

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

WRIT PETITION NO. 15055 OF 2024

Muchhala Magic Land Pvt. Ltd.,

A Private Limited Company,
registered under the provisions
of the Companies Act, 1956,
Having its registered office at
Amar Mahal, Ground Floor, Near
Chandan Cinema, Juhu, Mumbai
- 400 049,

Through its Managing Director,
Mr. Arunkumar J. Muchhala.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Revenue & Forest Department,
Government of Maharashtra,
Mantralaya, Mumbai-400 032.

2. The District Collector, Thane,
Having office at Court Naka,
Thane, Dist- Thane.

3. Chief Conservator of Forests,
Thane, Having office at Near
Microwave Tower, Bara
Bungalow Area, Krishna Borker
Marg, Kopri, Thane (East), Dist-
Thane - 400 603.

4. Sub-Divisional Officer, Thane,
Thane Sub-Division, Having
office at Thane.

5. The Tahsildar, Thane,
Having office at Thane.

6. The Talathi, Saja Kolshet,
Having office at Thane

.. Respondents

...

Mr. Saurabh Butala a/w Mr. Siddhesh Bane a/w Ms Aishwarya Hinge and Mr. Pranil Vichare, for the Petitioner.

Mr. Asif Patel, Addl.G.P. a/w Mr. M. M. Pable, AGP, for the Respondent-State.

...

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED: 09th APRIL, 2026

Order : [Per Manjusha Deshpande, J.]:

1. The Petitioner is raising challenge to the order passed by the Sub-Divisional Officer ("SDO"), Thane, rejecting application of the Petitioner for deletion of Mutation Entry No.2181, treating the Petitioner's property as a private forest in land bearing Survey No. 158/3A and 158/4A, admeasuring about 10.67 acres, situated at Village- Kavesar, Taluka and District Thane. The impugned order is challenged on the ground that, this order has been passed without following due process of law, without issuing any notice and granting opportunity of hearing to the Petitioner. Thus, it requires to be set aside, having passed in violation of principles of natural justice.

2. The learned counsel, Mr. Butala for the Petitioner submits that the Petitioner purchased plot of land bearing Survey Nos. 157, 158/3, 158/4, admeasuring near about 13.08

acres, at Village- Kavesar, District- Thane, from the original owner Smt. Hiragauri Shankarlal Vyas for a consideration of Rs. 12 lakhs by executing registered Sale Deed. Pursuant to the Sale Deed, the name of the Petitioner is recorded in the record of rights, and Mutation Entry No. 1624 has been made in respect of the property on 06.12.1990. It is submitted that the subject property was converted into N.A. land in the year 1954 itself, and in the year 1989 it was registered for tourism. After purchase of the said land, the Petitioner has obtained the requisite permissions and approvals from the respective Competent Authorities for development of tourist facilities and running of entertainment ventures in the name and style as "Suraj Water Park". The Commencement Certificate ("C.C.") is also issued by the Thane Municipal Corporation after completion of construction. On receiving the C.C., the Petitioner is running the water park on the said land. In the year 2004, a Mutation Entry No. 2100 was recorded, showing part of the land affected by Corporation road and the lands came to be subdivided into Survey Nos. 157/A, 158/3A, 158/4A, recorded in the name of the Petitioner and Survey Nos. 157/B, 158/3B and 158/4B were recorded in the name of the Corporation. The property was treated as forest under the

provisions of Maharashtra Private Forest (Acquisition) Act, 1975 (for short “the Act of 1975”), pursuant to the instructions issued by the Range Forest Officer (“RFO”) received by the SDO, Thane, vide order dated 06.03.2006. As a result of Mutation Entry No. 2181, necessary changes in the other right column of the 712 extract of Survey No. 158 of Village- Kavesar, Thane, entry of forest has been taken. It is the grievance of the Petitioner that this entry was taken without issuing any notice to the Petitioner. As a result of entry of ‘forest’ in the other right column, it is treated as a forest land. An enquiry is conducted by the SDO, Thane, as contemplated under Section 22A of the Act of 1975, pursuant to which, an order came to be passed on 18.12.2006. This order passed by the SDO, Thane recorded that, the lands in Survey No. 158/2, 158/3, 158/4, 158/5 shall be returned to the owners, and proposal should be forward to the Central Government as per Section 2 of the Forest (Conservation) Act, 1980, and upon receiving the permission from the Central Government, necessary entries will be taken in record.

It is submitted that, to the surprise of the Petitioner a notice was issued to the Petitioner on 17.12.2011, calling upon them to explain the legal status of its rights over the subject

property alleging that the Petitioner had encroached upon the private forest. The Petitioner submitted a response to the said notice on 23.02.2011. In the meanwhile, the Petitioner came to know about the pendency of the issue about service of notice issued under Section 35 of the Indian Forest Act, 1927 to the land holders, was subject matter of challenge before the Hon'ble Supreme Court in case of *Godrej & Boyce Manufacturing Company Limited & Ors. Vs. State of Maharashtra & Ors.*¹ with other connected SLPs. Therefore, the Petitioner also filed an Interim Application seeking intervention in those matters, being Interim Application Nos. 48 of 2011, 49 of 2011 and 50 of 2011 in Special Leave Petition (Civil) No. 11640 of 2008, filed by one *Hill Side Residents Welfare Association*. The Appeal filed by the *Godrej & Boyce Manufacturing Company Limited* has been allowed by the Hon'ble Supreme Court, vide Judgment dated 30.01.2014, and even the Interim Application seeking directions in the SLPs were also disposed of in terms of the order passed in the SLP and other connected SLPs.

It is further submitted by the learned counsel that, pursuant to the judgment in case of *Godrej & Boyce Manufacturing Company Limited (supra)*, the State of

¹ (2014) 3 SCC 430

Maharashtra issued instructions to the Commissioner of Mumbai Municipal Corporation, Chief Conservator of Forest and all the Collectors directing to implement the said decision. Despite the specific directions issued by the Government to delete the private forest entry in respect of the subject property, the entry in respect of the Petitioner's land was not deleted, therefore, the Petitioner preferred a detailed application requesting the SDO, Thane to delete all the entries made in the revenue record relating to the subject property as private forest, on 16.03.2015.

It is the submission of the learned counsel that, in all other cases where such directions are issued, the order passed by the Hon'ble Supreme Court has been implemented; however, it is only in case of the Petitioner the SDO, Thane has not taken appropriate steps for deleting the entries of private forest. The Petitioner has preferred various representations to the Authorities of Forest Department as well as the Revenue Department, but no action was taken by either of the departments for deletion of the entry. In view of the lethargic approach of the Respondents, the Petitioner had also filed Writ Petition No.4593 of 2022 in this Court, seeking limited relief of direction to the District Collector, Thane, to decide its

application for deletion of entry of private forest. The Writ Petition filed by the Petitioner has been disposed of by this Court vide order dated 22.04.2022, directing the Competent Authority to consider the case of the Petitioner on its own merits. After passing of the order by this Court on 22.04.2022, the Petitioner once again approached the SDO, Thane, along with a copy of order passed by this Court requesting deletion of Mutation Entry No. 2181 in respect of the subject property, along with the copies of Judgment and Order dated 30.01.2014. Unfortunately, without considering the law laid down in the judgment of *Godrej & Boyce Manufacturing Company Limited (supra)* and the group of petitions, which also included the Intervention Application filed by the Petitioner, the impugned order dated 03.04.2023, rejecting the application of the Petitioner, refusing to delete Mutation Entry No. 2181 has been passed.

3. The learned counsel for the Petitioner has drawn our attention to the order passed by this Court in an identical matter in Writ Petition No. 961 of 2021 filed by one Shabbir Gulam Hussain Morbiwala and another. This Court has observed in its order dated 14.07.2022 that just because the Petitioner's name may not appear in the reported judgment,

does not mean that the Petitioner was not covered by the Supreme Court decision. The decision of the Supreme Court clearly holds that, where no notice under Section 35 (3) of the Indian Forest Act, 1927, was shown to have been issued and served, there would be no vesting or deemed acquisition of the land under the Act of 1975.

4. It is submitted that, in view of the aforementioned facts and circumstances although the Petitioner is covered by the reported judgment of the Supreme Court, which is also applied in respect of various other lands covered by the issue, the Petitioner has been given a discriminatory treatment by the Authorities, which has resulted in the impugned order; hence, the impugned order deserves to be quashed and set aside.

5. After hearing the Petitioner when we have called upon the learned Addl.G.P. representing the State, he informs us that in the case of the Petitioner though the notice under Section 35(3) is issued, the Respondent Authorities do not have any proof of service of notice.

In the light of the submissions of the parties when we perused the documents on record, we find that undisputedly the Petitioner is the owner of the lands in Survey No. 158 of Village- Kavesar, District- Thane, and they have filed

Intervention Application in Special Leave Petition (Civil) No. 11640 of 2008, which was heard and disposed of alongwith the judgment in case of in ***Godrej & Boyce Manufacturing Company Limited*** (*supra*), where the similar relief removing of the entry of forest from the 7/12 extract in respect of Survey No. 158/3 and 158/4 was granted. It all also needs to be appreciated that the land in Survey No. 158/3 to the extent of 2 hectares 40 ares and Survey No. 158/4 to the extent of 2 hectares 16 ares have been retruend to Petitioner upon the enquiry under Section 22A of the Act of 1975.

On perusal of the judgment in the case of ***Godrej & Boyce Manufacturing Company Limited*** (*supra*), we find that the Special Leave Petition (Civil) No. 11640 of 2008 has been allowed, as a result, the Petitioner stands covered by the judgment of the said judgment. The learned Addl.G.P. has made a statement that, although the notice under Section 35 (3) has been issued, they do not have any proof of service of notice. The Hon'ble Supreme Court while considering the issue of notice under Section 35(3) of the Indian Forest Act, 1927 has held that, a notice under Section 35(3) is intended to give an opportunity to the owner of a forest to show cause why a regulatory or prohibitory measure be not made in respect of

the forest. The owner of the forest on receiving such notice is expected to file objection within a reasonable time as specified in the notice, and is also given an opportunity to lead evidence in support of his objections.

This procedure is capable of being followed only when there is a service of notice. Therefore, the service of notice under Section 35(3) is inherent in the language used in the provision. It is held that the notice issued under Section 35(3) should be within a reasonable period and closer to the proximity of coming into force of the Act of 1975. If the State fails to take any decision on the show cause notice for several decades, it cannot be acted upon after a huge gap; after it has passed its shelf life.

The notice under Section 35(3) not only contemplates issuance of notice, but also service of notice to the land holder. The Hon'ble Supreme Court in the aforementioned judgment has stressed upon the importance of service of notice, which was found to be lacking in the pending matters before the Supreme Court, as a result of which, the impugned notices in the Writ Petitions were quashed. The Intervention Application of the Petitioner being a part of the proceedings before the Hon'ble Supreme Court, is also covered by the said judgment

since the intervention filed by them has been allowed.

It is the categorical case of the Petitioner that, without giving any opportunity to the Petitioner the entry of forest land has been taken, vide Mutation Entry No. 2181. Similarly, the statement of the learned Addl.G.P. also makes it evident that, there is no proof of issuance of notice under Section 35(3) of the Indian Forest Act, 1927; hence, the mutation entry becomes untenable.

6. In spite of the aforementioned prevailing facts and circumstances which covers the case of the Petitioner, the SDO has rejected the Application of the Petitioner. The learned counsel has also drawn our attention to the decision of this Court in the case of *Ananta Waman Tanki & Ors. Vs State of Maharashtra & Ors*² decided on 26.07.2023, in which directions have been issued regarding deletion of Mutation Entry No. 2181, in respect of the lands in the Survey No. 245/4B of Village- Kavesar, Taluka and District Thane. In view of the fact that Mutation Entry No. 2181 is already set aside, we find that the Petitioner's case is also covered by the said decision, since his grievance also pertains to Mutation Entry No. 2181.

Hence, vide impugned order, the SDO has wrongly

² 2023 SCC OnLine Bom 1523

rejected the Application of the Petitioner on the ground that, if the entry of forest is deleted from the 7/12 extracts, which are wrongly taken, it would amount to deforestation. The provisions of the Forest Conservation Act, 1980 contemplate a previous sanction from the Central Government since in the prayer of the Petitioner is for deletion of words 'reserve forest' from the 7/12 extracts, it will be necessary to take prior permission of the Central Government as well as the Supreme Court. This reasoning given by the SDO in our view, is totally misplaced and contrary to the record and in contravention of the judgment of the Supreme Court itself in case of ***Godrej & Boyce Manufacturing Company Limited*** (*supra*). More particularly, considering that the Petitioner itself was part of the group of the matters, which were disposed of alongwith the decision in case of ***Godrej & Boyce Manufacturing Company Limited***, which is clearly covered by the said judicial pronouncement, which does not require affirmation from the Hon'ble Supreme Court again. Thus, the order passed by the SDO is perverse, without appreciating the facts on records as well as the law governing on the issue. Hence, we allow the Writ Petition in terms of prayer clause (b), which reads thus:

(b) This Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, order or

direction in the like nature under Article 226 of the Constitution of India, thereby quashing and setting aside impugned Order dated 03.04.2023 passed by Sub Divisional Officer, Sub Division Thane, rejecting the application of the Petitioner for deletion of Mutation Entry No. 2181 treating the Petitioner's property as a private forest land bearing Survey No. 158/3A and 158/4A admeasuring near about 10.67 acres, situated at village Kavesar, Taluka & Dist. Thane.

Digitally
signed by
RUSHIKESH
VISHNU
PATIL
Date:
2026.04.21
10:49:09
+0530

(MANJUSHA DESHPANDE, J.) (BHARATI DANGRE, J.)