of Section 35 of the Forest Act, 1927 were served to the erstwhile owners.

12. After careful consideration of the facts pleaded in the Petition as well as the Affidavit in Reply, it is nowhere found that notice as required under sub-Section 3 of Section 35 of the Forest Act, 1927 was served. It will be thus necessary to make a reference to the relevant provisions of the MPFA. Clause (c-i) and clause (f) of Section 2 of the MPFA reads thus:

(c-i) “forest” means a tract of land covered with trees (whether standing, felled, found or otherwise), shrubs, bushes, or woody vegetation, whether of natural growth or planted by human agency and existing or being maintained with or without human effort, or such tract of land on which such growth is likely to have an effect on the supply of timber, fuel, forest produce, or grazing facilities, or on climate, stream flow, protection of land from erosion, or other such matters and includes—

- (i) land covered with stumps of trees of forest ;
- (ii) land which is part of a forest or lies within it or was part of a forest or was lying within a forest on the 30th day of August 1975 ;
- (iii) such pasture land, water-logged or cultivable or non-cultivable land, lying within or linked to forest, as may be declared to be forest by the State Government ;
- (iv) forest land held or let for purpose of agriculture or for any purposes ancillary thereto ;
- (v) all the forest produce therein, whether standing, felled, found or otherwise.

(f) “private forest” means any forest which is not the property of Government and includes,—

- (i) any land declared before the appointed day to be a forest under section 34A of the Forest Act ;
- (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 ;
- (iv) land in respect of which a notification has been issued under section 38 of the Forest Act.
- (v) in a case where the State Government and any other person are jointly interested in the forest, the interest of such person in such forest;
- (vi) sites of dwelling houses constructed in such forest which are considered to be necessary for the convenient enjoyment or use of the forest and lands appurtenant thereto.”

13. Sections 3, 5 and 6 of the MPFA read 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 Agricultural Lands (Ceiling on Holdings) Act, 1961, for the time being in force or any building or structure standings 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.”

14. Another provision which is necessary to be referred to is Section 35 and 36A of the Forest Act of 1927 as amended by Bombay Act No. 24 of 1955 and Maharashtra Act No. 6 of 1961 which reads thus:

“**BOMBAY.**—(1) In its application to the State of Bombay, for sub-section (1) of Section 35, the following shall be *substituted*, namely:—

“35. (1) The Provincial Government may, by notification in the Official Gazette,—

- (i) regulate or prohibit in any forest—
 - (a) the breaking up or clearing of the land for cultivation;
 - (b) the pasturing of cattle;
 - (c) the firing or clearing of the vegetation;

- (d) the girdling, tapping or burning of any tree or the stripping off the bark or leaves from any tree;
 - (e) the lopping and pollarding of trees;
 - (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;
- (ii) regulate in any forest the regeneration of forests and their protection from fire;

when such regulation or prohibition appears necessary for any of the following purposes:—

- (a) for the conservation of trees and forests;
- (b) for the preservation and improvement of soil or the reclamation of saline or water-logged land, the prevention of land-slips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;
- (c) for the improvement of grazing;
- (d) for the maintenance of a water supply in springs, rivers and tanks;
- (e) for the maintenance, increase and distribution of the supply of fodder, leaf manure, timber or fuel;
- (f) for the maintenance of reservoirs or irrigation works and hydro-electric works;
- (g) for protection against storms, winds, rolling stones, floods and drought;

(h) for the protection of roads, bridges, railways and other lines of communication; and

(i) for the preservation of the public health.”

(2) In sub-section (2) of Section 35 of the said Act for the words “in or upon any forest or wasteland” the words “in any forest” shall be *substituted*.

(3) In sub-section (3) of Section 35 of the said Act the words “or land” shall be *deleted*. [*Vide* Bombay Act 62 of 1948, S. 3]

(2) In Section 35 of the said Act,—

(1) in sub-section (3), after the word “until after the issue” the words “by an officer authorised by the State Government in that behalf” shall be *inserted*;

(2) after sub-section (3), the following sub-sections shall be *added*, namely:—

“(4) A notice to show cause why a notification under sub-section (1) should not be made, may require that for any period not exceeding six months, or till the date of the making of a notification, whichever is earlier, the owner or such forest and all persons who are entitled or permitted to do therein any or all of the things, specified in clause (i) of sub-section (1), whether by reasons of any right, title or interest or under any licence or contract or otherwise, shall not, after the date of the notice and for the period or until the date aforesaid, as the case may be, do any or all the things specified in clause (i) of sub-section (1), to the extent specified in the notice.

(5) A notice issued under sub-section (3) shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908 (V of

1908), for the service of summons and shall also be published in the manner prescribed by rules.

(6) Any person contravening any requisition made under sub-section (4) in a notice to show cause why a notification under sub-section (1) should not be made shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.” [*Vide* Bombay Act 24 of 1955, S. 4].

MAHARASHTRA.—In its application to the State of Maharashtra, in Section 35,—

(i) in sub-section (4), for the words “six months” the words “one year” shall be *substituted*;

(ii) after sub-section (5), the following sub-section shall be *inserted*, namely:—

“(5-A) Where a notice issued under sub-section (3) has been served on the owner of a forest in accordance with sub-section (5), any person acquiring thereafter the right of ownership of that forest shall be bound by the notice as if it had been served on him as an owner and he shall accordingly comply with the notice, requisition, and notification, if any, issued under this section.”;

(iii) after sub-section (6), the following sub-section shall be *inserted*, namely:—

“(7) Any person contravening any of the provisions of a notification issued under sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine, or with both.” [*Vide* Mah. Act 6 of 1961, S. 9].

“36-A. *Manner of serving notice and order under Section 36.*—The notice referred to in sub-section (1) of Section 36 and the order, if any, made placing a forest under the control of

a Forest-officer shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the service of summons.”

15. It will be also necessary to make a reference to the decision of the Supreme Court in the case of *Godrej & Boyce*. Paragraph 1 of the said decision reads thus:

“1. Leave granted. The principal question for consideration is 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. In our opinion, the question must be answered in the negative. Connected therewith is the question whether the word "issued" in Section 2(f)(iii) of the Maharashtra Private Forests Acquisition Act, 1975 read with Section 35 of the Indian Forest Act, 1927 must be given a literal interpretation or a broad meaning. In our opinion the word must be given a broad meaning in the surrounding context in which it is used. A tertiary question that arises is, assuming the disputed lands are forest lands, can the State be allowed to demolish the massive constructions made thereon over the last half a century. Given the facts and circumstances of these appeals, our answer to this question is also in the negative.”

(Emphasis added)

16. The Supreme Court the case of *Godrej & Boyce* also considered the question whether disputed land was a forest under clause (c-i) of Section 2 of the MPFA. Further, the Supreme Court

considered the question regarding issuance of notice under sub-Section 3 of Section 35 of the Forest Act, 1927 and held thus:

“55. A notice under Section 35(3) of the Forest Act is intended to give an opportunity to the owner of a forest to show cause why, inter alia, a regulatory or a prohibitory measure be not made in respect of that forest. It is important to note that such a notice pre-supposes the existence of a forest. The owner of the forest is expected to file objections within a reasonable time as specified in the notice and is also given an opportunity to lead evidence in support of the objections. After these basic requirements are met, the owner of the forest is entitled to a hearing on the objections. This entire procedure obviously cannot be followed by the State and the owner of the forest unless the owner is served with the notice. **Therefore, service of a notice issued under Section 35(3) of the Forest Act is inherent in the very language used in the provision and the very purpose of the provision.**

58. Finally, Section 35(5) of the Forest Act mandates not only service of a notice issued under that provision “in the manner provided in the Code of Civil Procedure, 1908, for the service of summons” (a manner that we are all familiar with) but also its publication “in the manner prescribed by rules”. This double pronged receipt and confirmation of knowledge of the show-cause notice by the owner of a forest makes it clear that Section 35(3) of the Forest Act is not intended to end the process with the mere issuance of a notice but it also requires service of a notice on the owner of the forest. The need for ensuring service is clearly to protect the interests of the owner of the forest who may have valid reasons not only to object to the issuance of

regulatory or prohibitory directions, but also to enable him/her to raise a jurisdictional issue that the land in question is actually not a forest. The need for ensuring service is also to prevent damage to or destruction of a forest.

(Emphasis added)

17. Thus, the law settled by the Supreme Court in the case of *Godrej & Boyce* needs to be applied to the facts of the present case. Considering the statements made in the Affidavit in Reply of Shri. Nandkishor Nanasaheb on behalf of Respondent Nos. 1, 2 and 3, it is not even the case made out that notices under sub-Section 3 of Section 35 of the Forest Act, 1927 were served upon the erstwhile owners of the said land. It is not even a case made out that a Notification under sub-Section 1 of Section 35 was issued with respect to the said land. The only reliance placed in the affidavit is to some notice issued in the month of April 1958 to one Mahadu Bhavna Bhalekar as reflected in the 'Golden Register'. In the absence of any proof of service of notice, sub clause (iii) of clause (f) of Section 2 of the MPFA is not applicable to the said land. Hence, the said land cannot be termed to be a 'Private Forest' under the MPFA. Hence, the said land which is subject matter of the Petition cannot be said to vest in the State Government under sub-Section 1 of Section 3 of the MPFA.

18. With respect to entry made in the revenue record, the same is based on assumption that said land being a 'Private Forest' stands vested in the State Government. In view of the law laid down in the case of *Godrej & Boyce* and in view of the statements made in the

Affidavit in Reply on behalf of Respondents Nos. 1, 2 and 3, the said land survey Nos. 28/1/A, 68, 69 and 70 cannot be said to be 'Private Forest' under sub-clause (iii) of clause (f) of Section 2 of the said MPFA and, therefore, there is no vesting in the State Government by virtue of Section 3 of the MPFA. Only on this ground, the prayer of the Petitioners for quashing and setting aside the impugned mutation entry No. 1736 dated 23rd July 2001 in respect of the said land needs to be accepted.

19. It is necessary to make it clear that the issue involved in the present Petition is examined only in the context of the contention that whether the said land constitutes a 'Private Forest' under the MPFA on the basis of some notice of April 1958 under sub-Section 3 of Section 35 of the Forest Act, 1927. It is thus, necessary to make it clear that we have not examined the question of applicability of the provisions of the Forest Act, 1927 and the Forest Conservation Act of 1980 on any other ground. We have not made any adjudication on the status of the said land except the issue whether the same is a 'Private Forest' in accordance with sub-Clause (iii) of clause (f) of Section 2 of the MPFA. Thus, our findings are only to the extent that said land being survey Nos. 28/1/A, 68, 69 and 70 is not a 'Private Forest' within the meaning of sub-clause (iii) of clause (f) of Section 2 of the MPFA and did not vest in State Government under Section 3 of the MPFA.

20. Hence, the following order:

- (a) Subject to the clarification recorded in paragraph no. 19, the impugned mutation entry No. 1736 dated 23rd July 2001 in respect of Petitioners' lands being survey Nos. 28/1/A, 68, 69 and 70 of village Lonivali, District Raigad is quashed and set aside;
- (b) The Chief Conservator of Forest, Government of Maharashtra and the Deputy Conservator of Forest, Alibag, District Raigad are directed to take the necessary action to implement the order dated 10th April 2003 passed by the Collector, Raigad in Private Forest Case No. 1 of 2003; and
- (c) Rule is made absolute in above terms with no order as to costs.

(Gauri Godse, J)

(G. S. Patel, J)