



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5442 OF 2021

Shashikant Raghunath Dhavlikar
Age – 80 years Occ- Retired
R/at – 2903/C, Ramkrushna Tower,
Flat No. S-2, Vangi Bol, Kolhapur
through Power of Attorney Holder
Shri. Rajendra Sadashiv Dhenge,
Age – 60 Years Occu- Agriculturist
R/at 1262 Sandhyamath Galli,
A-Ward, Shivaji Peth, Kolhapur

.....Petitioner

Vs.

1. Divisional Commissioner,
Pune Division, Having office
at- Council Hall, Camp, Pune

2. Tahsildar, Taluka-Gaganbavada,
Dist-Kolhapur.

3. Circle Officer, Salvan,
Taluka – Gaganbavada,
Dist.- Kolhapur.

4. Range Forest Officer,
Having office at : Salvan
Taluka – Gaganbadada,
Dist – Kolhapur

5. State of Maharashtra

.....Respondents

Mr. Drupad Patil a/w Mr. Dheeraj D. Patil for the petitioner
Ms. S. S. Bhende, AGP for the State

CORAM : GAURI GODSE, J.

DATE : 4th APRIL 2024

JUDGMENT:

1. Heard. Rule. Rule made returnable forthwith. By consent of the parties, the petition is taken up for final disposal.
2. This petition takes an exception to the Order dated 25th February 2020 passed by the learned Principal Secretary, Revenue and Forest Department, State of Maharashtra, in a revision application filed by the petitioner. The proceedings before the State Government arise out of an application filed by the petitioner for entering his name in the revenue record pursuant to a certificate issued in the name of the petitioner under The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ("Consolidation Act"). Application filed by the petitioner before the learned Tahsildar for entering his name based on the consolidation certificate was rejected, and the said rejection has been confirmed up to the State Government. Hence, this

petition challenges the orders rejecting the application of the petitioner for entering his name in the revenue records. The petitioner has, therefore, also prayed for allowing his application to enter his name as owner of the suit lands being Gat No. 8A (Old S. No. 47) and Gat No. 8B (Old S. 48), situated at village Shenwade, Taluka Gaganbawada, District Kolhapur.

3. Since the application of the petitioner was rejected on the ground that the suit lands are private forest as per the mutation entry no. 21, the petitioner in this petition has also prayed for a declaration that the suit lands are not private forest or reserved forest within the meaning of The Maharashtra Private Forests (Acquisition) Act, 1975 ("said Act of 1975)

4. There is no dispute that the petitioner is the original owner of the suit lands. At the time of implementation of the consolidation scheme, the original survey numbers 47, 48 and 49 were consolidated and thereafter divided into Gat Nos. 8A, 8B and 8C. The suit lands bearing Gat Nos. 8A and 8B have been allotted to the petitioner's predecessor. In the year 1980, a draft scheme was implemented under the

Consolidation Act. Notification under Section 21 of the Consolidation Act was published on 15th March 1983. Accordingly, a certificate was issued under Section 24 on 15th February 1988 in the name of the petitioner's predecessor, and the same was registered on 23rd February 1988 in respect of the suit lands. However, on 6th June 1985, mutation entry 21 was entered, stating that the suit lands are private forests. The said mutation entry was effected based on a report dated 25th June 1976, prepared by the learned Sub Divisional Officer ('SDO') under the provisions of the said Act of 1975. The said report indicates that the possession of the suit lands was taken over as a private forest. The mutation entry 21 also refers to the letter dated 11th June 1976 issued by the concerned Talathi with regard to taking over possession of the lands on the ground that the suit lands are private forests. The said report pertains to the various lands of three villages, which also includes the said lands.

5. Petitioner made an application for entering his name on 30th May 2016 before learned Tahsildar. The said application was rejected by learned Tahsildar on 19th November 2016. The application was

rejected on the ground that in an inquiry being made by the circle officer, the petitioner failed to produce any supporting documents for entering his name. Hence, based on the report submitted by the circle officer, the application was rejected by learned Tahsildar. Being aggrieved by the said rejection, the petitioner preferred an appeal under Section 247 of the Maharashtra Land Revenue Code ('MLRC') before the learned SDO. At the time of hearing of the said appeal, learned SDO called for a report from the forest officer with regard to mutation entry 21 regarding the suit lands being shown as private forest. Accordingly, the Range Forest Officer submitted his report dated 5th April 2017. The said report indicated that since 1975, the suit lands were in possession of the forest department and that the claim of the petitioner of ownership and cultivation is incorrect. The said report stated that the suit lands are private forest as the notice dated 27th August 1975 was issued under Section 35(3) of the Indian Forest Act, 1927 ('the said Act of 1927') in the name of the petitioner's father. Hence, on the date of the said Act of 1975 coming into force, the suit lands were deemed to be private forest in view of the provisions of the

said Act of 1975. Thus, the said report of the Range Forest Officer stated that the suit lands are private forests. Relying upon the said report, learned SDO dismissed the appeal of the petitioner by holding that in view of the land being private forest under the said Act of 1975, the name of the petitioner cannot be entered into as owners based on the certificate issued under the consolidation Act.

6. Aggrieved by the rejection, the petitioner preferred a second appeal under Section 247 of the MLRC before the Additional Collector. The said appeal was dismissed by the Additional Collector on the same grounds. Thus, being aggrieved by the said order, the petitioner preferred a revision application under Section 257 of MLRC before the Additional Commissioner. The said revision application was also dismissed on the same grounds, and earlier orders were confirmed. Hence, the petitioner preferred a second revision under Section 257 of the MLRC before the State Government. The State Government again referred to the report submitted by the Range Forest Officer, and based on the said report and the provisions of the said Act of 1975, the revision application was dismissed, and the orders passed by the

authorities were confirmed. Hence, the present petition.

7. Learned counsel for the petitioner submitted that since the beginning, the name of the petitioner's predecessor's name has been entered into the revenue record, indicating that he is cultivating the suit lands. He relied upon various 7/12 extracts annexed to the petition. He submitted that perusal of the 7/12 extracts would show that the name of the petitioner's predecessor and then his name is entered as cultivating the suit lands during all the years and for the first time, private forest entry is made in 1985. He thus submitted that despite a report dated 25th June 1976, recording that the possession was taken over of the suit lands on the ground that the suit lands were private forest, revenue entries would show that the petitioner was cultivating the suit lands. Hence, based on the report, it cannot be concluded that the petitioner was not in possession. In fact, the entries in 7/12 extracts would show that possession of the suit lands was never taken over from the petitioner. He further submits that it is not even the case of the respondent that there was any Panchanama recorded for taking over possession. Except for the report dated 25th June 1976, nothing is

produced on record supporting the contention that possession of the suit lands was taken over from the petitioner at any time.

8. So far as the mutation entry no. 21 is concerned, learned counsel for the petitioner submitted that mutation entry is recorded only based on the report dated 25th June 1976. He submits that even the said mutation entry does not refer to any inquiry made regarding the suit lands being a private forest or any notice issued to the petitioner for recording the said mutation entry. He submits that the revenue record indicates that the petitioner was the owner of the suit lands and was also cultivating the same. Hence, the mutation entry could not have been entered without issuing notice to the petitioner and without making necessary inquiries as contemplated under Section 150 of the MLRC. He, therefore, submits that since no notice was issued to the petitioner before making the mutation entry, there was no occasion for the petitioner to challenge the same. However, when the petitioner learnt about the mutation entry during the proceedings initiated for entering his name in the revenue record, the petitioner filed an application dated 10th January 2017 under Right to

Information Act ('RTI Act') requesting for necessary information regarding the documents that were referred to in the mutation entry 21. By letter dated 2nd February 2017, the petitioner was informed that the documents referred to in the mutation entry 21 were not available in the office. By way of an additional affidavit dated 30th April 2024, the petitioner has placed on record a letter received by him in response to an application made under the RTI Act. Learned counsel, thus, submitted that there was no occasion for the petitioner to challenge the said mutation entry. He further submits that in the present petition, necessary averments are made regarding the petitioner not receiving any notice at the time of making the mutation entry.

9. Learned counsel thus submits that for recording that the suit lands are private forest, a necessary inquiry was necessary with regard to whether the suit lands are private forest within the meaning of Section 2(f)(iii) of the said Act of 1975. He submitted that the deeming provision for declaring land as a private forest within the meaning of Section 2 (f) (iii) is well settled by the Hon'ble Supreme Court in the decision of *Godrej and Boyce*

Manufacturing Company Limited and Another Vs. State of Maharashtra and others¹. He submits that the law in this regard is no longer res integra and that the provision under the said Act of 1975 is applicable only if the notice issued under sub-section (3) of Section 35 of the Act of 1927 is served upon the owner and/or there is a notification under sub-section 1 of Section 35 of the said Act of 1927. Therefore, he submits that the necessary inquiry is necessary to determine whether the land is a private forest based on the aforesaid notice.

10. The learned counsel for the petitioner further relied upon Section 6 of the said Act of 1975 and submitted that if there is an issue regarding the land being a private forest or not, the issue needs to be decided by the Collector under Section 6 of the said Act. In support of his submission, he relied upon the decision of the Hon'ble Division Bench of this Court in the case of ***Rajmachi Rural Aid and Development, Through its Hon. Secretary Vs. State of Maharashtra, Through the Secretary and Others***². He submits that a similar issue

¹ (2014) 3 Supreme Court Cases 430

² 2022 SCC OnLine Bom 943

had arisen in the said case, and the challenge in the said case was regarding the defects in the notice issued under Section 35(3) and Notification under Section 35(1) of the said Act of 1927. He submits that after considering various decisions on the issue of service of notice and the provisions of the said Act of 1927 and the well-settled legal principle in various decisions, including *Godrej and Boyce*, this Court relegated the party to the Collector for making an inquiry under Section 6 for deciding the issue as to whether the land was a private forest or not, and whether it vested in the Government. Thus, by relying upon the said decision, learned counsel for the petitioner submitted that even in the present case, the issue had arisen before the revenue authority, including the learned collector, as to whether the suit lands are private forest or not, within the meaning of the said Act of 1975. He thus submits that the learned Collector ought to have made an inquiry as contemplated under Section 6 of the said Act of 1975.

11. The learned counsel for the petitioner submits that considering the nature of the dispute in the present case, this matter requires to be

remitted to the learned Collector for making an inquiry, as contemplated under Section 6, for deciding as to whether the suit lands are private forest or not. He thus submits that in the event the learned Collector, after holding an inquiry, comes to a conclusion that the suit lands are not a private forest, then the petitioner's application for entering his name as owner based on the consolidation certificate needs to be allowed. However, if the learned Collector comes to a conclusion that the suit lands are a private forest within the meaning of said Act of 1975, the petitioner would be entitled to challenge the said conclusion by approaching the Tribunal under Section 18 of the said Act of 1975.

12. Learned AGP supports the impugned orders. She submits that the petitioner has never challenged the mutation entry 21, though, in the 7/12 extract since the year 1993, an entry is made regarding the suit lands being a private forest. She submits that once the deeming provision under the said Act of 1975 is applicable and the suit lands are held to be a private forest, the suit lands vested in the government in view of possession being taken over as recorded in the report dated

25th June 1976. She thus submits that once the land is vested in the government in view of the provisions of the 1975 Act, the petitioner's name cannot be entered as owner based on the consolidation scheme. She, therefore, supports the impugned orders on the ground that the authorities were right in rejecting the petitioner's application as the suit lands are vested in the government in view of the provisions under the said Act of 1975. Learned AGP submitted that if the matter is to be remitted back to the collector for inquiry as contemplated under Section 6 of the said Act of 1975, the issue regarding the petitioner not raising any objection on mutation entry 21 be kept open for the Collector to take into consideration while making an inquiry under Section 6.

13. I have considered the submissions. Perused the papers. A perusal of the record reveals that certain facts are not disputed. There is no dispute that the petitioner is the owner of the suit lands. It is also not disputed that the consolidation scheme is implemented, and the petitioner's father is shown as the holder of the suit lands in the notification issued under Section 21 of the Consolidation Act, which

was published on 15th March 1983. Pursuant to the implementation of the consolidation scheme, a certificate under Section 24 was also issued in the name of petitioner's father on 15th February 1988 and registered on 23rd February 1988. Though before the certificate under Section 24 of the Consolidation Act was issued, the entry regarding suit lands being private forest was already made on 6th June 1985; however, prior to the said date, notification under Section 21 of the Consolidation Act was issued on 15th March 1983. Thus, when the mutation entry 21 was effected, the notification issued under Section 21 of the Consolidation Act treated the suit lands as the holding of the petitioner's father based on the ownership and possession as recorded in the revenue records. Hence, before certifying mutation entry 21, it was incumbent upon the authorities to issue notice to the petitioner for effecting the said mutation entry.

14. Section 150 of the MLRC provides for making necessary inquiries after issuing notice to the interested parties before certifying the mutation entry. Nothing is produced on record to show that any notice was issued or served upon the petitioner before entering the

suit lands as private forest by way of mutation entry 21. The proceedings under the Consolidation Act accepting the holding of the petitioner cannot be ignored as all the procedures under the Consolidation Act have been followed, and a certificate under Section 24 is issued in the name of the petitioner's predecessor. Thus, when mutation entry 21 was effected, the draft scheme under the Consolidation Act was already published in the year 1980, and notification under Section 21 was also issued. Hence, in the absence of any notice to the petitioner before effecting mutation entry 21, no fault can be found with the petitioner on the ground that the mutation entry is not challenged by the petitioner.

15. Learned counsel for the petitioner is right in relying upon the decision of this court in the case of *Rajmachi Rural Aid and Development*. In the said decision, the Hon'ble Division Bench of this Court has found it proper to relegate the issue as to whether the land in question was a private forest or not and whether it vested in the government for the decision under Section 6 of the said Act of 1975 by the Collector. Considering the nature of the dispute, in the present

case, an inquiry regarding whether the suit lands are a private forest or not is necessary after giving an opportunity of hearing to the petitioner. It is not in dispute that mutation entry 21 was effected without giving notice to the petitioner, though the petitioner father's name continues to be shown as owner and cultivator of the suit lands since the beginning. The name of the petitioner's father appears as cultivator even after mutation entry 21 is effected based on the report of the learned SDO dated 25th June 1976. It is not the case of the revenue authorities that any Panchnama was recorded before preparing the report regarding the possession of the suit lands being taken away pursuant to the provisions of the said Act of 1975 on the ground that the suit lands are private forest, in view of the deeming provisions of the said Act of 1975.

16. Thus, once the petitioner's application for entering his name in the revenue record as the owner of the suit lands based on the certificate issued under the consolidation Act was filed, it was necessary for the Revenue Authorities to make necessary inquiries on the mutation entry no. 21. Hence, the view taken by the Hon'ble

Division Bench of this Court in the case of *Rajmachi Rural Aid and Development* would also be applicable in the present case. Hence, I find merits in the submissions made on behalf of the petitioner that the matter requires to be relegated to the learned Collector for necessary inquiry and decision as per Section 6 of the said Act of 1975 for making necessary inquiry as to whether the suit lands are a private forest or not, and whether it vested in the government. Hence, the petition must be partly allowed to remit the issue as aforesaid to the learned Collector.

17. Hence, for the reasons stated above, the petition is partly allowed by passing the following order.

ORDER

I. Judgment and Order dated 25th February 2020 passed by the State Government in RTS No. 3819/7934/PK.44/J-5A/P.K.06(03)2019 is quashed and set aside.

II. Judgment and Order dated 28th May 2018, passed by the learned Additional Commissioner, Pune Division in RTS Revision Application No. 12 of 2018 is quashed and

set aside.

III. The Judgment and Order dated 27th November 2017, passed by the learned Additional Collector, Kolhapur in RTS Second Appeal No. 274 of 2017, is quashed and set aside.

IV. Judgment and Order dated 24 May 2017, passed by the Sub-Divisional Officer, Karvir Sub-Division, Kolhapur in RTS Appeal No. 277 of 2016 is quashed and set aside.

V. The Order dated 19th November 2016, passed by the learned Tahsildar, Gaganbawada, rejecting the petitioner's application dated 30th March 2016, is quashed and set aside. Consequently, the petitioner's application dated 30th March 2016 is restored to the file of learned Tahsildar, Gaganbawada.

VI. Learned Collector, Kolhapur is directed to decide the following issues under Section 6 of The Maharashtra Private Forests (Acquisition) Act, 1975:

A) Whether the suit lands are private forest within the meaning of Section 2(f)(iii) of the said Act of 1975.

B) Whether the suit lands are vested in the

State Government, in view of provisions of the said Act of 1975.

VII. Depending upon the said decision taken by the learned Collector in the inquiry under Section 6 of the said Act of 1975, necessary direction be issued by the learned Collector regarding the application dated 30th March 2016 filed by the petitioner subject to the appropriate remedy provided under the said Act of 1975.

VIII. Needless to record that if the learned Collector's decision is adverse to the petitioner, it will always be open to the petitioner to adopt appropriate proceedings for challenging the same as permissible in law.

IX. The petitioner shall appear before the learned Collector, Kolhapur, on 2nd May 2024 at 11 AM. Thereafter, the learned Collector will fix the schedule of the hearing.

X. The petitioner will be at liberty to file necessary documents in support of his submissions.

XI. Needless to record that necessary inquiries under Section 6 of the said Act of 1975 should be carried out after issuing necessary notice to all the concerned

parties and complete the inquiry as expeditiously as possible.

XII. Contentions of all parties regarding the issue as to whether the suit lands are a private forest or not is kept open to be decided in the said inquiry.

18. Writ Petition is partly allowed in above terms.

[GAURI GODSE, J.]