

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

WRIT PETITION NO. 4169 OF 2024

1. Dhanaji Baburao Gavate]
 Age: 74 Years, Occ: Agriculture]
 Address: Flat No : 103, Riddhi CHS,]
 Plot No.75A, Sector 20C, Navi Mumbai,]
 Airoli, Thane-400708]
]
2. Ananta Baburao Gavate]
 Age:62 Years, Occ: Agriculture]
 Address : Room No.2984, Gavatewadi,]
 Belapur Road, Behind Reliable Tech Park,]
 Airoli, Navi Mumbai-400708.]
]
3. Kashibai Kashinath Gavate]
 [Since deceased through legal heirs]]
]
- 3a. Moreshwar Kashinath Gavate]
 [Since deceased through legal heirs]]
]
- 3a(i).Navin Moreshwar Gavate]
 Age :51 Years, Occ: Agriculture]
 Address : House No.2/112,]
 Moreshwar Apartment,]
 Thane-Belapur Road, Digha,]
 Airoli, Navi Mumbai-400708]
]
- 3a(ii).Amar Moreshwar Gavate]
 Age:46 Years, Occ: Agriculture]
 Address : House No.110,]
 Moreshwar Apartment,]
 Thane-Belapur Road, Digha,]
 Airoli Navi Mumbai-400708]

- 3a(iii)Rajesh Moreshwar Gavate]
 Age :47 Years, Occ: Agriculture]
 Address: House No.111,]
 Moreshwar Apartment,]
 Thane-Belapur Road, Digha,]
 Airoli, Navi Mumbai-400708]
]
4. Narendra Kashinath Gavate]
 Age:67 Years, Occ: Agriculture]
 Address: House No.820, Vitava Koliwada,]
 Mukesh Galli Near Fish Market,]
 Gavatewadi, Kalwa, Thane-400605.]
]
- 5a. Anandi Koli]
 [through Legal Heirs]]
]
- 5a(i)Punam Sachin Koli]
 Age: 50 Years, Occ: Agriculture]
 Address :104, Mangal Murti Apt,]
 Plot No.21C, Sector 9,]
 Navi Mumbai, Airoli, Thane-400708]
]
- 5a(ii) Prajakta Samir Koli]
 Age :48 Years, Occ: Agriculture]
 Address : A/4, Sion Kamgar Society,]
 Opp. Chroma Showroom,]
 Sion, Kolivada, Sion,]
 Mumbai-400022]
]
- 5a(iii)Mahesh Koli]
 Age : Adult, Occ: Agriculture]
 A/P : Diwale Gaon, Plot No.B-13,]
 Janabai Sadan, Sector 14, CBD Belapur,]
 Navi Mumbai-400614.]
]
- 6) Yamuna Babu Koli]
 Age : 63 Year, Occ: Agriculture]
 Address : A/P:Diwale Gaon, Plot No.B-13,]

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| | Janabai Sadan, Sector 14, CBD Belapur,
Navi Mumbai-400614. |] | |
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| 7) | Malati Ravindra Warlikar
Age:57 Years, Occ:Agriculture
Address: W/O:Ravindra Worlikar, 116/I,
Pakhri Lane, Golfadevi Road, Worli,
Koliwada, Mumbai-400030 |] | |
| | |] | |
| | |] | |
| 8) | Bhagwan Kashinath Gavate
Age:62 Years, Occ: Agricultural
Address: Manohar Apt, Room No.103/104,
Thane-Belapur Road, Digha,
Mumbai, Airoli-400708. |] | |
| | |] | |
| | |] | |
| 9) | Anil Kashinath Gavate
Age:59 Years Occ: Agricultural
Address : Kashi Bai Gavate Chawl,
Holi Ground, Near Fish Market,
Vitava, Thane-400612 |] | |
| | |] | ..Petitioners |

VERSUS

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|----|--|---|----------------------|
| 1. | The State of Maharashtra
Through Revenue and Forest Department,
Having Office at Bandhkam
Bhavan, 25, Marzban Road,
Fort, Mumbai-01. |] | |
| | |] | |
| | |] | |
| 2. | The Collector, Thane. |] | |
| | |] | |
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| 3. | The Sub-Divisional Officer,
Thane Division, Thane. |] | |
| | |] | |
| | |] | |
| 4. | The Talathi, Airoli,
Navi Mumbai Municipal Corporation,
Ward Office, Airoli,
Tal. and Dist. Thane. |] | |
| | |] | ..Respondents |

Dr. Milind Sathe, Senior Advocate with Mr. Satyajeet A. Rajeshirke,
Mr. Gautam R. Kulkarni, Advocates for the petitioners.
Mr. N. C. Walimbe, Additional Government Pleader with Mr. S.P.
Kamble, Assistant Government Pleader for the respondent-State.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL JJ.**

DATE : 10TH DECEMBER 2024

JUDGMENT: (Per A. S. Chandurkar, J.)

1] Rule. Rule made returnable forthwith and heard learned counsel for the parties.

2] The petitioners have approached this Court under Article 226 of the Constitution of India seeking to raise challenge to the legality and validity of Mutation Entry Nos. 441 and 335 that indicate the name of the Maharashtra Government as having interest in the aforesaid lands by treating it to be forest land. Various other ancillary reliefs have been sought.

3] Dr. Milind Sathe, learned Senior Advocate for the petitioners by inviting attention to the order dated 07/01/2016 passed in Writ Petition No.10338 of 2014 (*Nana Govind Gavate (Since deceased)*)

through legal heirs A to J and Others vs. State of Maharashtra Through its Principal Secretary, Revenue & Forest Department & Others) submits that in somewhat similar circumstances, this Court had considered a challenge to similar mutation entries that were carried out pursuant to notices issued under Section 35(3) of the Indian Forest Act, 1927 (*for short, "the Act of 1927"*). The petitioners therein were claiming rights from the common ancestors of the present petitioners and were similarly situated. It was submitted that this Court had held that mere issuance of the notice under Section 35(3) of the Act of 1927 was not sufficient to vest the said land in the State Government. A similar challenge was therefore considered in the aforesaid writ petition and the said mutation entries came to be set aside. Mutation Entry No.445 which is the subject matter of challenge in the present writ petition was also subject matter of consideration in the said Writ Petition with regard to Gat No.95/1. He also invited attention to the judgment of the Division Bench dated 03/02/2015 in Writ Petition No.9969 of 2013 (*Dr. Arjun Sitaram Nitnwar vs. The Tahsildar, District-Thane and Others*). The issue raised in the present writ petition was also considered at length in the

aforesaid writ petition and it was held that there was no vesting of land in the State Government merely on the basis of a notice under Section 35(3) of the Act of 1927. It was thus submitted that considering the fact that similar issues raised by the predecessors of the petitioners having been decided, the petitioners were entitled to similar relief.

4] Mr. N.C. Walimbe, the learned Additional Government Pleader for the respondents referred to the affidavit-in-reply filed on behalf of the respondent no.3 and opposed the prayers as made. It was submitted that after following the necessary procedure, the mutation entries were undertaken. Merely on the basis of the earlier adjudication, the petitioners had prayed for passing of similar orders. There was no reason whatsoever to interfere with the mutation entries carried out in accordance with law.

5] We have heard the learned counsel for the parties and we have perused the decision rendered in *Nana Govind Gavate (Since deceased) through legal heirs A to J and Others* and *Dr. Arjun Sitaram Nitnwar* (supra). We find that the case of the petitioners is

similar to the facts of aforesaid case. Merely on the basis of issuance of notice under Section 35(3) of the Act of 1927, the subject mutation entries have been carried out. Service of these notices under Section 35(3) of the Act of 1927 have not been shown to have been effected in accordance with the prescribed procedure. This issue has been considered by the Supreme Court in *Godrej and Boyce Manufacturing Company Ltd. & Anr. vs. State of Maharashtra & Others*, (2014) 3 SCC 430. Mutation Entry No.445 with regard to the adjoining Gat Number was the subject matter of consideration in *Nana Govind Gavate (Since deceased) through legal heirs A to J and Others* (supra). From the material on record, we are satisfied that the petitioners are similarly situated as the petitioners in the said writ petition. Accordingly, for the reasons recorded in the aforesaid decisions, this writ petition is allowed in terms of prayer clauses (b) and (d) which read as under:-

“(b) This Hon’ble Court may after considering legality, validity and propriety of Mutation Entry No.441 of 445 recording name of the Maharashtra Government Forest Land be pleased to quash and set aside the same.

(d) This Hon’ble Court may be pleased to issue a writ of

mandamus or any other appropriate writ, order and / or direction, in the nature of mandamus under Article 226 of the Constitution of India directing the Respondents the cancel the Mutation Entry Nos. 441 and 445 and restrain the Respondents from treating the Petitioners land as the Forest private land.”

It is however clarified that we have not adjudicated the question as to whether the provisions of Indian Forest act 1927 and Forest (Conservation) Act, 1980 are otherwise applicable to the aforesaid lands. That issue is kept expressly open.

6] Rule is made absolute in the aforesaid terms with no order as to costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]