

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

WRIT PETITION NO.- 1284 OF 2020

Vijayalaxmi Shrinivas Panditrao

...Petitioner

Vs.

Deputy Conservator of Forest, Kolhapur
Division and Others

...Respondents

Mr. Rafique Dada, Senior Counsel i/b Mr. Yuvraj P.
Narvankar, for Petitioner.

Mr. C. D. Mali, AGP, for State- Respondent Nos. 1 and 2.

CORAM:- N. J. JAMADAR, J.

RESERVED ON : 24th APRIL, 2023.

PRONOUNCED ON:- 23rd AUGUST, 2023

JUDGMENT:-

1) Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2) The petitioner takes exception to an order dated 20th August, 2019, passed by the Minister (Revenue) in RTS Second Revision No. 3818 of 2018, whereby the Revision Application preferred by the petitioner came to be rejected, affirming the order passed by the Additional Divisional Commissioner, Pune dated 13th October, 2017 which, in turn, had affirmed

the orders passed by the authorities below setting aside the order of Tahasildar, Budargad, Dist. Kolhapur dated 25th May, 2015.

3) The Petition arises in the backdrop of the following facts:-

(a) Agricultural lands bearing Gat Nos.162/1-B, 162/2-B and 162/3 admeasuring 124 hectares situated at Mauje Minache, Tal. Bhudargad, Dist. Kolhapur ("the subject lands") originally belonged to one late Mr. Anantrao Narayanrao Panditrao, the predecessor in title of the petitioner. In the year 1975, late Anantrao had been served with a notice under Section 35 (3) of Indian Forest Act, 1927 ("the Act, 1927"), calling upon to show cause as to why the subject lands be not declared a protected forest.

(b) Proceedings were, thereafter, initiated under the provisions of Maharashtra Private Forest (Acquisition) Act, 1975. Ultimately, the proceedings under the Private Forest Act, 1975, culminated in an order dated 6th September, 1991 in Appeal Nos.1 of 1990 and 2 of 1990. By the said judgment and order, the learned President Maharashtra Revenue Tribunal ("MRT") modified the order passed by the Sub-Divisional Officer and declared that the predecessor in title of the petitioner was entitled to retain 124 hectares i.e. 310 acre land, being the agricultural land and rest

of the land could be acquired by the Government after due settlement of compensation and demarcation of boundaries.

(c) Petitioner claims the said judgment and order was passed after providing an effective opportunity of hearing to the concerned parties including the Forest Department. None appealed the said order and, thus, the said order attained finality. In fact, the order passed by the MRT was given effect to by the authorities of the State. In execution of the said order, Mutation Entry No.249 came to be certified. Lands bearing Gat Nos.162/1 admeasuring 179.39 hectares was sub-divided into 162/1 admeasuring 117.60 hectares and 162/1B admeasuring 61.79 hectares, whereas land bearing Gat No. 162/2 admeasuring 109.93 hectares was divided into land bearing Gat No. 162/2A admeasuring 52.60 hectares and Gat No. 162/2B admeasuring 57.33 hectares. Consequently, lands bearing Nos.162/1A admeasuring 117.60 hectares and 162/2A admeasuring 52.60 hectares were mutated in the name of Forest Department and land bearing Gat Nos.162/1B admeasuring 61.79 hectares and 162/2B admeasuring 57.33 hectares were mutated in the name of late Anantrao. Possession receipts evidencing the delivery of the aforesaid lands were also executed.

(d) Petitioner claims the aforesaid Mutation entries were never challenged and the subject lands continued to retain the character of agricultural lands. The petitioner had been in peaceful possession and cultivation of the subject lands. However, according to the petitioner, on 4th May, 2006, without any notice to the petitioner, Mutation entry Nos.710 and 744 were certified and the name of Government of Maharashtra came to be shown in the holders column with an endorsement of 'reserved Forest', and the petitioner's name relegated to "other rights" column. It transpired that the said Mutation was effected by wrongly drawing support from the Government Resolution dated 22nd February, 2005.

(e) Petitioner asserts the said Government Resolution dated 22nd February, 2005, governs only that land which has been defined and/or declared as a Forest. Since the subject land had been declared as an agricultural land by a competent judicial Tribunal under the provisions of Private Forest Act, 1975, the same could not have been designated as a reserved forest and the land holder completely divested of all the legitimate rights, which had accrued under the order of MRT, and that too without any notice to the land holder.

(f) The petitioner thus approached Tahasildar, Bhudargad under Section 155 of Maharashtra Land Revenue Code, 1966 (“the Code”) for the correction of record of right in respect of the subject land. After providing an opportunity of hearing the Tahsildar, by an order dated 25th May, 2015, ordered rectification record of right of the subject land by deleting the entry of ‘Government of Maharashtra - reserved forest’ and restoring the name of the original holders of the land to the occupants/holders column, as per ME No.253.

(g) The Deputy Conservator of Forest and others carried the matter in Appeal before the Sub-Divisional Officer, Ajra, Bhudargad, Sub-Division Gargoti. By a judgment and order dated 17th February, 2016, in RTS Appeal No. 27 of 2015, the Sub-Divisional Officer allowed the Appeal by setting aside the order passed by the Tahsildar. The Sub-Divisional Officer was of the view that in view of the instructions of the Central Government neither the State Government nor any Officer of the State Government had the power to delete an entry of forest in the record of right/government record without prior permission of the Central Government and, in the case at hand, no such permission was obtained before deleting the entry of reserved

forest from the record of right and, therefore, the order passed by Tahasildar was unsustainable.

(h) The petitioner unsuccessfully challenged the order of Sub-Divisional Officer, Gargoti before the Collector, Kolhapur in Appeal No. 349 of 2016, and before the Divisional Commissioner, Pune in First Revision No.169 of 2017. Both the authorities were of the view that the Sub-Divisional Officer had correctly set aside the order of deleting the entry of reserved forest, passed by Tahasildar.

4) Being aggrieved, the petitioner filed Second Revision before the State Government. By the impugned judgment and order, the Minister (Revenue) rejected the Revision holding, *inter alia*, that though MRT had returned a finding that the land holder was entitled to retain the subject land yet, the said decision was rendered after the enactment of Conservation of Forest Act (25th October, 1980) and, therefore, even if it was assumed that the entry of reserved forest was made in the record of right unlawfully, yet, the State Government or its instrumentalities were not empowered to delete the entry of reserved forest without prior permission of the Central Government.

5) Being further aggrieved, the petitioner has invoked the writ jurisdiction.

6) The substance of challenge in the Petition is that judicial determination by MRT that subject lands were retainable agricultural lands having attained finality, the subject lands must be treated as agricultural lands and they could not have been designated as a private forest under Private Forest Act, 1975. The instructions of the Central Government proscribing conversion of forest land and the Government Resolution dated 22nd February, 2005, do not apply to the subject lands as they had already been declared to be agricultural lands by the competent judicial Tribunal. In any event, according to the petitioner, stand of the Revenue Authorities including the State Government that even an *ex facie* incorrect and unsustainable entry in revenue record could not be corrected without prior permission of the Central Government, is patently unjustifiable. Hence, the petitioner has prayed to set aside all the impugned orders, restoration of the order passed by the Tahasildar dated 25th May, 2015, restoring the name of the petitioner as holder of the subject lands in accordance with ME No. 253.

7) An affidavit-in-reply is filed on behalf of the respondent Nos. 1 and 2, contesting the petitioners claim. The thrust of the defence of the respondent Nos. 1 and 2, as manifested in the affidavit-in-reply, is that in view of the order of the Supreme

Court dated 12th December, 1996 in Writ Petition (C) No. 202 of 1995, in the matter of **T.N. Godavarman Thirumulkpad Vs. Union of India and Others**, which has been referred in the Circular of the Central Government dated 19th March, 2004, any correction in the entry of revenue record so as to change the status of land from 'forest' to 'non forest', in effect, amounts to de-reservation of the forest land covered thereunder and it would require not only the permission of the Central Government in accordance with the provisions contained in Section 2(i) of the Forest (Conservation) Act, 1980, but also prior leave of the Supreme Court.

8) Consistent with the said stand, respondent Nos. 1 and 2 contend that the said Circular dated 19th March, 2014 was not brought to the notice of, nor considered by the Tahasildar while passing the order dated 25th May, 2015, whereby the entry of reserved forest was ordered to be deleted. In the circumstances, the authorities below were fully justified in taking the view that the said order could not have been passed without obtaining prior permission of the Central Government.

9) The petitioner has placed copies of relevant documents under a further affidavit, especially, the copies of the orders passed by the authorities under the Private Forest Act.

10) An additional affidavit-in-reply has also been filed on behalf of the respondent Nos. 1 and 2 placing on record the copies of relevant revenue proceedings and Mutation entries.

11) In the wake of aforesaid proceedings and material, I have heard Mr. Rafique Dada, the learned Senior Counsel for the petitioner and Mr. C. D. Mali, the learned AGP for respondent Nos. 1 and 2 at length. The learned Counsel took the Court through the pleadings, the various proceedings under Private Forest (Acquisition) Act, 1975, and outcome thereof, especially the order passed by MRT dated 6th September, 1991, the proceedings post the said order by the revenue authorities, certification of the Mutation entries and the circular as well as the Government of Maharashtra Resolution dated 14th July, 2005.

12) Mr. Dada, assailed the very process of certification of Mutation entry Nos. 710 and 744 on 4th May, 2006, on the premise that the said certification was carried out in violation of fundamental principles of judicial process as well as natural justice as the name of the petitioner/holders came to be deleted from the record of right of the subject land without any notice to the petitioner/holders much less an effective opportunity of hearing. Mr. Dada, as a second limb of this submission would

urge that the Tahasildar, Bhudargad was justified in carrying out the correction in the record of right by resorting to the provisions contained in Section 155 of the Code, 1966, as the controversy stood settled by the decision of MRT dated 6th September, 1991. Mr. Dada would further urge that the Sub-Divisional Officer, Appellate Authority and Revisional Authority under the Code, 1966 misdirected themselves in appreciating the controversy at hand from the perspective of the restoration of the forest land under Section 22A of the Private Forest Act, 1975. This incorrect impression led to vitiation.

13) Resultantly, the authorities fell in error in applying the provisions contained in the Government Circular dated 14th July, 2005 which addresses the matter of updation of record of right in the context of the restoration proceedings under Section 22A of the Private Forest Act, 1975. Mr. Dada would urge that the subject land do not fall within the definition of private forest contained in Section 2 (f) of the Private Forest Act, 1975. In fact, the subject land having been declared by a judicial determination “not to be a forest”, the provisions of the Private Forest Act, 1975 were not at all attracted. According to Mr. Dada what accentuates the situation is the fact that not only the decision of MRT dated 6th September, 1991, allowing the

retention of 124 hectares of land by the holders thereof attained finality as it was never assailed by any party but also the said decision was fully acted upon and implemented in as much as the delivery of possession of the said land and the Mutation of record of right to reflect the execution and implementation of the said order are evidenced by the possession receipts and Mutation Entry Nos. 249 and 253.

14) Lastly, Mr. Dada submitted that the subject land was never recorded as a forest in any of the government record. Even for correction of an entry, which was erroneously made *ex parte*, the permission of the Central Government, as envisaged by Section 2 of the Forest (Conservation) Act, 1980, cannot be insisted as the jurisdictional condition of the land, in the first place, being a forest cannot be said to have been established.

15) To buttress this submission, Mr. Dada placed a very strong reliance on a Division Bench Judgment of this Court in the case of **Sankalp Resorts Limited and Another Vs. State of Maharashtra, through Principal Secretary and Others**¹. Mr. Dada submitted with tenacity that the controversy at hand is squarely covered by the judgment in the case of **Sankalp Resorts** (supra).

1 (2022) 3 Mah LJ 756

16) Mr. Mali, the learned AGP countered the submissions on behalf of the petitioner with equal resoluteness. It was submitted that the fact that original holder was served with a notice under Section 35 (3) of the Indian Forest Act, 1927 is incontestible. In that view of the matter, according to Mr. Mali, the provisions contained in Sub Section (iii) of Clause (f) of Section 2, which defines “private forest” under the Private Forest Act, 1975 squarely gets attracted and the submission on behalf of the petitioner based on the decision of MRT 6th September, 1991 is of no avail. The fact that by the said decision of MRT, certain land stood excluded from the operation of the ceiling limit as portions of the land were found to be in possession of tenants, does not advance the cause of the petitioner and, according to Mr. Mali, there was never a declaration under Section 6 of the Private Forest Act, 1975 that the subject lands were agricultural lands.

17) Banking heavily upon the provisions contained in Sub Section (3) of Section 3, which declares that all private forest vested in the State Government under Sub Section (1) of Section 3 shall be deemed to be reserved forest within the meaning of the Indian Forest Act, 1927, Mr. Mali strenuously submitted that decision of the Supreme Court in the case of **T. N. Godavarman**

Thirumulkpad Vs. Union of India and Others² applies with full force and vigor, and it is legally impermissible to correct the record of right which has the effect of de-reserving a forest. Mr. Mali made an endeavor to distinguish the decision of this Court in the case of **Sankalp Resorts** (supra) on the ground that in the said case the notice under Section 35 of the Forest Act, 1927 was not served on the land holders, and, upon an enquiry, Collector had declared the subject matter of the said case was an agricultural land. Since these two material facts do not find place in the instant case, the ratio in the case of **Sankalp Resorts** (supra) cannot be readily imported to the facts of the instant case.

18) Mr. Dada joined the issue by canvassing a submission that the aforesaid submissions on behalf of the State again loose sight of the non applicability of the provisions of Section 22A of the Private Forest Act, 1975 and also ignore the pivotal fact that the cultivable land up to the ceiling limit was not at all covered by the Private Forest Act, 1975. Mr. Dada made a painstaking effort to demonstrate with reference to prayers and issues involved in the case of **Sankalp Resorts**(supra) and draw home the

² (1997) 2 SCC 267

point that the **Sankalp Resorts** (supra) is on all four with the facts of the case at hand.

19) I have given a careful consideration to the aforesaid submissions. On facts, there does not seem much controversy. Indisputably notice under Section 35 (3) of the Indian Forest Act, 1927 was issued to the original land holder in the year 1975. With the enforcement of Private Forest Act, 1975 with effect from 30th August, 1975, under Section 3 of the Private Forest Act, 1975, all the private forests stood vested in the State Government. A dispute was raised under Section 6 of the Private Forest Act as regards the area which stood excluded from the preview of acquisition under Section 3 (1) of the Act, 1975 for being the land under lawful cultivation of the occupant or tenant and not in excess of the ceiling under Agricultural Land Ceiling Act.

20) A determination was initially made by Sub-Divisional Officer on 30th December, 1985. The matter was carried in Appeal before the Maharashtra Revenue Tribunal. By a judgment and order dated 17th November, 1988, the Designated Member MRT was persuaded to allow the Appeal and remand the matter to the Sub-Divisional Officer to investigate the fact of partition of the subject land in the year 1960 and its effect upon

the holdings of the co-sharers; the appellant and respondent Nos. 3 to 6 therein.

21) Post remand, Sub-Divisional Officer conducted enquiry under Section 6 of the Private Forest Act, 1975. Being aggrieved by the said determination Mrs. Ramadevi Anantrao Pandit preferred an Appeal under Section 13 of the Private Forest Act, 1975 before MRT. By a judgment and order dated 6th September, 1991, the learned Member MRT allowed the Appeal by modifying the order of Sub-Divisional Officer and declared that the agricultural land admeasuring 124 hectares, i.e. 310 acres is allowed to be retained by landlords and rest of the land was liable to be acquired by the Government. The said determination by MRT has not been challenged and thus attained finality. Indisputably, the determination by MRT was implemented and Mutation Entry Nos. 249 and 253 came to be certified and possession of the respective portions were delivered.

22) In the backdrop of the aforesaid uncontroverted facts, justifiability and legality of the impugned order is required to be tested. Evidently, the Mutation entry Nos. 710 and 744 were certified on the basis of the Government Circular dated 14th July, 2005, with reference to an order of this Court dated 22nd June, 2005. The said circular, *inter alia*, provided that the case where

Section 22A proceedings (restoration of forest land to the holders) were not concluded on the date of enforcement of Forest (Conservation) Act, 1980 i.e. 25th October, 1982 or those proceedings were concluded but the sanction/approval of the Central Government was yet not obtained, an entry of "Government of Maharashtra - reserved forest" be made in the occupier/holder's column and the name of the owner be recorded in the "other rights" column. Pursuant to this Government directive, it seems, Mutation Entry Nos.710 and 744 came to be effected. Subsequent proceedings before the Revenue Authorities to correct the aforesaid Mutation Entries and unsuccessful challenge thereto upto the State Government are already noted above, and need no reiteration.

23) To start with the statutory provisions. Indian Forest Act, 1927 was enacted to consolidate the law relating to forest, the transit of forest produce, and duty leviable on timber and other forest produce. Chapter-V of the Indian Forest Act, 1927 relates to the control over forests and lands not being the property of the government. Under Sub Section (1) of Section 35, the State Government was empowered to regulate or prohibit acts enumerated therein in any forest or waste land. Sub Section (2) of Section 35 empowered the State Government to construct at

its own expense, any such work as it thinks fit in or upon any forest or waste land. Sub Section (3) of Section 35 mandated issue of notice to the owner of such forest or land to show cause why such notification as envisaged by Sub Section (1) or the work be not issued or carried out.

24) In the year 1975, the State legislature passed Maharashtra Private Forest Act, 1975 and it was brought into force on 30th August, 1975. Post certain amendments, the Private Forest Act defines a “Forest” as under:-

[(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....”

25) “Private forest” is defined under Clause (f) as under :-

(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...”

26) The crucial provision which constitutes the substratum of the State’s case of the vesting of the private forest in the State Government contained in Section 3, reads as under:-

“3. Vesting of Private forests in State Government:-

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....”

27) Section 4 enumerates steps to be taken by Government on acquisition of private forest. Section 5 enables the State Government to take over possession of private forests. Sections 6 to 19 deal with settlement of disputes, determination of amount to be paid to the holders of private forest, deduction of amount of encumbrances and expedition of rights of other persons, Appeals, Revision etc. Section 22A, which came to be inserted by Maharashtra Private Forests (Acquisition) (Amendment) Act, 1978 provides for restoration of forest land to owner in certain circumstances. Finally Section 24 repealed Section 34A, 35, 36A, 36B, 36C and 37 of the Act, 1927 on and from appointed date i.e. 30th August, 1975.

28) For the purpose of determination of controversy at hand, it may be necessary to note the phraseology of Section 6 which provides for settlement of disputes and the relevant part of Section 22A empowering the Collector to restore forest land to

owner upon fulfillment of certain conditions. They read as under:-

“6. Settlement of disputes:-

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.

.....

22A- Restoration of forest land to owner in certain circumstances:-

(1) Notwithstanding anything contained in the foregoing provisions of this Act, if, on an application made by any owner of private forest, within a period of six months from the date of commencement of the Maharashtra Private Forests (Acquisition) (Amendment) Act, 1978, or suo motu at any time, the Collector, after holding such inquiry as he deems fit, is satisfied that the total holding of land of such owner became less than twelve hectares on the appointed day on account of acquisition of his forest land under this Act or that the total holding of land of such owner was already less than twelve hectares on the day immediately preceding the appointed day, the Collector shall determine whether the whole of the forest land acquired from such owner or what portion thereof shall be restored to him, so, however, that his total holding of land, on the appointed day, shall not exceed twelve hectares...”

29) Evidently, the definitions of “forest” and “private forest” are expansive. Nonetheless, to qualify for acquisition and vesting in the State Government under the provisions of Section 3 (1), the

land in question must fall within any of the sub clauses of Clause (f) of Section 2, which defines, “private forest”. Sub Section (2) of Section 3 of the Private Forest Act, 1975 is of material significance. Sub Section (2) of Section 3 expressly excludes the vesting under Sub Section (1) of the land comprised in a private forest as is held by an occupant or tenant and is lawfully under cultivation on the appointed day to the extent it is not in excess of the ceiling provided under the Agricultural Lands Ceiling Act.

30) These provisions give rise to two primary issues. One, whether the land qualifies the designation of a “forest” or “private forest”. Two, whether the land being under cultivation and below the ceiling limit prescribed under the Agricultural Land Ceiling Act is excluded from the acquisition under Section 3 (1). Herein lies the utility of the dispute resolution mechanism provided in Section 6 of the Private Forest Act, 1975. Under Section 6, the Collector is enjoined to decide the disputes 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 and the decision of the Collector, subject to the decision of the Tribunal in Appeal, is made final.

31) The Constitutional validity of the Maharashtra Private Forest Act, 1975 was challenged before this Court. A five Judge Bench of this Court in the case of **J. C. Waghmare and Others Vs. State of Maharashtra and Others**³ upheld the constitutionality of the provisions of the Private Forest Act, 1975, especially Section 3. The Full Bench, in the process, expounded the import of the definition of 'Private Forest' under Section 2 (f) and the remit of the determination by the Collector under Section 6 of the Act. The Full Bench, *inter alia*, observed as under:-

“30. Turning to the definition of 'private forest' given in Section 2 (f), it will appear clear that even this definition consists of two parts; the first part indicating what the expression 'means' according to the Legislature and the second part indicating what the expression 'includes' according to the Legislature. In the first part 'private forest' has been defined to mean 'any forest which is not the property of the Government' while under the inclusive part six items or heads mentioned in Sub-clauses (i) to (vi) have been included in the definition. It is thus clear that Sub-clauses (i), (ii) and (iv) of Section 2(f) deal with declared, adjudicated or admitted instances of forests. Sub-clause (iii) of Section 2(f) no doubt seeks to cover land in respect of which merely a notice has been issued to the owner of a private forest under Section 35(3) and his objections may have remained unheard till 30-8-1975 as Section 35 has stood repealed on the coming into force of the Acquisition Act. Here also, as in the case of owners of land falling under Sub-clause (iii) of Section 2(c-1), his objections, if any, including his objection that his land cannot be styled as forest at all can be heard and

3 AIR 1978 Bombay 119

disposed of under Section 6 of the Acquisition Act, and this position was conceded by Counsel appearing for the State of Maharashtra.”

.....

32. In the first place, the scheme clearly shows that under Section 3 all private forests vest in the State Government and since both the expressions --'forest' as well as 'private forest' --have been defined in the Act what vests in the State Government is 'private forest' as per Section 2 (f) and in order to be 'private forest' under Section 2 (f) it must be 'forest' under Section 2 (c-1) in the first instance and read in this manner the expression 'all the private forests' occurring in Section 3 will include 'forest produce.' it is not possible to accept the argument that the word 'forest' occurring in the composite expression 'private forest' should not be given the meaning which has been assigned to it in Section 2 (c-1). Moreover, as stated earlier, the scheme itself suggests that what vests in the State under Section 3 are private forests as defined by Section 2 (f) but such private forests must in the first instance be 'forests' as defined by Section 2 (c-1) and read in that manner the forest produce would vest in the State Government along with the private forest under Section 3 of the Act.

32) The Full Bench of this Court thus held that Sub-clauses (i), (ii) and (iv) of Section 2(f) deal with declared, adjudicated or admitted instances of forests. Sub-clause (iii) of Section 2(f) though covers the land in respect of which only a notice has been issued to the owner under Section 35(3) of the Indian Forest Act, 1927, yet his objections, including his objection that his land cannot be styled as forest at all, can be heard and disposed of under Section 6 of the Private Forest Act, 1975.

33) The Full Bench further held that the scheme of the Private Forest Act itself suggests that what vests in the State under Section 3 are private forests as defined by Section 2 (f) but such private forests must in the first instance be, 'forests' as defined by Section 2 (c-1).

34) The aforesaid exposition of law would indicate that the inquiry envisaged under Section 6 of the Private Forest Act, 1975 would subsume in its fold the primary question as to whether the land is “forest” in the first instance; whether it satisfies the description of “private forest”; whether any private forest or a part thereof is liable to be acquired under Section 3 (1) and the last question would also hinge upon the determination as to whether a portion of land is excluded by operation of Sub Section (2) of Section 3 in respect of land under cultivation not exceeding the ceiling on holdings.

35) The aforesaid view of this Court in the case of **J. C. Waghmare** (supra) attained finality and in the case of **Godrej and Boyce Manufacturing Company Limited and Another Vs. State of Maharashtra and Others**⁴, the Supreme Court after referring to the aforeextracted view expressly recorded that the said view has been accepted by the State of Maharashtra and

⁴ (2014) 3 SCC 430

has now attained finality. In the case of **Godrej and Boyce** (supra) , the Supreme Court also observed that it was quite clear from a reading of **J. C. Waghmare** (supra) that the, “means and includes” definition of ‘forest’ in Section 2 (c-i) of the Private Forest Act, 1975 does not detract or take away from the primary meaning of the word, “forest” and the Supreme Court was in agreement with the said view.

36) At this juncture, recourse to the decision of this Court in the case of **Sankalp Resorts** (supra), on which a very strong reliance was placed by Mr. Dada, would be apposite. In the said case pursuant to a communication by Deputy Conservator of Forest, the Revenue Officer had made an entry of “forest land” in the record of right of the subject land. Upon a dispute being raised by the owner before the Collector under Section 6 of the Private Forest Act, 1975, it was held that the subject land was not private forest and a draft speaking order was prepared awaiting permission of the Central Government under Section 2 of Forest (Conservation) Act, 1980. Since no action was taken despite relentless persuasion, the land owner approached this Court seeking *inter alia* a direction to the Revenue Authorities to delete the entry of forest in the record of right. It was the stand of the State Government that despite a declaration by Collector

that the subject land was not a private forest, permission of the Government of India under Section 2 of the Forest (Conservation) Act, 1980 was required and until such permission had been granted, the land would be deemed to be forest.

37) In the backdrop of the aforesaid controversy, a Division Bench of this Court after a reference to the relevant provisions of Private Forest Act, 1975 and Section 2 of the Forest (Conservation) Act, 1980 enunciated the law as under:-

“30. Section 2 (c-i) of the State Act defines 'forest' and the decision of the Collector, or the order of the State Government under Section 18, be final “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.

.....

33. 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 13.11.2011 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.

34. 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.

.....

36. 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.

.....

40. 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.

41. 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-afforestation. 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."

(emphasis supplied).

38) Repelling the contention that despite the determination by the Collector under Section 6 of the Act that the subject land is not a private forest, it continues to be a forest till the Central Government grants permission under Section 2 of the Forest (Conservation) Act, 1980, the Division Bench, *inter alia*, observed as under:-

“42. 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:

.....

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...."

(emphasis supplied).

39) The aforesaid pronouncement of the Division Bench enunciates in empathetic terms that once the Collector in exercise of the jurisdiction under Section 6 of Private Forest Act, 1975 declares that the land is not a forest, the question of applicability of the provisions of Forest (Conservation) Act, 1980 does not arise. The Division Bench has also adverted to an incongruous situation which may be arise where the Competent Authority has made the determination and yet the permission of the Central Government is insisted upon.

40) Mr. Mali, the learned AGP would however urge that the said determination by the MRT in the instant case has been made without adverting to the provisions contained in Section 2 of the Forest (Conservation) Act, 1980. A very strong reliance was placed on the observations of the Supreme Court in the

case of **T.N. Godavarman Thirumulkpad Vs. Union of India and Others**⁵, to bolster up the submission that notwithstanding such determination by MRT allowing the land holder to retain 124 hectares of land, the character of the land continues to be that of a “forest”. Paragraph 4 of the said order reads as under:-

“4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance. The Act has made provisions for the conservation of forests and for matters connected therewith must apply to all forests irrespective of the nature of ownership or classification thereof. The word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reservedd, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term 'forest land', occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works Vs. State of Gujarat, Rural Litigation and Entitlement Kendra Vs. State of U.P. and recently in the order dated 29th November, 1996 (Supreme Court Monitoring Committee Vs. Mussoorie Dehradun Development Authority). The earlier decision of this Court in State of Bihar V. Banshi Ram Modi has, hterefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any state Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in

5 (1997) 2 SCC 267

such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take necessary remedial measures without any further delay.

5. We further direct as under:

I-General

1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or ply-wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith."

41) The aforesaid enunciation of law and the submissions canvassed on behalf of the parties, in the facts of the case at hand, warrant determination of the moot question as to whether despite the determination by MRT that the predecessor in title of the petitioner was entitled to retain 124 hectares of land, the subject land can still be designated as a reserved forest? For an answer the factual position needs to be re-adverted to. First and foremost, it is incontrovertible that the order passed by MRT

dated 6th September, 1991 has attained finality. Secondly, the action seems to have been taken by the Revenue Authorities on the basis of the Government Circular dated 14th July, 2005. Thirdly, in the order passed by the Sub-Divisional Officer setting aside the order passed by the Tahasildar deleting Mutation Entry 744 the Sub-Divisional Officer referred to a Government of India letter dated 19th March, 2014. In response to Government of Maharashtra's letter dated 13th February, 2014 certain clarification as to whether for the correction of entries, whereby certain non forest lands have been inadvertently recorded as forest in the revenue record the provisions of the Forest (Conservation) Act, 1980 would be attracted, the Ministry of Environment and Forest clarified that correction of entry in the revenue record to change status of a land record as "forest" to "non-forest" in effect amounts to de-reservation of a forest land. The same thus required not only prior approval of the Central Government in accordance with the provisions of Section 2 (1) of the Forest (Conservation) Act, 1980, but also prior leave of the Supreme Court. It would be contextually relevant to note that in the impugned order the Minister (Revenue) has also referred to the said letter dated 19th March, 2014 and observed that even if it was assumed that Mutation entry No.744 was made in an

unlawful manner yet prior permission of the Central Government was required to correct the said error.

42) Whether aforesaid approach is justifiable ? Answer to this question is required to be explored in two parts. One, the applicability of the Government Circular dated 14th July, 2005. From perusal of the said circular, it becomes clear that the circular delineates the manner in which the entries in the record of right in respect of, “forest” are to be made where orders of restoration of the forest land have been passed under Section 22A of the Maharashtra Private Forest Act, 1975. The Division Bench of this Court in the case of **Dr. Arjun Sitaram Nitnwar Vs. Tahsildar, District Thane and Others**⁶ after perusal of the circular issued by the State Government to all the Divisional Commissioners and District Collectors held that directions contained in said circular are in relation to the entry made in the revenue records on the basis of order of restoration of the lands passed under Section 22A of the Act, 1975.

43) In the case at hand, the applicability of the aforesaid directives of the State Government contained in the Government Circular dated 14th July, 2005 is not made out. As noted above, the petitioner or the predecessor in title of the petitioner never

⁶ (2015) 6 Mah. LJ 634

applied for restoration of the forest land under Section 22A of the Act, 1975, on the premise that on account of acquisition of the forest land, the total holding of the land owner became less than 12 hectares on the appointed date or that total holding of the land owner was already less than 12 hectares on the day immediately preceding the appointed date. On the contrary, the challenge by the predecessor in title of the petitioner to the designation of the private forest was on the ground that the determination of the ceiling under Section 5 of the Maharashtra Agricultural Lands Ceiling Act, 1961 was erroneous. That was clearly a challenge to the extent of acquisition covered by Sub Section (2) of Section 3 of the Private Forest Act, 1975. Thus the initial action of the authorities to make an entry in the revenue record of "State of Maharashtra- reserved Forest" on the basis of state Government directives cannot be sustained.

44) Two, the support and sustenance sought to be drawn to the impugned action on the basis of the proscription contained in Section 2 of the Forest Conservation Act, 1980 and clarificatory letter dated 19th March, 2014 now merits consideration.

45) The applicability of the provisions contained in Section 2 of the Forest Conservation Act, 1980 is undoubtedly required to be

considered keeping in view the purpose and object of both Private Forests Act, 1975 and the Forest Conservation Act, 1980. The Maharashtra Private Forest Act was enacted to, *inter alia*, acquire private forests in the State of Maharashtra generally for conserving their material resources and protecting them from destruction or over-exploitation by their owners and for promoting systematic and scientific development and management of such forests for the purpose of attaining and maintaining ecological balance in the public interest. The legislature found it expedient to enact such a measure which had the trappings of acquisition of land as the private forests in the state were found to be generally in highly degraded and over-exploited state. It was considered necessary to arrest the depletion of the forest cover in the state.

46) The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance. Forest Conservation Act, 1980 thus made provision for conservation of forest irrespective of nature of the ownership or classification thereof. In furtherance of the aforesaid objects, the definition of “forest” has received a purposive interpretation. The courts are often called upon to weigh a balance between the process of development, on one

hand, and the ecological imperative of preserving environment, on the other.

47) On the aforesaid touchstone, reverting to the facts of the case, the determination, in my considered view, must be based on the primary question as to whether the subject land stood vested under Section 3 (1) of the Maharashtra Private Forest Act, 1975. Since cultivated land upto ceiling is excluded by Sub Section (2) of Section 3 of the Private Forest Act, 1975, it cannot be said that the cultivable land which fell within the ambit of Sub Section (2) of Section 3 also stood vested in the State Government as a part of private forest on the appointed date i.e. 30th October, 1975. The nature of the determination under Section 6 of the Private Forest Act, 1975, adverted to above, also bears upon the issue. The aspect as to whether a portion of the land has or has not vested in the State Government as the private forest, squarely falls within the province of the authority of the Collector, as envisaged by Section 6 of the Private Forest Act, 1975. That determination, it must be noted, relates to the date of vesting of the private forest under Section 3 (1) of the Act, 1975. **J. C. Waghmare** (supra) in terms clarifies that such vesting under Section 3 (1) is not final and is subject to the adjudication by the Collector under Section 6 of the Act, 1975.

48) If this is the position in law, and on facts it is incontrovertible that the determination made by the MRT that the owners were entitled to retain 124 hectares of land has attained finality, it would be rather difficult to accede to the submission that the said determination by MRT does not bind the State Government.

49) I have perused the order passed by the MRT in Forest Appeal No. 1 of 1990. The learned President MRT has, *inter alia*, adverted to the panchanama dated 14th April, 1979, which indicated that 374 acres and 11 gunthas land was shown in possession of the landlords and tenants as agricultural land and that the record of right of Gat Nos. 162/2, 162/3 and 161/1 indicated that the lands were being cultivated by the landlords in the year 1982-1983 to 1984-1985 personally and paddy, groundnut and other crops were taken therein. The decision by MRT to exclude 124 hectares of land, based on the attendant facts and the entitlement of co-sharers, thus cannot be said to be without any material. The submission of Mr. Mali that there is no determination under Section 6 that the subject lands were agricultural lands does not merit acceptance in the light of clear findings of the learned President MRT. In any event, the said

decision has attained finality and the legality, propriety and correctness thereof is now not open to challenge.

50) The conspectus of the aforesaid consideration is that, in the totality of the circumstances, the determination by MRT sets the issue at rest that the subject land, which was allowed to be retained by the land owners (as being below the ceiling under the Agricultural Lands Ceiling Act, 1961), did not vest in the State Government under Section 3 (1) as to that extent the said land stood excluded under Sub Section (2) thereof. Secondly and indisputably the decision of MRT was implemented and executed to the fullest with Mutation Entry Nos. 249 and 253 being certified on the basis of the said decision and possession delivered. In this backdrop, it was not open for the revenue authorities to re-open the issues concluded by the decision of MRT in an indirect manner by deleting the names of the owners from the holders/occupiers column and substituting the name of 'State of Maharashtra reserved forest'. To sum up, it could not be established that the subject land continued to be "forest" under the Private Forest Act, 1975.

51) If viewed through the aforesaid perspective, the Division Bench judgment in the case of **Sankalp Resorts** (supra) governs the facts of the case at hand with equal force; the change being

that in the instant case the determination by MRT was years before certification of Mutation entry No. 744 whereas in the case of **Sankalp Resorts** (supra) a dispute was raised under Section 6 after the entry of forest was made in the record of right and the decision that the land was not private forest was rendered subject to the permission of the Central Government. The substratum, however, remains the same – the subject lands never vested in the State Government under Section 3 (1) of the Private Forest Act, 1975 and, therefore, provisions contained in Section 2 of the Forest Conservation Act, 1980 were not attracted.

52) I am, therefore, persuaded to hold that the Mutation entry No.744 having been entered wholly unjustifiably, the insistence of the authorities on the prior permission of the Central Government under Section 2 of the Forest Conservation Act, 1980, on the basis of the clarificatory letter dated 19th March, 2014 is unsustainable. The Petition, therefore, deserves to be allowed. Resultantly, the name of the State Government is required to be deleted and the position restored as it obtained prior to certification of Mutation entry No. 744.

53) Before parting it needs to be clarified that this Court has examined the issues raised in this Petition only in the context of

the challenge to certification of Mutation entry No. 744 and refusal of the authorities to correct the record of right in view of the decision of MRT dated 6th September, 1991. This Court has not delved into the aspect of applicability of the other provisions of the Forest Conservation Act, 1980, on any other ground. This determination is confined to the extent that the subject land did not vest in the State Government under Section 3 (1) of the Act, 1975 in view of the exclusion of the cultivated land to the extent indicated in sub Section (2) of Section 3, as determined by MRT.

54) Hence, the following order.

ORDER

- i)** Subject to the aforesaid clarification, the Petition stands allowed in terms of prayer Clause “a”.
- ii)** The decision of Tahasildar in RTS No. 203/15 dated 25th May, 2015 stands restored.
- iii)** Necessary entries in the revenue record in terms of the aforesaid order of Tahasildar dated 25th May, 2015 be made within a period of one month from today.
- iv)** Rule made absolute to the aforesaid extent.

v) In the circumstances of the case there shall be no order as to costs.

[N. J. JAMADAR, J.]

At this stage, Mr. Mali, the learned AGP seeks stay to the execution and implementation of this judgment.

Mr. Narvankar, the learned Counsel for the petitioner opposes the prayer.

Having regard to the nature of the controversy involved in the Petition, execution and operation of this judgment is stayed for a period of eight weeks.

In the meanwhile, the interim protection which was granted to the petitioner shall continue to operate.

[N. J. JAMADAR, J.]