

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 706 OF 2024

JABS International Pvt. Ltd.

...Petitioner

Versus

State of Maharashtra Thr. The Chief Secretary & Ors.

...Respondents

Mr. Atul Rajadhyaksha Sr. Adv. a/w Nishant Tripathi, Pranav Vaidya i/b M. Tripathi & Co., for Petitioner.

Mr. A. I. Patel Addl. G. P. a/w Mr. K. S. Thorat 'B' Panel Counsel for State-Respondent Nos.1, 4,5 & 6.

Mr. Prashant Chawan, Sr. Advocate a/s Prajit Vora, for Respondent Nos.2 and 3 (MIDC).

Mr. Sonal Dalvi, Assistant Conservator of Forest, Thane (LRP & WL) present.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE: 27 JANUARY 2025

P.C.

1. We had heard learned counsel for the parties on the earlier occasion when we had passed a detailed order. For convenience, the said order is noted which reads thus:

"1. We are not at all satisfied with the affidavit filed by Urmila Jagannath Patil, Sub Divisional Officer, District. Thane dated 18 October 2024 and more particularly, considering the averments as made in paragraph Nos. 4 and 5 wherein it is stated that the land which is subject matter of the present petition and being claimed as industrial area by the petitioner, also supported by the MIDC, was labeled as private forest when Mutation Entry No. 801 was made, as stated by her in paragraph 6 of the affidavit. However, without any clarification

recording the lawful events, if any in that regard it is stated that after Maharashtra Private Forest (Acquisition) Act, 1975 was brought into force, a further mutation entry no. 815 was recorded and the said land was subjected to be a Maharashtra Private Forest. It is difficult to ascertain such statements as made by the deponent in the affidavit and more particularly in the last five lines of paragraph 6 of the affidavit. Further, we are also not in a position to appreciate that what the deponent intends to say in paragraph 7 when she made the following averments:

*“7. I say that, thereafter in the year, 2005 pursuant to directions received from the Forest Department, name of 'Maharashtra Government Private Forest' was recorded by Mutation Entry No. 816 in kabjedar column and the name of the MIDC in the other right column. Hereto annexed and marked as **Exhibit'3'** is copy of Mutation Entry No. 816. The effect of the said Mutation Entry have been given to all plots of land about 15 properties. Hereto annexed and marked as **Exhibit '4'** collectively are copies of the 7/12 extracts. I crave leave to refer and rely upon the records and proceedings with respect to said Properties as and when produced.”*

2. We are sure that Ms. Urmila Jagannath Patil, could have obtained appropriate legal advise before she could place on record such vague affidavit. We also believe that Ms. Urmila Patil certainly would not have any intention to mislead this Court, which we hope we are not required to verify at the further hearing.

3. We accordingly, adjourn the proceedings to **27 January 2025 “High on Board”**. However, directing Urmila Patil to explain Para 6 and 7 elaborately.

4. We would also wonder when MIDC has taken a clear stand that the land was subject matter of acquisition and ultimately vested in the MIDC and thereafter it was allotted to the petitioner in the manner known to law, as to in what manner the plot which is surrounded by all industrial units and also being used for industrial purposes, could be labeled as private forest, unless procedure qua the very plot in question was followed and thereafter the plot was acquired under the provisions of **Maharashtra Private Forest (Acquisition) Act, 1975** to be categorized as a private forest. All these events are required to be explained on sufficient material as acceptable in law.

5. We may observe that Government Officer on affidavit that too in a writ petition, has to take a clear stand and it cannot in any manner be vague and ambiguous.

6. For the purpose of clarity, we again reiterate that the contention of petitioner is in respect of plot No. 350/A stated to be original survey No. 134."

2. On such backdrop, we have heard learned counsel for the parties today. Our attention is drawn to an order passed by the Additional Commissioner, Konkan Division dated 31 May 2019, on an appeal filed by the MIDC in the context of the land subject matter of the present proceedings purported to be categorized as forest was the grievance of the MIDC, in such proceedings. The operative portion of the said order reads thus:

(Translation of a Photocopy of a portion from Order, typewritten in Marathi.)

ORDER

1. The Application of the Appellant is partly allowed for the reasons mentioned in the Judgment.
2. As a result of partly allowing the Application of the Appellant, the Order bearing No. Sub-Div./Thane/'Kha'. 'Va'./Acquisition/ Enquiry matter of 22A/Thane/S.R./No. 15/2006, dated 31st August, 2006 of the Sub-divisional Officer, Thane is set aside and the present matter is remanded to the Sub-Divisional Officer, Thane to take necessary steps as per the observations mentioned under the Head viz. 'Findings' in the Judgment.
3. No order as to costs.
4. This order shall be intimated to all the persons concerned.

3. Mr. Chavan, learned senior counsel for the MIDC has drawn our attention that in similar facts proceedings had arisen before this Court in Writ Petition No. 2752 of 2020 (**Goma Engineering Pvt. Ltd. Vs. State of Maharashtra & Ors.**) in which the Court considered the challenge to a communication dated 22 November 2019 issued by the Range Forest Officer, Thane addressed to Deputy Engineer, MIDC Division-2 stating that

in view of the issuance of notice under Section 35(3) of the Indian Forest Act, 1927, dated 27 September 2015, it would not be permissible to undertake any construction on land, subject matter of the said petition, being Survey No. 272 situated at Mahape, Thane. The petitioner therein had sought directions to the District Collector to cancel the mutation entry bearing No.3814 with regard to the land survey No.275/1 wherein, the said land has been shown as Reserved Forest belonging to the Maharashtra Government. Considering the rival contentions and the documentary materials on record, the Court observed that it had become clear that after following the prescribed procedure under the Land Acquisition Act, 1884 various lands including lands in question was acquired for industrial use. It was also observed that in the said case, since 1963, the MIDC was in possession of the land through its lessee and the land was used for industrial purposes. The Court referred to the communication dated 22 November 2019 which was issued by Range Forest Officer, the Deputy Conservator of Forest, Thane Division to the MIDC, as well as to the petitioner, stating that the record indicated that the possession of the plot in question had been with MIDC since 1963 and it is for such reason, the Range Forest Officer was instructed that the offence registered under the Indian Forest Act, 1927 may not be proceeded further. The Court while observing that the land in question was subject matter of acquisition proceedings under the 1894 Act

and consequently, respondent No.2 to 4, the Revenue Officials were directed to take appropriate steps to rectify the Revenue Entry. The relevant extract of the order reads thus:

"4. After hearing the learned counsel for the parties and after perusing the documentary material on record, it becomes clear that after following the prescribed procedure under the Act of 1894 various lands including land Survey No.275/1 wherein Plot No.B- 66 is situated came to be acquired for industrial use. It is clear from the record that since 1963 it is the MIDC that is in possession of the aforesaid lands through its lessee. It is thus clear that since 1963 the said land is being used for industrial purposes and there is no forest therein in existence. It is pertinent to note that after the impugned communication dated 22nd November 2019 was issued by the Range Forest Officer, the Dy. Conservator of Forest, Thane Division, issued a communication to the MIDC as well as the petitioner stating therein that the record indicated that the possession of Plot No. B-66 out of Survey No. 275/1 had been with MIDC since 1963. For this reason, the Range Forest Officer was instructed that the offence registered under the Indian Forest Act 1927 (for short "Act of 1927") may not be proceeded further.

5. In the light of this, communication dated 23rd December 2019 issued by the Dy. Conservator of Forests who is an authority superior to the Range Forest Officer, it is clear that even according to the forest department, since 1963 the subject land has been under the industrial use. For that reason issuance of the impugned communication dated 22nd November 2019 is contrary to the documentary material on record and hence unwarranted. The notice under Section 35(3) of the Act of 1927 has not been shown to have been served on the land holder. In any event, prior to the Maharashtra Private Forest (Acquisition) Act, 1975 coming into force the subject land was acquired and since 1963 is being used for industrial purposes. In that view of the matter, we find that issuance of impugned communication dated 22nd November 2019 is not supported by any material on record.

6. For aforesaid reasons, the following order is passed.

ORDER

(i) The communication dated 22nd November 2019 issued by the Range Forest Officer, Thane is quashed and set aside.

(ii) It is held that Plot No.B-66 falling in Survey No. 275/1 was the

subject matter of acquisition proceedings under the Land Acquisition Act, 1894 pursuant to notification under Section 4 of Act of 1894 dated 24th January 1963 and notification under Section 6 of the Act of 1894 published on 20th March 1963.

(iii) Consequently, the respondent Nos. 2 to 4 shall take appropriate steps to rectify Mutation Entry No.3814 to the extent of land ad measuring 2 Hectares 68 Ares bearing Survey No.275/1, Village Panchpakhadi, Taluka Thane, Dist. Thane within a period of 8 weeks from today.

4. The situation in the present case is quite similar to what had fell for consideration of the Court in **Goma Engineering Pvt. Ltd.** (supra). We also note that the MIDC has taken a clear stand in regard to the acquisition of the said land for the purposes of the MIDC and accordingly, the authority of the MIDC to dispose of such land, in pursuance of which the MIDC issued offer letter dated 11 September 2014 and the final allotment letter dated 25 July 2015 annexed as Exhibit -A3 and Exhibit - A5 respectively to the Writ Petition.

5. The Sub-Divisional Officer is yet to pass final orders in pursuance of the directions as made by the Additional Divisional Commissioner (supra). We are hence of the opinion that a final order needs to be passed by the Sub-Divisional Officer after hearing the MIDC and the Forest Department.

6. Hence, at this stage of the proceedings, the following orders shall serve the interest of justice:

ORDER

(i) As agreed by Mr. Patel, learned AGP on instructions of Mr. Rahul Suryawanshi, Nayab Tahsildar, Thane states that a hearing can be held on 30 January 2025 at 2.30 p.m. in the office of the Sub-Divisional Officer, Thane.

(ii) Mr. Chavan, learned Senior Counsel for the MIDC states that the representative of the MIDC shall attend the hearing as also the representative of the Forest Department Mr. Sonal Valvi, Assistant Conservator of Forest, Thane who is present in the Court, would also attend the hearing.

(iii) Let the parties be heard and appropriate orders be passed in accordance with law, in the light of the observations as made hereinabove and more particularly, considering the decision of the Court in **Goma Engineering Pvt. Ltd.** (supra).

7. An affidavit on behalf of the State, in regard to the decision that would be taken be placed on record on or before **7 February 2025**.

8. List the present proceeding on **10 February 2025 (HOB)**.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)