

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14411 OF 2025**

Kisan Gopal Tokare

....Petitioner

V/S

State of Maharashtra & Ors.

....Respondents

Mr.Saurabh Butala for the Petitioner.

Mr.A.I. Patel, Addl. GP a/w Mr.M.M. Pabale, AGP for the State.

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

**RESERVED ON : 9th APRIL,2026
PRONOUNCED ON : 28th APRIL,2026**

JUDGMENT (PER BHARATI DANGRE, J) :

1 'Rule'. Rule is made returnable forthwith by consent of parties.

Heard the learned counsel Mr.Saurabh Butala for the Petitioner and Mr.A.I. Patel, Additional Government Pleader for the State.

2 The Petition involves the land bearing Gut No.225 admeasuring 11 acres, situated at Village Dongarnhave, Taluka Murbad, District-Thane, being subdivided into 3 parts as Gut No.225/A, Gut No.225/B and Gut No.225/C.

As far as the land bearing Survey No.225/B admeasuring 1.62.0 HR and land bearing Survey No.225/C admeasuring 2.20.0 HR is concerned, with the details of the predecessors being provided in the Petition, with respect to the mutation entries, the Petitioner has pleaded that the erstwhile owners, sold land bearing Survey Nos.225/B and 225/C to the Petitioner vide registered Sale Deed dated 06/10/2022 and the name of the Petitioner is recorded in the 7/12 extract of both the Gut Nos. vide Mutation Entry No.2415.

The Petition is accompanied by 7/12 extract in respect of Gut No.225/B and 225/C alongwith the mutation entry.

Based on the aforesaid documents, the Petitioner claims to be the absolute owner and in possession of the subject land pursuant to the execution of the registered Sale Deed dated 06/10/2022 and it is his claim that the erstwhile owners handed over possession of the subject land to the Petitioner and since then the Petitioner has been in absolute and peaceful possession of the said land.

3 The Petitioner has grievance in respect of Mutation Entry No.1449 recorded on 20/08/2001, recording that vide order dated 29/08/2000 passed by the Divisional Commissioner and an order dated 17/08/2001 passed by the Tahsildar under the Maharashtra Private Forest Act, 1975 in the other right column of the subject land, it is recorded that non-forest activities are not permitted without prior permission of the Central Government.

Reference is also made to another Mutation Entry No. 1534 recorded on 07/10/2005 recording that the lands in respect of which Mutation Entry No.1449 was recorded vide circular issued by the Divisional Commissioner and the Government Resolution, it is recorded that the land in respect of which order under Section 22A was passed before the Maharashtra Private Forest Conservation Act, 1980 came into force, the ownership of the said land shall remain with the owner of the subject land and name of the owner shall be recorded in the occupant column and in other rights column entry of "forest" shall be recorded, in respect of which "non-forest activities" are not permitted without prior permission of the Central Government. The Mutation Entry No.1534 is also annexed with the Petition.

4 A perusal of Mutation Entry No.1534 with regard to the Circular dated 07/10/2005 issued by the Revenue and Forest Department, Mantralaya, Mumbai, with reference to the earlier Mutation Entry No.1449 note that since directions were issued that the entry was prior to the Conservation of Forest Act, 1980 coming into force and in pursuance thereto by continuing the ownership of the person who is in possession, entry was made as regards "Forest". According to the Petitioner, the aforesaid mutation entry stand as on date.

However, since the Petitioner was apprehensive about any adverse action being initiated against him at any point of time, he sought information under the Right to Information Act in respect of Survey No.225, Dongarnhave, Taluka Murbad, from the

Divisional Forest Officer, Thane, inquiring whether notices were issued under Section 35(3) of the Indian Forest Act, 1927 and whether the notices were served on the owner and demanding the proof of service alongwith the Notification under Section 35(1), declaring the land to be a private forest. He also sought information whether there is any record to show that possession of the land was taken by the forest department and if there is any Panchanama executed in that regard alongwith a copy of the order passed under Section 22A and 6 of the Act, thereby restoring the subject land and also declaration/notification issued under Section 38 of the Act.

The Petitioner received response, when the copy of the Notification under the provisions of Section 35(3) was supplied to the Petitioner, but it was sans any proof of the service of notice and no other information document sought was provided to the Petitioner. Similarly, the Petitioner also sought information from Range Forest Officer, Murbad Forest Division, who responded on 03/11/2023, informing the Petitioner that the proof of service of notice under Section 35(3) is not available, but a gazette notification issued under Section 35(1) was made available and it was clarified that the possession of the subject land is not with the Forest Department and even an order restoring the land under Section 22A and Section 6 is also not available.

5 In the wake of the information received, the Petitioner has pleaded his case to the effect that after the Notification was issued under Section 35(1) of the Indian Forest Act, 1927, no steps were taken in respect of the subject land and possession of

the land was never taken by the Forest Department as a result, it continued to remain with the predecessor of the Petitioner and pursuant to the Sale Deed being executed, it was transferred to the Petitioner. It is, therefore, the contention of the Petitioner that the subject land which stand in his name was never declared as “forest” on following due process of law and as contemplated by following the provisions of the Indian Forest Act, 1927 by issuing notice under Section 35(3) to be followed by the Notification issued under Section 35(1) of the Indian Forest Act, 1927.

It is in these circumstances, the Petitioner called upon the Respondents to set aside Mutation Entry Nos.1449 and 1534 and not to treat the subject land in his possession as “forest”.

Despite the receipt of the notice, the Respondents failed to take cognizance and, therefore, the Petitioner has approached this Court.

6 The Petitioner has placed heavy reliance upon the decision of the Apex Court in case of *Godrej & Boyce Manufacturing Company Ltd. vs. State of Maharashtra*¹ and *Rohan Vijay Nahar vs. State of Maharashtra*² and various other authoritative pronouncements of this Court, and according to the Petitioner his case is squarely covered by the aforesaid decision.

7 The learned counsel Mr. Butala has urged that the notice allegedly issued under Section 35(1) of the Indian Forest Act, 1927, by the Government, in respect of the subject land, was issued without complying with the statutory requirement of

1 (2014) 3 SCC 430

2 (2025) SCC OnLine SC 2366

serving a notice under Section 35(3) upon the owner and in his absence, there cannot be any declaration of 'private forest'.

It is also alleged that in the absence of the requisite procedure being followed and serving notice upon the land owners, since the land was never lawfully declared as 'forest' the Respondent also lacked the authority to exercise the power under Section 22A of the Maharashtra Private Forests (Acquisition) Act, 1975 and to declare the said land as 'forest' or to record the land as 'forest' in other right column.

It is otherwise his contention that the provisions of Section 22A and 35 are not applicable to the land as the provisions were applicable only pursuant to the declaration of land as private forest by following due process. In absence of the procedure being followed, according to the Petitioner, there is no justification in issuing notice under Section 22A of the Maharashtra Private Forests (Acquisition) Act, 1975.

8 Unfortunately, when the Petitioner sought information under the Right to Information Act, 2005, even seeking the orders under Section 22A as well as the compliance ensured before the Notification was issued under Section 35(1) of the Indian Forest Act, 1927, he could secure no such document.

As on date, we do not see the background in which Mutation Entry No.1534 is recorded, and in absence of the Petitioner being armed with necessary documents, it is very difficult for us to ascertain the position whether Section 22A order is already issued.

The Petitioner has addressed representation to various

Authorities, such as State Government through Revenue and Forest Department as well as the Chief Forest Conservator, Konkan Division and Deputy Forest Conservator, Thane Division and no cognizance is taken of the said representation/notice.

At this stage, we must note that this Court had settled the law, as regards declaration of Private Forest, when no procedure preceding the declaration of the land as 'private forest' has been followed and the issue has been settled by the Hon'ble Apex Court in case of *Godrej & Boyce Manufacturing Company Ltd. vs. State of Maharashtra*³ and recently in *Rohan Vijay Nahar vs. State of Maharashtra*⁴.

However, in the present case we find that as the Respondent has failed to furnish any information to the Petitioner and even has not bothered to take cognizance of his notice and hence we deem it appropriate to relegate the Petitioner for determination of his claim, by the Forest Department and in particular Respondent Nos.3 and 4.

9 We permit the Petitioner to file a fresh representation to Respondent Nos.3 and 4, so that after inspecting its own record, the Department would be in a position to redress grievance of the Petitioner, in light of the authoritative pronouncement of the Apex Court and we do not intend to grope in the dark, as in the wake of the accusation of the Petitioner, an order of restoration was passed under Section 22(a), but albeit without following the procedure of Section 35(3) of the Indian Forest Act, 1927 and we expect the Respondents to take cognizance of the grievance of

³ (2014) 3 SCC 430

⁴ (2025) SCC OnLine SC 2366

the Petitioner. If the representation is preferred within a period of 4 weeks from today, we direct Respondent Nos.3 and 4 to respond to his notice/representation within a period of six weeks thereof.

Needless to state that if the grievance of the Petitioner is not satisfied, he is at liberty to approach the Court by filing a fresh Writ Petition.

Writ Petition is disposed of in the above-said terms.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]