

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 95 OF 2020

1. Sankalp Resorts Private Limited,
a company incorporated under the
Companies Act, 1956 and having its
registered office at Bajaj Bhawan,
Jamnalal Bajaj Marg, Nariman Point,
Mumbai 400 021.

2. Emerald Acres Private Limited,
a Company incorporated under the
Companies Act, 1956 and having its
address at Bajaj Bhawan, 2nd floor,
Jamnalal Bajaj Marg, Nariman Point,
Mumbai 400 021.

..Petitioners

Versus

1. State of Maharashtra,
through Principal Secretary, Revenue and
Forest Department, Mumbai 400 032.

2. The Collector, New Collector office
Building, Opposite Sassoon Hospital,
Station Road, Pune, Pune 411 001.

3. Deputy Conservator of Forest,
Senapati Bapat Marg, Opposite Symbiosis
College, Pune 411 004.

4. The Talathi, Taluka Lonavala, NH-04
Mumbai - Pune National Highway,
District Pune, Pune 410 401.

5. Union of India, Aayakar Bhavan
Maharashi Karve Road, Churchgate
Mumbai 400 020.

..Respondents.

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- Mr. Virag Tulzapurkar, Senior Advocate with Mr. Dinesh Purandare, Ms. Lata Dhruv, Keya Raval and Ms. Swati Sutar Advocates i/by M/s. Dhru & Co. for Petitioners;
 - Mr. Ashutosh M. Kulkarni, Advocate - 'A' Panel Counsel with Mr. S.B. Kalel, AGP for Respondent Nos. 1 to 4;
 - Mr. Mandar Limaye with Mr. Advait Sethna, Advocates for Respondent No. 5.
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**CORAM : S. J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

**RESERVED ON : 02.09.2021.
PRONOUNCED ON : 15.03.2022.**

JUDGMENT (Per : S.J. Kathawalla & Milind N. Jadhav, JJ.)

. By the present petition, the Petitioners have prayed for the following reliefs:

- "(a) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ, order or direction in the nature of Mandamus or any other appropriate writ, order or direction directing the 2nd Respondent to issue his Judgment under Section 6 of the Maharashtra Private Forest (Acquisition) Act, 1975 in terms of its Order dated January 13, 2011 without recourse to the Union of India under The Forest (Conservation) Act, 1980;
- (b) Without prejudice to prayer (a) above and strictly in the alternative thereto, the Hon'ble Court be pleased to direct the 5th Respondent to grant its approval under Section 2 of The Forest (Conservation) Act, 1980 within such time as this Hon'ble Court may deem fit and/or proper;
- (c) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ, order or direction in the nature of Mandamus or any other appropriate writ, order or direction directing the 4th Respondent to:
- (i) delete the Mutation Entry No.720 dated December 24, 2005 in the revenue records maintained in respect of the lands described in Exhibit I hereto;

- (ii) intimate all concerned Land and Revenue Authorities to update their respective records of the deletion of Mutation Entry No.720 dated December 24, 2005."

2. Before we advert to the submissions made on behalf of the respective parties, it will be apposite to state the relevant facts in brief.

2.1. The Petitioner No.1 is the owner of following six parcels of land situated in revenue village Bhushi, Taluka Maval, District Pune, within the limits of the Municipal Council of Lonavala (for short: "the said lands"):-

SURVEY NO.	AREA	
	H	R
113 A/1	1	94.25
113 B/2	1	74
113 B/1	1	10
114	2	27
115	5	38
116/1	3	85

2.2. The Petitioner No.1 has assigned development rights to the Petitioner No.2 in respect of the said lands under registered development agreements.

2.3. The Petitioners assert that the following documentary evidence in respect of the said lands prove that the said lands are / were agricultural lands:

- i. 7/12 extracts i.e. revenue records of the said lands;
- ii. judgment and order dated 31.07.1976 passed by the Maharashtra Revenue Tribunal, Poona in Ceiling Appeal No. 498 of 1976 in respect of Survey Nos. 113 and 113A;
- iii. order dated 22.01.1992 passed by the Sub-Divisional Officer, Haveli, Pune in respect of Survey Nos. 113/A/1, 113/B/2 and 113/B/1 regularizing the transfer of said lands in favour of the Petitioner No.1's predecessor in title;
- iv. commencement certificate dated 14.05.1997 issued by the Lonavala Municipal Council in respect of Survey Nos. 113/A(pt), 113/B(pt), 114, 115 and 116/1;
- v. final development plan of the year 1978 classifying the said lands as 'agricultural lands';
- vi. certificate dated 02.11.2011 issued by the Lonavala Municipal Council certifying that the said lands were included in the 'agricultural' or 'non-development' plan approved on 20.01.1978;
- vii. zone certificate dated 12.07.2018 issued by the Lonavala Municipal Council classifying the said lands as 'agricultural lands'.

2.4. In view of the above documentary evidence it is the Petitioners' case that the said lands are not 'private forest land' or 'forest' as contemplated under the provisions of the Maharashtra Private Forests (Acquisition) Act, 1975 ("**the State Act**") and/or the Forest (Conservation) Act, 1980 ("**the Central Act**").

2.5. On 11.11.2005, the Respondent No.3 - Deputy Conservator of Forest issued a letter to the Tahsildar - Maval stating that the said lands along with several other lands stood vested in the State Government under the provisions of the State Act and the Maharashtra Private Forest (Acquisition) Rules, 1980 ("**the said Rules**"). The said letter further stated that all non-forest activities were permissible on the said lands only after obtaining prior permission of the Central Government and necessary mutation entry in the 7/12 extracts of the said lands be immediately effected and copies thereof be sent to the Respondent No.3 for record.

2.6. Immediately thereafter Respondent No.4 - Talathi, Taluka - Lonavala recorded Mutation Entry No. 720 in the Mutation Register notifying the said lands as 'forest land'. Accordingly the 7/12 extracts of the said lands were mutated recording the name of the Forest Department in the 'other rights' column of the 7/12 extracts. By virtue of this mutation entry the said lands came to be described / declared

as 'forest lands'.

2.7. Since the Mutation entry No. 720 was entered into with reference to the provisions of the State Act, the Petitioners raised a dispute and filed three statutory Appeals bearing Nos. 6/2008, 7/2008 and 10/2008 before the Collector under Section 6 of the State Act to challenge the vesting of the said lands under the State Act and for setting aside the Mutation Entry No.720. On 13.01.2011, the Appellate Authority held that the said lands are 'not private forest' and passed a non-speaking order without giving detailed reasons while reserving the judgment. The order dated 13.01.2011 reads thus:

"Draft order prepared declaring suit land as 'not private forest' u/s 6 of M. Pr. Forest act, 1975. Matter referred to GoI through GoM for permission u/s 2 of Forest (Conservation) act 1980."

2.8. On 13.01.2011 Respondent No. 2 - Collector referred the draft order declaring the State lands as 'not private forest' under Section 6 of the State Act to the State Government for seeking sanction from the Central Government under Section 2 of the Central Act before issuing the final order.

2.9. Between 05.10.2011 and 29.03.2018, the Petitioners addressed 25 letters to the Respondents on 05.10.2011, 11.05.2012, 16.05.2012, 30.05.2012, 30.07.2012, 08.11.2012, 04.01.2013,

02.05.2013, 09.05.2013, 04.06.2013, 19.09.2013, 20.09.2013, 08.11.2013, 12.12.2013, 24.01.2014, 05.06.2014, 19.07.2014, 29.01.2016, 21.04.2016, 20.06.2016, 25.08.2016, 10.10.2016, 20.10.2016, 13.06.2017, 29.03.2018, *inter alia*, seeking a copy of a detailed judgment and speaking order passed by the Respondent No. 2 - Collector and deletion of Mutation entry No. 720 in view of the non-applicability of the provisions of Section 2 of the Central Act to the Petitioners' case.

2.10. On 15.07.2014 the Chief Conservator of Forests (Mantralaya) addressed a letter to the Respondent No. 2 - Collector calling upon the Collector to furnish the details pertaining to the said lands for procuring sanction from the Central Government. A copy of this letter was endorsed to the Director of the Petitioner No.1.

2.11. On 16.06.2016 the Private Secretary of the Minister (Finance & Budget) and Forests (Mantralaya) addressed a letter to the Petitioner No. 2 informing that the Petitioners' case was forwarded to the Secretary, Forests for appropriate action.

2.12. In response to the Petitioners' 25 letters addressed between 05.11.2011 and 29.03.2018 as stated above, the Petitioners received

the aforementioned two letters from the Respondent No. 1 - State.

2.13. On 26.09.2019, the Petitioners filed the present Writ Petition.

3. Mr. Virag Tulzapurkar, learned Senior Advocate appearing for the Petitioners after taking us through the pleadings, has made the following submissions:-

- i. that the Central Government permission is not required under the provisions of Section 2 of the Act of 1980 for correction or rectification of an incorrect mutation entry in respect of land which is never designated or classified as 'forest land';
- ii. that the said lands are agricultural lands and there is documentary evidence including the draft speaking order placed on record to prove that the said lands are not 'forest lands';
- iii. that the Mutation Entry No.720, entered unilaterally and solely on the basis of the letter dated 11.11.2005 received from the Respondent No.3 in the revenue record and 7/12 extracts of the said lands, notifying the said lands as 'forest lands' is illegal and erroneous; the said lands were never

described and declared as 'forest' or 'private forest' or 'reserved forest' under the provisions of the State Act or the Central Act; that the Petitioners were never issued any notices under the provisions of Section 35 of the Indian Forest Act, 1927 (for short: "**the Act of 1927**") prior to the enactment of the State;

- iv. that since the Mutation entry No.720 was effected pursuant to the letter dated 11.11.2005 addressed by the Respondent No.3 - Deputy Conservator of Forest under the State Act, the Respondent No.2 - Collector being the Appellate Authority under Section 6 of the State Act has jurisdiction to hear and decide the Petitioner's Dispute Application declaring the said lands as 'forest';
- v. that no steps as required under the provisions of Section 4 of the State Act were taken by the Respondents after the appointed date, 30.08.1975 i.e. coming into force of the State Act; the Respondents never contended that the said lands were 'private forest' or 'forest' or stood acquired under the State Act or stood vested in the State Government;
- vi. that no notification declaring the said lands as 'forest' has been issued under the provisions of the Act of 1927 prior to the enactment of the State Act or the Central Act;

- vii. that the said lands are not acquired / never acquired under the provisions of the State Act and/or the Act of 1927, nor there is any declaration to the effect that the said lands are 'forest land' or 'private forest' or 'reserved forest' prior to the insertion of the Mutation entry No.720;
- viii. that physical possession of the said lands has always remained with the Petitioner;
- ix. that the Respondent No. 2 - Collector, Pune by his final judgment and order dated 13.01.2011 has specifically held that the said lands are 'not private forest'; that the reasoned order of the Respondent No.2 - Collector declaring the said lands as 'not private forest' rests the issue in favour of the Petitioner and therefore the provisions of Section 2 of the Central Act are inapplicable to the said lands;

4. *PER CONTRA*, Mr. Ashutosh Kulkarni, learned Advocate appearing on behalf of Respondent Nos.1 to 4 has drawn our attention to the Affidavit-in-Reply dated 05.03.2020 filed by Sanjay Baburao Marne, Assistant Conservator of Forests, Pune Forest Division and further Affidavit-in-Reply dated 16.04.2021 filed by Sandesh Ravindra Shirke, Sub-Divisional Officer, Taluka - Maval, District - Pune and

contended that the draft order by the Collector declaring the said lands as 'not private forest' requires the permission of the Government of India under the provisions of Section 2 of the Central Act and until such permission is received, the said lands are deemed to be 'forest land'. He has made the following submissions to oppose grant of reliefs in the present petition:

- i. that the draft order dated 13.01.2011 and the reasoned speaking order annexed to the Affidavit-in-Reply dated 16.04.2021 declaring the said lands as 'not private forest' has no existence in law and cannot be relied upon by the Petitioners for seeking any reliefs much less the reliefs sought in the petition; that the draft order shall become final only on receipt of the permission from the Government of India under the provisions of Section 2 of the Central Act and only thereafter can come into force;
- ii. that the condition for seeking permission under Section 2 of the Central Act is just, legal and absolutely mandatory and cannot be dispensed with under any circumstances as Section 2 of the Central Act begins with a *non-obstante* clause having a complete overriding effect on all the laws in force in the State, including the State Act; the said Section explicitly prohibits the State Government or any other

Authority from issuing any order without the prior approval of the Central Government;

- iii. that under the provisions of sub-section 3 of Section 3 of the Central Act there is a deeming provision which states that all 'private forests' vested in the State Government shall be deemed to be 'reserved forest' within the meaning of the Central Act; thus to declare that any 'reserved forest' shall cease to be 'reserved forest' or that any 'forest land' be used for any 'non-forest purpose', the prior permission of the Central Government is a condition precedent for the State Government to issue / pass the final order;
- iv. that in the present case the Petitioners desire to establish a resort, hotel, club and other ancillary activities on the said lands, which is admittedly for 'non-forest purposes'; therefore on a cumulative reading of Section 2 of the Central Act with Section 6 of the State Act, when a case is under consideration under Section 6 of the State Act, before issuing the final declaration under Section 6, prior permission of the Central Government is required to be obtained;
- v. that in terms of the State Government circular dated 16.12.2004, in respect of enquiry under Section 6 of the

State Act, it is mandatory on the part of the Collector to prepare the proposal and submit the same to the State Government for seeking permission from the Central Government under the provisions of Section 2 of the Central Act and only after receipt of permission, issue the order/certificate under the provisions of Section 6 read with Section 22 of the State Act; that in the present case Respondent No.2 - Collector has referred the Petitioner's case to the State Government for seeking permission under Section 2 of the Central Act and the same is awaited.

4.1. In view of the above submissions, Advocate Mr. Kulkarni has prayed for dismissal of the present Writ Petition.

5. Mr. Mandar Limaye, learned Advocate appearing for Respondent No.5 - Union of India (Central Government) has drawn our attention to the Affidavit-in-Reply dated 24.08.2020 filed by Shri. Chandulal Tashildar, Assistant Inspector General of Forest, Ministry of Environment, Forest and Climate Change, Nagpur and has contended as follows:

- i. that though it is the case of the State Government that the draft order is referred to the Central Government for

obtaining approval under the provisions of Section 2 of the Central Act, the Ministry of Environment and Forest is not in receipt of any such proposal / case from the State Government of Maharashtra in respect of the said lands;

- ii. that the said lands fall within the ambit and purview of the State Government of Maharashtra and the provisions of the State Act and since the State Government is the repository of the land records of the forest areas/lands, it is the primary responsibility of the State Government to determine the status of the said lands or any parcel of land in the State as to whether the same is a 'private forest', 'reserved forest' and/or 'forest' under the provisions of the State Act while giving due regard to the provisions of the Central Act;
- iii. that in the present case after following the due process of law and enquiry as contemplated under the provisions of Section 6 of the State Act, the draft speaking order produced on record by the State Government has declared the said lands as 'not private forest' and the Central Government has no role to play in the same.

5.1. Advocate Mr. Limaye has called upon the Court to pass appropriate orders.

6. We have perused the material on record, Affidavit-in-Reply filed on behalf of the Respondents, considered the submissions made by the learned Advocates for the parties and the statutory provisions relied upon by them.

6.1. The issue as to whether the said lands are 'forest land' / 'private forest' / 'reserved forest' is now put to rest by virtue of the draft speaking order passed by the Respondent No.2 - Collector declaring the said lands as 'not private forest'.

6.2. The only question that now arises for determination is whether the draft speaking order is subject to the provisions of Section 2 of the Central Act and whether the approval of the Central Government is a condition precedent before issuing the final order. Depending upon this adjudication, the Petitioners have sought deletion of the Mutation entry No. 720 as a consequential relief.

7. Before we proceed to give our findings, it will be apposite to refer to the relevant statutory provisions for adjudicating the present case.

7.1. Section 2(c-i) of the State Act defines 'forest' and 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 a 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."

7.2. Section 2(f) of the State Act defines 'private forest' and reads thus:-

"2(f). "private forest" means any forest which is not the property of the 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 land lands appurtenant thereto;"

7.3. Section 3 of the State Act provides for vesting of private forests in the State Government and reads 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 occupation 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 Agriculture Lands (Ceiling on Holdings) Act, 1961, for the time being in force or any building or structure standing thereon or appurtenant thereto.

(3) All private forests vested in the State Government under subsection (1) shall be deemed to be reserved forests within the meaning of the Forest Act."

7.4. Section 6 of the State Act pertains to raising of a dispute by the land owner and deals with the power of the Collector to decide the dispute / question as to whether or not any private forest or portion thereof has vested in the State Government and reads thus:-

"6. Where any question arises as to whether or not any forest is a private forest, or whether or not any private forest or portion thereof has vested in the State Government or whether or not any dwelling house constructed in a forest stands acquired under this Act, the Collector shall decide the question, and the decision of the Collector shall, subject to the decision of the Tribunal in appeal which may be preferred to the Tribunal within sixty days from the date of

the decision of the Collector, or the order of the State Government under Section 18, be final."

7.5. Section 2 of the Central Act pertains to restrictions on the de-reservation of forests or use of forest land for non-forest purpose and reads thus:-

"2. **Restriction on the de-reservation of forests or use of forest land for non-forest purpose.** - Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,—

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest-land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest-land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest-land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation."

[Explanation.- For the purposes of this section 'non-forest purpose' means the breaking up or clearing of any forest-land or portion thereof for -

(a) the cultivation of tea, coffee, spices, rubber, palms, oil bearing plants, horticultural crops or medicinal plants;

(b) any purpose other than reafforestation;

but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.]

8. Section 2(c-i) of the State Act defines 'forest' and the

definition is self-explanatory. Section 2(f) of the State Act defines 'private forest' which relates to the property not belonging to the Government and includes any land/forest which is so declared under Section 34A or in respect of which notification under Section 35(1) is in force or in respect of which notice under Section 35(3) has been issued or in respect of which notification under Section 38 has been issued. Thus, on the appointed day i.e. 30.08.1975, the date of coming into force of the State Act, if any proceedings under the provisions of Sections 34A, 35(1), 35(3) or 38 of the Act of 1927 are pending or in force then such land or forest is defined as 'private forest'. The effect of pendency of any such proceeding under the Act of 1927 on the appointed day is given in Section 3 of the State Act which provides for vesting of private forests in the State Government on the appointed day. It is pertinent to note that Section 3(1) states that all private forests in the State shall stand acquired and vest in the State Government which implies that such lands / forests have to be covered by the definition of 'private forest' in Section 2(f) of the State Act. However, in the event if any owner / person is aggrieved and a question arises as to whether or not a forest is a private forest or any private forest or portion thereof has vested in the State Government, then under Section 6 of the State Act such owner / person can file an appeal to the Collector and dispute the status of the land as to whether or not the said land is forest / private forest or whether or not any

private forest or portion thereof has vested in the State Government.

8.1. In the present case we are concerned with the Mutation entry No. 720 which came to be effected by the Respondent No. 4 after receipt of letter dated 11.11.2005 from the Respondent No. 3. On effecting the Mutation entry, the said lands came to be declared as forest land. Hence, under the provisions of Section 6, the Petitioners raised a dispute that the said lands are 'not forest land' or 'private forest' and have not stood vested in the State Government on the appointed date that is the date of coming into effect of the State Act. It is pertinent to note that the letter dated 11.11.2005 addressed by the Respondent No. 3 does not refer to pendency of any proceedings / notice in respect of the said lands under the provisions of the Act of 1927 on the appointed date so as to bring the said lands under the ambit of the definition of 'private forest' under Section 2(f) of the State Act. The letter dated 11.11.2005 on a closer scrutiny merely states that the said lands along with several other lands have stood vested in the State Government under the provisions of the State Act and the said Rules and all non-authorized activities on the said lands would be permissible only after obtaining prior permission of the Central Government. Save and except this reason, there is no other reason to determine the vesting of the said lands in the State Government under

the provisions of the State Act and the said Rules.

8.2. The Petitioners have placed on record sufficient material to prove that the said lands admittedly are agricultural lands and not 'forest land'. Admittedly, there is no documentary proof available with the Respondents to establish that the said lands are "private forest" or "reserved forest". In fact, the Respondents never treated the said lands as 'forest land'. The Petitioners submit that admittedly, no notification and / or notices, either under Section 35 or 38 of the Act of 1927 or under Section 21 of the State Act were ever published and / or issued in respect of the said lands; that no entry is made in the "Golden Register" maintained by the Respondent No. 1 recording that the said lands stood acquired as "forest lands."

8.3. Section 2 of the Central Act refers to restrictions on the de-reservation of forests or use of forest land for non-forest purpose. Perusal of this Section shows that the said provision applies to forests or use of forest land for non-forest purpose and clearly implies that the land in question to which the said provision applies should be reserved forests or forest land or any portion of forest land. The said Section states that no State Government shall make except with the prior approval of the Central Government any order directing any reserved forest or any forest land or any portion thereof to be dealt with or de-

reserved. It is implicit by the bare reading of the Section that the said provision applies in the case of reserved forest / forest land or any portion thereof. In the present case Respondent No.2 - Collector by his draft speaking order dated 13.01.2011 has conclusively determined that the said lands are not forest lands. This determination is pursuant to the statutory inquiry as contemplated under the provisions of Section 6 of the State Act. This determination has been done on 13.01.2011. The State Government has not filed any Appeal challenging the decision of the Collector within the prescribed period of sixty days before the Tribunal and as such the decision of the Collector in respect of the said lands has become final. The said lands therefore cannot be deemed to be forest land / reserved forest or any portion thereof as forest for the purpose of obtaining prior approval of the Central Government for its de-reservation and use for non-forest purpose under the Central Act.

9. In the above backdrop it is stated that for the provisions of Section 2 of the Central Act to come into force, a jurisdictional fact that the land in question is a 'forest' needs to exist. If the land in question is 'not a forest', then the provisions of Section 2 of the Central Act cannot be invoked or made applicable. Section 2 of the Central Act come into play only if the subject land is a forest and not otherwise. In the present case, the decision of the Collector under the

provisions of Section 6 of the State Act adjudicating that the said lands are 'not private forest' having become final, the State Government cannot invoke the provisions of Section 2 of the Central Act for seeking de-reservation of the said lands.

10. We have perused the detailed speaking order dated 13.01.2011 passed by the Respondent No.2 - Collector which is annexed as Exhibit R-2 to the Affidavit-in-Reply dated 16.04.2021 of the Respondent No. 2 (pages 353 to 383 of the Writ Petition). We may highlight and reproduce some of the relevant portions of the order, which read thus:-

"...Considering the provisions u/s, 4 of the Act of 1975, it will be seen that no steps have been taken by forest authorities for acquisitions of these suit lands..."(**@Page 370**)

"...The Forest authorities have submitted a copy of 'Golden Register' maintained by the Department on which generally considerable reliance has been placed. It is about the notices under Section 35(3) of the Indian Forest Act 1927 issued from time to time. Nowhere it shows the suit lands in the said register and respondent-forest have also not agitated on this point about the inclusion of the suit lands in the said 'Golden Register' and also it does not contain any Gat number of village Bhushi..." (**@ Page 371**)

"...no notices u/s 35 of the Act of 1927 and under section 21(1) under the Act of 1975 were issued in the present case by Forest department till today..." (**@Page 372**)

"...On perusal of 7/12 extracts from 2002.2003 to 2004.05 of the suit lands it is seen that most of the lands are 'pad' and Kharip lands, hold by different holders and does not support the claim of Forest Department..." (**@ Page 373**)

"... Further perusal of the papers, it will be seen that Development Plan was sanctioned by the Urban Development Department in the area wherein the said lands are shown as agricultural lands and not forest lands in possession of the

Forest Department. When draft development plan was published, objections were called and after the period was over, the draft plan was made final during the period from the year 1978 to 2006 papers available before this court shows that it was not challenged by the Forest Department at any point of time..." (@ Page 375)

"...The Forest authorities themselves have not taken any basic steps to establish their authority on the lands claimed to have been under the Private Forests Acquisition Act Forest authorities are claiming the properties on the strength of mere 'words' and are accepting the factual situation contrary to their claims discussed in earlier paragraphs..." (@ Page 376)

"... From a perusal of the definitions of the above sections it is clear that the question of approval of the Central Government arises only when the State Government makes a request for such approval in respect of cases falling under the enumerated categories of section 2. **In the present case nature of suit lands is being declared as non-forest on merits** and the available documents show that these are not a private forest lands and therefore as contemplated u/s 2 of the Act of 1980, this court is required to seek permission from the Central Government Authority through State Government..." (@ Page 377/378) (Emphasis supplied).

"...From the foregoing discussion, it is clear that the suit lands prior to the appointed day and subsequent to the same have not been vested with the Forest Department and **the mutation entry No.720 of village Bhushi Tal. Mawal taken in respect of the suit lands needs to be quashed...**" (@ Page 380) (Emphasis supplied).

".. Considering the above legal and factual position, and the papers available before this Court and the points discussed in the judgment as above, I pass the following Order.

ORDER

The suit lands are declared as 'not private forest' under section 6 of the Maharashtra Private Forest (Acquisition) Act, 1975. The application of the applicant in this behalf is allowed and the M.E. No.720 of Village Bhushi Tal. Mawal is quashed in respect of the suit lands. The decision will be final subject to approval from Central Government u/s 2 as the Forest (Conservation) Act, 1980 and thereafter it will come into force. Thereafter inform both the parties accordingly." (@ Page 380/381)."

10.1. The scheme of Section 6 of the State Act requires the

Collector to decide any question as to whether or not any forest is a private forest or whether or not any private forest or portion thereof has vested in the State Government. In the present case, a detailed speaking order of the Collector has conclusively determined and declared the said lands as 'not private forest' under the provisions of Section 6 of the State Act. The decision is on the basis of the findings alluded to and reproduced hereinabove with reference to the provisions of the Act of 1927, the State Act and the Central Act. The categorical findings given by the Collector in arriving at the conclusion that the said lands are 'not private forest' with reference to the provisions of the Act of 1927 and the State Act do not leave any doubt in our mind that the said lands are not forest.

11. From the perusal of the above order, we find that there is a categorical finding arrived at by the Respondent No.2 - Collector recording that the said lands are 'not private forest' and hence are also not a 'forest' under the provisions of the State Act. The reasoned order however records that the declaration arrived at by the Respondent No.2 - Collector shall be subject to the permission from the Central Government under Section 2 of the Central Act.

12. In the present case, admittedly there is no declaration / notice / notification in respect of the said lands being classified and

declared as 'private forest'. Further under the provisions of Section 2 read with Section 3 of the State Act, the said lands have to be a 'forest' before it could be classified as a 'private forest' and thereafter declared to be a 'reserved forest'. According to the Petitioners the provisions of Section 3(2) of the State Act expressly excludes land under cultivation i.e. 'agricultural land' even if it is comprised in a 'private forest'. The said lands stand outside the purview of the provisions of Section 2 of the Central Act as they are not a forest and if that be so there can be no question of de-reservation or denotification or seeking approval for the use of forest land for non-forest purpose.

13. The entire controversy in the present case has arisen due to the unilateral Mutation entry No.720 recorded in the Mutation Register pertaining to the said lands which classified the said lands as 'forest lands'; this mutation entry was solely based on the communication dated 11.11.2005 addressed by the Respondent No.3 - Deputy Conservation of Forest to the Respondent No.2 - Collector without any substantive basis / evidence as observed by us.

13.1. We have noted that the said Mutation entry was effected with reference to the State Act. The Petitioners therefore filed the statutory appeal seeking adjudication under the provisions of Section 6 of the State Act. However, once the Respondent No.2 - Collector has

declared the said lands as 'not private forest' under Section 6 of the State Act, the applicability of the Central Act to the said lands does not arise. As seen, the said lands have been certified as 'agricultural lands' in the various revenue records and as such under Section 3(2) of the State Act, on this count also they cannot be deemed to be 'forest land' much less private forest land. Save and except the unilateral Mutation entry, admittedly there is no other evidence or material placed on record by the Respondents to classify, certify or notify the said lands as 'forest land'. The reasoned decision/order passed by the Respondent No.2 - Collector declaring the said lands as 'not private forest' under the State Act therefore decides the status of the said lands.

14. Under Section 2 of the Central Act the approval of the Central Government is necessary only if the land is a forest and if the State Government passes an order directing that any reserved forest shall cease to be reserved; or any forest land is used for non-forest purpose; or any forest land is assigned to a private person or a non-government organization; or any forest land may be cleared of trees or re-forestation. Thus it is clear that for the provisions of Section 2 of the Central Act to apply, it is necessary in the first place that the said lands have to be 'forest land'. However if the said lands are not forest land then the provisions of Section 2 of the Act of 1980 are

inapplicable and thus the permission sought by the Respondent No.2 - Collector from the Central Government with respect to its decision of declaration of the said lands as 'not private forest' is wholly illegal.

15. The Respondents' submission that the Collector has merely determined the said lands as 'not private forest' but the said lands still continue to be 'forest' is also unacceptable due to the following reasons:

- i. the State Act, defines forest in Section 2(c-i) and private forest in section 2(f). Thus the same Act deals with both definitions and if a dispute as to the status is raised, then under Section 6 it confers jurisdiction on the Collector to adjudicate the same alongwith a statutory appellate remedy to the Tribunal, in the present case the order of the Collector has become absolute;
- ii. the Mutation entry No. 720 itself was made with reference to the State Act. The matter therefore fell within the ambit of the State Act. Hence, the Petitioners necessarily had to file the Application under Section 6 of the State Act and the issue fell squarely within the Collector's jurisdiction. This has been admitted by the Respondent No.2 in its Affidavit (at Para 4; page Nos.347 and 348). Before the Respondent

No.2 - Collector, the State did not question or dispute the Collector's jurisdiction to decide all the issues raised by the Petitioner, the foremost being that the said lands were not forest land at all;

- iii. the Petitioners' case before the Collector was that the said lands were 'agricultural lands', - that they were never 'forest' in the first place and thus, could never be a 'private forest'; the documentary evidence on record states and establishes that the said lands are 'agricultural lands' and 'not forest' and the said documents were produced before the Collector to establish the same; these documents and their contents are not disputed;
- iv. admittedly, there were no proceedings pending under the Act of 1927 qua the said lands on the appointed date, i.e. 30.08.1975, the date of coming into force of the State Act;
- v. the Collector, on merits, accepted the Petitioner's case that the said lands are not 'forest' and thus came to the unequivocal conclusion that the said lands are 'not private forest'. This was an inherent part of the enquiry and on the basis of unimpeachable material on record, the Collector accepted the fundamental/basic fact and position that the said lands are 'not private forest' and hence necessarily are

not 'forest';

- vi. The State's argument, if accepted, would lead to an absurd and anomalous situation, and will defeat the scheme of the State Act. A 'forest' belonging to a private person is a 'private forest', and thus, when a private party objects to his land being declared a 'private forest', he is also objecting to it being declared a 'forest'. It cannot be that even when a party has succeeded under Section 6 of the State Act, his private land will continue to be a 'forest'. In any event, in this case, the Collector, acting within his jurisdiction, has on merits held that the said lands are 'not private forest'. This finding is final and binds the State.

16. Further the stand adopted by the State Government is in clear conflict with the stand taken by the Central Government in the present case due to the following reasons:

- i. The Central Government has categorically stated that it has not yet (for 11 long years) received any application from the State Government under Section 2 of the Central Act (para 4 of its Affidavit on page 330 and para 2 of page 1 of its Written Submissions). This is contrary to the State's case that it has forwarded the application to the Central

Government. However subsequently, during the hearing in Court, the State has admitted the position that it has not sent any application to the Central Government at all;

- ii. Rule 6 of the Forest (Conservation) Rules, 2003 prescribes the form for making an application under Section 2 of the Forest (Conservation) Rules. This Application has to be made by the State as the User Agency. Rule 6 and Form 'A' apply only when forest land is to be used for non-forest purposes, when a project is to be set up on the forest land, and particulars of the proposed project are to be set out. No such thing exists / applies in the present case. The State is fully aware of this fact and it is for that reason that no application, indeed, has been forwarded by the State Government in the last 11 years.

17. It is an admitted position that the State Government has never submitted the draft order passed by the Respondent No. 2 - Collector for seeking permission in the last 11 years; rule 6 and Form 'A' of Forest (Conservation) Act apply only in a case where an existing forest is to be de-reserved or is been put to a non-forest use, which is not applicable to the said lands. The Petitioners have been wrongly denied the benefit of the said lands for the last decade on a completely

false and erroneous premise that the Petitioners' case was pending approval / permission from the Central Government under the provisions of Section 2 of the Central Act. The Central Government represented by Advocate Mr. Mandar Limaye has in its Affidavit-in-Reply dated 24.08.2020 (paragraph 6, page 331) confirmed that the Central Government has no role to play in the matter and the same stand is reiterated in their written submissions dated 28.07.2021.

18. In view of the above discussion and findings, it is held that the provisions of Section 2 of the Central Act do not apply to the said lands, hence the contention of the State Government that the approval / permission of the Central Government is required for confirming the declaration arrived at by the Collector is wholly erroneous.

19. For the above reasons, we hold that the order dated 13.01.2011 passed by Respondent No. 2 - Collector to the extent that it states that the decision that the said lands are not 'private forest land' will be subject to the approval from the Central Government under Section 2 of the Central Act and only thereafter will come into force, is bad in law and is quashed and set aside. The rest of the order passed by the Respondent No. 2 - Collector is upheld and maintained.

20. In view of the above the Writ Petition stands allowed in terms of prayer clauses (a) and (c). However, there shall be no order as to costs.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]

21. After pronouncing the Judgment, at this stage Mr. Kulkarni, learned Advocate appearing on behalf of Respondent Nos.1 to 4 has made an application for stay of the judgment. The Application is rejected.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]