
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 706 OF 2024

M/s Jabs International Pvt Ltd

.. Petitioners

Versus

State of Maharashtra & Ors

.. Respondents

Mr. Atul Rajadhyaksha, Senior Advocate with Mr. Nishant Tripathi, Pranav Vaidya i/b M. Tripathi & Co, Advocates for the Petitioners.

Mr. K. S. Thorat 'B' Panel Counsel, for the State/Respondent Nos.1, 4, 5 and 6.

Mr. Prashant Chawan, Senior Advocate with Poonam Seth i/b Navdeep Vora & Associates, Advocates for Respondent Nos.2 and 3.

Mr. S. D. Valvi, Assistant Conservator of Forest, Thane (L. R. P. & Wildlife) is present.

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CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JULY 25, 2025

ORAL JUDGMENT: [PER B. P. COLABAWALLA, J.]

1. Rule. Respondents waive service. With the consent of parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition has been filed seeking the following reliefs:-

“a. That that this Hon’ble Court may be pleased to issue the writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records and proceedings pertaining to Plot No. A-350/1 and upon its scrutiny, be further pleased to quash and set aside the letter dated 28th September 2015 issued by the Respondent No.2 informing the Petitioners that the said land (Plot No. A-350/1) is recorded as “the Government Forest”.

a(i). That this Hon’ble Court may be pleased to issue appropriate writ, order or direction calling for the records and proceedings of the Appeal of the MIDC before the Ld. Ld Sub-Divisional Officer, Thane (Kra. TD/Te-6/Kha.Van/SR-01/2025) and upon examining the validity of the order dated 12th February 2025 (Exhibit K to the Petition) passed by the Ld. Sub-Divisional Officer, Thane, be pleased to quash and set aside the same;

b. That this Hon’ble Court may be pleased to issue the writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order and direction directing the Respondent No.2 to (a) execute and register the Lease Deed thereby vesting into the Petitioners Plot No. A-350/1, TTC Industrial Area, Mahape, Navi Mumbai-400 710, (b) to hand over to the Petitioners possession of Plot No.A-350/1, TTC Industrial Area, Mahape, Navi Mumbai- 400 710.

c. That in the event of this Hon’ble Court not being pleased to grant prayer clause (b) supra, be pleased to the issuance of writ of mandamus or writ in the nature of mandamus or any other appropriate, writ, order and direction directing the Respondent No.2 to (a) execute and register the Lease Deed thereby vesting into the Petitioners Plot No. A-829, TTC Industrial Area, Mahape, Navi Mumbai- 400 710, (b) to hand over to the

Petitioners possession of Plot No. A-829, TTC Industrial Area, Mahape, Navi Mumbai- 400 710”.

3. At the outset, Mr. Rajadhyaksha, the learned Senior Counsel appearing on behalf of the Petitioners pressed the above Petition only in terms of prayer clauses (a), (a-i) and (b) of the above Writ Petition.

4. According to Mr. Rajadhyaksha, the Petitioners have been constrained to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to impugn the arbitrary & unreasonable acts attributable to the 2nd and the 4th Respondents. The gravamen of this Petition emanates from the fact that Respondent No.2 had initially allotted a plot of land, namely, Plot A-350/1 in the *Trans Thane Creek Industrial Area (“TTC Industrial Area”)* to the Petitioners and which was adjoining to their existing facility on Plot A-350. Plot A-350/1 was allotted to the Petitioners for the purpose of expanding their manufacturing and processing capabilities. Towards this allotment, MIDC (2nd Respondent) also collected more than Rs.5 Crores (in the year 2015) towards the lease premium and yet did not handover physical possession of Plot A-350/1. According to MIDC, possession of Plot A-350/1 was not handed over because the 4th Respondent (Chief Conservator of Forests) raised an objection that Plot No. A-350/1 was “Forest Land”. It appears that because of the objection

of the Forest Department, an alternate Plot, namely, Plot A-829 was allotted to the Petitioners, in substitution of Plot A-350/1. It appears that the 4th Respondent has taken objection to even Plot A-829 being allotted to the Petitioners because, according to the 4th Respondent, the same is also “Forest Land”. It is in these circumstances that the Petitioners have approached this Court in its writ jurisdiction seeking the reliefs more particularly set out earlier.

5. The brief facts of this case would reveal that in the year 1965, Respondent No.1 issued a Notification under Section 1 (3) of the *Maharashtra Industrial Development Act, 1961* (for short “**MID Act**”), applying Chapter VI of the said Act to various lands, including the Plots which form the subject matter of the present Writ Petition, w.e.f. 15th October 1965. Thereafter, on 26th May 1966 and 23rd December 1971, Respondent No.1 published in the Maharashtra Official Gazette Notifications under Section 32 (1) of the MID Act whereby they notified that the lands mentioned therein vested in the State Government free from all encumbrances. In other words, these lands were acquired by the State Government for industrial purposes as more particularly mentioned in the said Notifications. It is pertinent to note that Survey No. 134, with many other survey numbers, formed the subject matter of the aforesaid Notifications issued under Section

32 (1) of the MID Act. Pursuant to these Notifications, possession of the lands which form the subject matter of these Notifications, were also handed over to MIDC in the year 1972 (which included Survey No.134). On these lands, and more particularly Survey No.134, an industrial area was developed in a phased manner. Accordingly, the Trans Thane Creek Industrial Area (***“TTC Industrial Area”***) was also developed. After preparation of the layout of the TTC Industrial Area, Plots were carved out and were allotted to various entrepreneurs.

6. The Petitioners, in or about 1994, were allotted Plot No. A-350, situated on the aforesaid Survey No. 134. The Petitioners are currently carrying on its business activities from the structures constructed on the said plot. Somewhere in the year 2014, the Petitioners applied for allotment of the adjacent plot [Plot A-350/1] for expansion purposes. It is pursuant to this application that MIDC issued an allotment order dated 23rd July 2015 for Plot A-350/1 situated on Survey No. 134.

7. It appears that pending the process of allotment of the aforesaid Plot A-350/1, the Forest Department raised an issue that Survey No. 134 [in which Plot A-350/1 is situated] is “Forest Land”. In answer to this claim of the Forest Department, MIDC addressed a communication dated 11th January

2016 and 20th September 2017 informing the Forest Department that Survey No. 134 was already acquired by the State Government and possession of the same was handed over to MIDC. It was further pointed out that the said Survey No. 134 was part of a notified industrial area of MIDC, namely the TTC Industrial Area, and requested the Forest Department to delete the said Survey No. 134 as “Forest Land” under the provisions of the *Maharashtra Private Forest (Acquisition) Act, 1975*.

8. Be that as it may, considering the objections raised by the Forest Department, MIDC decided to allot another alternative Plot, namely Plot A-829 to the Petitioners. It appears that even this Plot, the Forest Department claims, is “Forest Land”, and therefore, cannot be allotted to the Petitioners. It is in these facts that the present Petition is filed.

9. We have heard the learned counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. The undisputed facts on record are that Survey No.134 (on which Plot A-350 and A-350/1 are located) was acquired by the State Government by resorting to provisions under the MID Act. Pursuant to this acquisition, Survey No.134 vested in the State Government free from all encumbrances. It was thereafter handed over to MIDC to develop an industrial area.

Accordingly, MIDC developed the TTC Industrial Area in a phased manner in which Survey No.134 is located. Once this was done, MIDC carved out various plots and allotted the same to various entrepreneurs, one of which was the Petitioners. This was in relation to Plot A-350 on which the Petitioners have already constructed structures thereon, and from which it carries on its business from the year 1994 onwards.

10. In these undisputed facts, we fail to understand how the Forest Department can today contend that Plot No. A-350/1, and which is adjoining to Plot A-350, is “Forest Land”. According to the Forest Department, Survey No.134 is a “Private Forest” because, in relation to Survey No.134, a notice dated 6th March 1957 was issued to the original owners under Section 35 (3) of the Indian Forest Act, 1927. Once this notice was issued, then Survey No.134 would be a “Private Forest” as contemplated under Section 2(f)(iii) of the *Maharashtra Private Forest (Acquisition) Act, 1975*. It was the submission of the Forest Department that the land could not automatically change from “forest” to “non-forest” just because the land was acquired for MIDC.

11. We find this argument to be without any merit for more than one reason. Firstly, we find that the Forest Department has not been able to point

out to us that the Notice issued under Section 35 (3) of the Indian Forest Act, 1927 was ever served upon the original owners. Merely issuing the notice would not make the land [forming the subject matter of the notice] a “Private Forest” under Section 2(f)(iii) of the *Maharashtra Private Forest (Acquisition) Act, 1975*. The said notice also has to be served on the owners of the land. If the said notice is not served, merely issuing the said notice would not make the land [forming the subject matter of the notice] a “Private Forest”. This has been so held by the Hon’ble Supreme Court in the case of ***Godrej and Boyce Manufacturing Company Limited and Anr vs. State of Maharashtra [(2014) 3 SCC 430]*** and more particularly paragraphs 54 to 58 and 72 to 74 thereof. For the sake convenience, the said paragraphs are reproduced hereunder:-

“54. Applying the law laid down by this Court on interpretation, in the context of these appeals, ***we may be missing the wood for the trees if a literal meaning is given to the word “issued”. To avoid this, it is necessary to also appreciate the scheme of Section 35 of the Forest Act since that scheme needs to be kept in mind while considering “issued” in Section 2(f)(iii) of the Private Forests Act.***

55. A notice under Section 35(3) of the Forest Act is intended to give an opportunity to the owner of a forest to show cause why, inter alia, a regulatory or a prohibitory measure be not made in respect of that forest. It is important to note that such a notice presupposes the existence of a forest. The owner of the forest is expected to file objections within a reasonable time as specified in the notice and is also given an opportunity to lead evidence in support of the objections. After these basic requirements are met, the owner of the forest is entitled to a hearing on

the objections. ***This entire procedure obviously cannot be followed by the State and the owner of the forest unless the owner is served with the notice. Therefore, service of a notice issued under Section 35(3) of the Forest Act is inherent in the very language used in the provision and the very purpose of the provision.***

56. Additionally, Section 35(4) of the Forest Act provides that a notice under Section 35(3) of the Forest Act may provide that for a period not exceeding six months (extended to one year in 1961) the owner of the forest can be obliged to adhere to one or more of the regulatory or prohibitory measures mentioned in Section 35(1) of the Forest Act. On the failure of the owner of the forest to abide by the said measures, he/she is liable to imprisonment for a term up to six months and/or a fine under Section 35(7) of the Forest Act. ***Surely, given the penal consequence of non-adherence to a Section 35(4) direction in a Section 35(3) notice, service of such a notice must be interpreted to be mandatory.*** On the facts of the case in Godrej, such a direction was in fact given and Godrej was directed, for a period of six months, to refrain from the cutting and removal of trees and timber and the firing and clearing of vegetation. Strictly speaking, therefore, despite not being served with Notice No. WT/53 and despite having no knowledge of it, Godrej was liable to be punished under Section 35(7) of the Forest Act if it cut or removed any tree or timber or fired or cleared any vegetation.

57. This interplay may be looked at from another point of view, namely, the need to issue a direction under Section 35(4) of the Forest Act, which can be only to prevent damage to or destruction of a forest. If the notice under Section 35(3) of the Forest Act is not served on the owner of the forest, he/she may continue to damage the forest defeating the very purpose of the Forest Act. Such an interpretation cannot be given to Section 35 of the Forest Act nor can a limited interpretation be given to the word "issued" used in the context of Section 35 of the Forest Act in Section 2(f)(iii) of the Private Forests Act.

58. Finally, Section 35(5) of the Forest Act mandates not only service of a notice issued under that provision “in the manner provided in the Code of Civil Procedure, 1908, for the service of summons” (a manner that we are all familiar with) but also its publication “in the manner prescribed by rules”. ***This double pronged receipt and confirmation of knowledge of the show-cause notice by the owner of a forest makes it clear that Section 35(3) of the Forest Act is not intended to end the process with the mere issuance of a notice but it also requires service of a notice on the owner of the forest. The need for ensuring service is clearly to protect the interests of the owner of the forest who may have valid reasons not only to object to the issuance of regulatory or prohibitory directions, but also to enable him/her to raise a jurisdictional issue that the land in question is actually not a forest. The need for ensuring service is also to prevent damage to or destruction of a forest.***

72. ***Given this factual scenario, we agree that Section 2(f)(iii) of the Private Forests Act is not intended to apply to notices that had passed their shelf life and that only “pipeline notices” issued in reasonably close proximity to the coming into force of the Private Forests Act were “live” and could be acted upon.***

73. In Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai [(2005) 7 SCC 627] this Court dealt with the provisions of the Land Acquisition Act and held that the legislation being an expropriatory legislation, it ought to be strictly construed since it deprives a person of his/her land. In this decision, reliance was placed on State of M.P. v. Vishnu Prasad Sharma [AIR 1966 SC 1593 : (1966) 3 SCR 557] and Khub Chand v. State of Rajasthan [AIR 1967 SC 1074 : (1967) 1 SCR 120] . ***The same rationale would apply to Section 2(f)(iii) of the Private Forests Act since it seeks to take away, after a few decades, private land on the ostensible ground that it is a private forest. Section 2(f)(iii) of the Private Forests***

Act must not only be reasonably construed but also strictly so as not to discomfit a citizen and expropriate his/her property.

74. The fact that the Private Forests Act repealed some sections of the Forest Act, particularly Sections 34-A and 35 thereof is also significant. Section 2(f)(iii) of the Private Forests Act is in a sense a saving clause for pipeline notices issued under Section 35(3) of the Forest Act but which could not, for want of adequate time be either withdrawn or culminate in the issuance of a regulatory or prohibitory final notification under Section 35(1) of the Forest Act, depending on the objections raised by the landowner. ***Looked at from any point of view, it does seem clear that Section 2(f)(iii) of the Private Forests Act was intended to apply to “live” and not stale notices issued under Section 35(3) of the Forest Act.***

(emphasis supplied)

12. Secondly, it is the State Government itself that has acquired Survey No.134 [amongst many others] from the original owners and handed over the same to the MIDC for it to be developed as an industrial area. If, in fact, Survey No.134 was a “Private Forest”, we cannot understand why the Forest Department did not object to the acquisition of the said land for industrial purposes by the State Government in the year 1965 itself. Why has the Forest Department woken up after over 50 years is something that is completely unexplained. We, therefore, find that the arguments of the Forest Department to be wholly unsustainable.

13. We find that in similar facts, this Court in the case of ***Goma Engineering Private Limited & Anr v/s The State of Maharashtra & Ors (Writ Petition No. 2752 of 2020 decided on 27th February 2024)*** inter alia quashed the Communication dated 22nd November 2019 issued by the Range Forest Officer, Thane which inter alia stated that in view of the issuance of a notice under Section 35(3) of the Indian Forest Act, 1927, and which was dated 29th September 1950, it would not be permissible to undertake any construction on the land which formed the subject matter of the said Writ Petition. In fact, the Division Bench even went on to direct Respondent Nos. 2 to 4 therein to take appropriate steps to rectify the mutation entry. We find that the facts in the present case are very similar to the facts in ***Goma Engineering Private Ltd (supra)***. In ***Goma Engineering Private Ltd (supra)*** also, the land in question was acquired under the provisions of the Land Acquisition Act, 1894 and possession of the same was handed over to MIDC, who then proceeded to allot the said plot to the predecessor of the Petitioner therein.

14. Considering the facts and circumstances of the present case, and the discussion above, we are of the view that the above Writ Petition deserves to be allowed. It is accordingly allowed in terms of prayer clauses (a) and (b) reproduced above. As a consequence, we also direct the District Collector,

Thane to carry out requisite changes in Mutation Entry No. 815 so as to not reflect Survey No.134 as “Forest Land” or a “Private Forest”.

15. Rule is made absolute in the aforesaid terms, and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

16. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]