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

WRIT PETITION NO.10072 OF 2023

- | | | |
|----|----------------------------|----------------|
| 1. | MRS. PREETI PARESH BHAGAT | } |
| 2. | MR. MANISH SAMPAT MEHTA | } |
| 3. | MR. MANOJ BALWANTRAI MEHTA | }..Petitioners |

VERSUS

- | | | |
|----|-----------------------------------|-----------------|
| 1. | THE TEHSILDAR, THANE | } |
| 2. | THE TALATHI | } |
| 3. | THE SUB-DIVISIONAL OFFICER | } |
| 4. | THE DEPUTY CONSERVATOR & DIRECTOR | } |
| 5. | THE STATE OF MAHARASHTRA. | }.. Respondents |

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Mr. Vivek V. Salunke a/w Mr. Santosh Thakur for the petitioner.
Mr. N. C. Walimbe, Addl. GP a/w Mrs. Reena A. Salunkhe, AGP for
Respondent Nos.1 to 5.

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**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ**

DATE : 19th MARCH 2024.

ORAL JUDGMENT : (PER : A. S. CHANDURKAR, J)

1. Rule. Rule is made returnable forthwith. Heard the learned counsel for the petitioners as well as the learned Additional Government Pleader for the respondents.

2. The petitioners claim title to land admeasuring about 8060 sq. mts. of village Yeoor, Taluka and District-Thane which is part of Gat No.4, Hissa No.9B(pt) admeasuring area O-H, 80-R, 6-P. They are aggrieved by Mutation Entry No.615 dated 23/05/2005 inasmuch as the said land has been shown to be “Private Forest” of the State Government.

3. The learned counsel for the petitioners by inviting attention to the judgment of the Division Bench in (*Dr. Arjun Sitaram Nitnwar Vs. The Tahsildar, District-Thane and others*), decided on 03/02/2015 submits that Mutation Entry No.616 of various similarly situated lands was the subject matter in said case and a similar prayer seeking declaration that said lands were not Private Forest was considered and accepted therein. Referring to the notice under Section 35(3) of the Indian Forest Act, 1927 (for short, “Act of 1927”) it was submitted that this notice dated 14/08/1975 was also the subject matter of consideration in the case of *Dr. Arjun Sitaram Nitnwar (supra)*. Reference therein was also made to an earlier notice dated 13/04/1957 stated to be issued under Section 35(3) of the Act of 1927. Since these notices were not shown to be served on the predecessors of the petitioners as required by law, it was clear that the said lands could not be treated to be private forest lands. The learned counsel also referred to the affidavit-in-reply that was filed in the case of *Mr. Arjun Sitaram Nitnwar (supra)* and submitted that the petitioners’

land was similarly situated and hence they were entitled to the benefit of that judgment. It was thus prayed that the petitioners be granted similar reliefs as was granted in the aforesaid decision.

4. The learned Additional Government Pleader opposed the writ petition by referring to the affidavit-in-reply filed on behalf of the Respondent Nos.4 and 5 through its Deputy Director-North, Sanjay Gandhi National Park Division, Thane and submitted that since notices dated 13/04/1957 and 14/08/1975 were served on the predecessors of the petitioners, the land in question was part of private forest. The petitioners were, therefore, not entitled for any relief whatsoever.

5. We have heard the learned counsel for the parties and we have perused the documents on record. Various lands from village Yeoor Taluka and District-Thane were the subject matter of consideration in the case of *Mr. Arjun Sitaram Nitnwar (supra)*. Mutation Entry No.616 as well as notice dated 14/08/1975 under Section 35(3) of the Act of 1927 was stated to be issued for Survey No.4/9. On the ground that this notice was not actually shown to be served on the owner of the land, it was held that the notification under Section 35(1) of Act of 1927 would not have any legal value. We find in the present case that the subject land is part of Survey No.4/9B from the same village and Mutation Entry No.615 is also

stated to be taken on the basis of notice dated 14/08/1975 issued under Section 35(3) of the Act of 1927. However, service of this notice on the predecessors of the petitioners has not been shown to be effected. It thus becomes clear that the petitioners are similarly situated as the petitioners in the case of *Mr. Arjun Sitaram Nitnwar (supra)*.

6. Hence, in the light of the documents on record coupled with the reasons assigned by this Court in the case of *Mr. Arjun Sitaram Nitnwar (supra)*, the following order is passed:-

ORDER

(a) It is declared that land bearing Gat No.4, Hissa No.9B(pt) admeasuring area O-H, 80-R, 6-P and total admeasuring area 8060 sq. mts. of Village Yeoor, Taluka and District-Thane is not “private forest” within the meaning of Sub-clause (iii) of Clause (f) of Section 2 of the Maharashtra Private Forest (Acquisition) Act, 1975 and hence, the said lands never vested in the State of Maharashtra by virtue of Sub-section (1) of Section 3 of the said Act of 1975. Accordingly, Mutation Entry No.615 only in relation to the said land stands cancelled. All entries in the Record of Rights in existence prior to the said Mutation Entry be restored within three months from today;

(b) We, however, make it clear that we have not made any

adjudication on the question whether the provisions of the Indian Forest Act, 1927 and the provisions of the Forest (Conservation) Act, 1980 are otherwise applicable to the said lands. The said issue is expressly kept open;

(c) Rule is made absolute in aforesaid terms with no order as to costs.

[JITENDRA JAIN, J]

[A.S. CHANDURKAR, J.]