



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3576 OF 2024

Shyamrao S/o Chapat Tarale and others Vs. Union of India, Ministry of Environment, Forest and Climate Change of India and others

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. D.C. Chahande, Advocate for Petitioners
Mr. N.S. Deshpande, DSGI for Respondent / Union of India
Mr. S.M. Uike, Addl. GP for Respondents / State

CORAM: **AVINASH G. GHAROTE AND**
 ABHAY J. MANTRI, JJ.

DATED : 8th APRIL, 2025

1. Heard Mr. Chahande, learned counsel for the petitioners, Mr. N.S. Deshpande, learned DSGI for respondent No. 1 and Mr. Uike, learned Addl. GP for respondent Nos. 2 to 10 / State.

2. The petitioners, who claim to be having title to the land of Survey no. 77, (Old Kh. No. 59/1) and Survey No. 87 (Old Kh. No. 68/3), admeasuring 4.68 HR and 0.52 HR respectively situated at Mouza Vanar Vihara, Tah. Selu, District Wardha, seek to challenge the Notification dated 29.8.1955 (page 133), issued by the Forest Department, in exercise of the powers under Section 29 of the Indian Forest Act, 1927, by which several areas, including the abovesaid lands in question, have been declared as a protected forest. The learned counsel for the

petitioners submits that though the lands have been declared as protected forest they continue to be in ownership of the petitioners, on account of which, the petitioners are entitled to cut the teak trees, standing on the aforesaid lands and no permission for the same would be required. In the alternative, he submits that in case such permission is required, since the petitioners have already made an application in this regard on 04.08.2017 (page 94), to the respondents, the same be directed to be decided.

2. Mr. Uike, learned Additional Government Pleader for respondent - Forest Department and Mr. Deshpande, learned DSGI for respondent - Union of India, vehemently oppose the petition, contending that on account of the passage of time, of more than 70 years, the challenge is belated and stale and cannot be accepted. It is also contended, that even otherwise since the purpose of challenge is to secure permission for cutting teak trees, the same cannot be said to be a legal ground for purpose of challenging the validity of Notification dt.29.8.1955.

3. The Notification dated 29.8.1955, which is issued in exercise of powers under Section 29 of the Act of 1927, declares various lands in various villages as detailed therein, including the aforesaid

lands, as protected forest. The petitioners, who claim to be the owners of the aforesaid lands, therefore, would be bound by the said Notification, as there is no challenge to the same by them over a period of 70 years. In terms of the declaration of the aforesaid lands, falling under the protected forest, the restriction as indicated on account of the applicability of Sections 29, 30 and 32 of the Forest Act, are attracted. The 7/12 extract (page 72), categorically records that before cutting any trees, prior permission of the Tahsildar, Selu is necessary to be obtained. The aforesaid 7/12 extract also indicates, that the aforesaid lands have been held by the petitioners in class-II occupancy rights, on account of which, also the petitioners cannot claim any absolute rights to the lands in question and therefore, the rights, which the petitioners claim would always be subject to the restrictions imposed which are applicable to the lands under the protected forest. This would be the position, even otherwise considering that the holding of the land is under class-II occupancy, which also imposes restriction under the Maharashtra Land Revenue Code regarding the entitlement of such lands. It is not a case, as if the petitioners are deprived of the right to cultivate the lands and take agricultural produce therefrom, which would be apparent from

the fact, that they are doing so since 1961, as is indicated from the 7/12 extract (page 72).

4. Considering the passage of time, of more than 70 years, we find that the challenge to the Gazette Notification dated 29.8.1955 is clearly stale, and cannot be entertained after passage of more than 70 years. That apart, even otherwise, since the lands have been continued to be declared as protected forest, nothing has been brought to our notice, to indicate, that such declaration and protection cannot continue.

5. In view of this position, we reject the challenge to the Notification dated 29.8.1955, as well as the communication dated 23.3.2022 (page 99), which rejects the request of the petitioners for deletion of the aforesaid lands from the protected forest. That takes us, to the plea of the learned counsel for the petitioners regarding pendency of the application for cutting the teak trees dated 04.08.2017 (page 94). The petitioners could only be permitted to cut the teak trees in the line with the policy of State in this regard. To that limited extent, we partly allow the petition by directing the concerned respondent - Forest Department authorities to consider the application dated 04.8.2017 filed by the petitioners in the light of the

applicable policy in that regard and decide the same as expeditiously as possible and in any case within a period of 8 weeks from today.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

MP Deshpande