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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1236 OF 2022

Prakruti Developers Through Its Proprietor ...Petitioner
Versus
Forest Range Officer, Pune Wanvadi ...Respondent

Mr Balasaheb R Deshmukh, *for the Petitioner.*
Mr A I Patel, Addl.GP, *a/w S.D. Vyas 'B' Panel Counsel for*
Respondent – State.

CORAM G.S. Patel &
Prithviraj K Chavan, JJ.
DATED: 29th June 2022

PC:-

1. Heard. The Petition impugns an order of the Assistant Conservator of Forest (“ACF”) dated 27th October 2021. A copy of this order is at Exhibit “H” at page 36. In paragraph 7, the ACF *inter alia* held that the Petitioner, a firm of developers, had encroached on a part of Survey No. 41 of village Mohammedwadi, Range - Pune, District Pune. The area of the encroachment was 0.0459 Hectares in Survey No. 41. Mr Deshmukh says there is no encroachment. His clients had earlier purchased Survey No. 42 from various agricultural land owners. He draws our attention to a map prepared by the authorities under the Maharashtra Land Revenue Code, 1966 at the Petitioner’s instance showing the

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boundaries of the Petitioner's purchased land Survey No. 42. Mr Deshmukh also points out that on 1st March 1879, the erstwhile State of Bombay issued a declaration that an area of 19 Acres and 21 R equivalent to 781 R was reserved forest. He maintains that this was the reserved forest on Survey No. 41. But in the impugned order and the map at page 71 relied on by the Forest Department the area of Survey No. 41 is shown as 790 R or 7.90 Hectares. Mr Deshmukh submission is that this discrepancy of 9 Are is unexplained by the Forest Department and in itself shows that there could not have ever been an encroachment by the Petitioner.

2. There may be a fundamental calculation error here. On our reckoning, 19 Acres is 769 Are, and therefore the 1879 declaration would be of $769 + 21$ Are, i.e. exactly 790 area. If this be so, then, as Ms Vyas points out, there is simply no basis to the Petition.

3. Ms Vyas maintains that there was an encroachment. The Petitioner has not fully traced title nor is there an accurate demonstration of the Petitioner's land holding. She invites attention to paragraphs 6 and 7 of the Affidavit in Reply page 47 which read thus:

"6. I say that, as per Section 72 of the Act the Forest Officers are invested with the power to survey, demarcate and make a map of any land. The Respondent measured Survey No.41 which is a reserved forest and found that the Petitioner had committed encroachment upon the reserved forest to the extent of 0.0459 H. by raising a tin sheet compound. I further state that there are fixed boundary marks in the reserved forest. The measurement carried out on the basis of those boundary marks are binding on the

adjoining land holders. I further state that the encroachment committed by the Petitioner as well as the encroachment committed by other adjoining holders has been removed by following due process of law and as per the impugned Judgment and Order passed by the ACF on 27/10/2021. After removal of the encroachment the Petitioners raised a compound wall within the boundary of Survey No.42. Hereto annexed and marked as **Exhibit-R-3** is a copy of the map showing encroachment by the Petitioner.

7. I state that, the Petitioner had placed on record a map prepared by the Taluka Inspector of Land Records on 20/01/2007. That map is of Survey No.42 while the encroachment is committed in Survey No.41. The map of Survey No.42 can not show encroachment over Survey No.41. The Respondent measured Survey No.41 which is a reserved forest and found that the Petitioner had committed encroachment upon the reserved forest to the extent of 0.0459 H. by raising a tin sheet compound. I further state that the Petitioner has not produced on record any map of Survey No.42 showing the tin sheet compound within the boundary of that land.”

4. She also points out that it is not just the Petitioner but several others were similarly found to be encroachers. Also, the ACF has very precisely identified the portions that were encroached.

5. In our view, there is a significant lacuna in the Petitioner’s case. We are being asked to presume the correctness of boundaries and of title. It is difficult to do anything of the kind within the frame of a Writ Petition under Article 226 of the Constitution of India. The Petitioner must establish its title and boundaries and must do

so in an appropriate proceeding in a Court of competent jurisdiction. We do not think there is merit in Mr Deshmukh's expressed apprehension that Section 74 of the Indian Forest Act will bar such a Suit. Section 74 is not in fact a jurisdiction ouster clause at all. It only provides the usual, standard-form statutory immunity to government officers acting in good faith in discharge of their duties. That only means that the ACF is insulated against a claim by the Petitioners for damages or other relief for having done his statutory duty. That is not the remedy the Petitioners must adopt, as noted above.

6. The Writ Petition is disposed of in these terms. There will be no order as to costs.

7. All contentions of the parties are kept open for the suitable civil action regarding title and boundaries that the Petitioner may institute.

(Prithviraj K Chavan, J)

(G. S. Patel, J)