

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

WRIT PETITION NO. 16682 OF 2025

1. Smt. Sandhya Sombahadur Gurung

Age: 60 years, Occ. Homemaker,
R/at. 15, Nanji Apt., Near Nakhawa
School, Kopri Colony, Thane, (East),
400 063.

2. Master. Samrat Sombahadur Gurung

Age: 15 years, Occ. Student, Through
his natural guardian Petitioner No. 1

3. Master. Samruddha Sombahadur Gurung

Age: 15 years, Occ. Student, Through
his natural guardian Petitioner No. 1

Petitioner Nos. 2 & 3 R/at. Vijaypur,
Hathibarkala, Nayagaon, P.O.
Anarwala, Dehradun, Uttarakhand-
248003.

.. Petitioners

Versus

1. The State of Maharashtra

Through its Principal Secretary,
Revenue and Forest Department,
Government of Maharashtra,
Mantralay, Madam Cama Road,
Hutatma Rajguru Chowk, Mumbai-
400 032, to be served through The
Office of Government Pleader,
Bombay High Court

2. Talathi, Saja - Mulgaon, Tal.
Ambernath, Dist. Thane, to be served
through the office of Government
Pleader, Bombay High Court

3. Circle Officer, Badlapur, Tal. Ambernath Dist. Thane, to be served through the office of Government Pleader, Bombay High Court

4. The Chief Conservator of Forest, Thane, near Microwave Tower, Bara Bungalow Area, Krishna Borkar Marg, Kopri, Thane (E) - 400 603 To be served through the office of Government Pleader, Bombay High Court

5. The Forest Range Officer (Conservation), Badlapur) Tal. Ambernath, Dist. Thane, to be served through the office of Government Pleader, Bombay High Court

6. Collector, Thane
To be served through the office of Government Pleader, Bombay High Court

.. Respondents

**WITH
WRIT PETITION NO. 17453 OF 2025**

1. Smt. Sandhya Sombahadur Gurung
Age: 60 years, Occ. Homemaker, R/at. 15, Nanji Apt., Near Nakhawa School, Kopri Colony, Thane, (East), 400 063.

2. Master. Samrat Sombahadur Gurung
Age: 15 years, Occ. Student, Through his natural guardian Petitioner No. 1

3. Master. Samruddha Sombahadur Gurung
Age: 15 years, Occ. Student, Through his natural guardian Petitioner No. 1

Petitioner Nos. 2 & 3 R/at. Vijaypur,

Hathibarkala, Nayagaon, P.O.
Anarwala, Dehradun, Uttarakhand-
248003.

4. Ms Yamini Sombahadur Gurung,
Age : 39 years, Occ. Homemaker

5. Ms Kamini Sombahadur Gurung
Age : 38 years, Occ. Homemaker

6. Ms Sneha Sombahadur Gurung
Age : 32 years, Occ. Homemaker
Through its Power of Attorney
Holder Ms. Kamini Sombahadur
Gurung

Petitioner Nos. 4 to 6 R/at 15, Nanji
Apt., Near Nakhawa School, Kopri
Colony, Thane (East) 400 063.

.. Petitioners

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Revenue and Forest Department,
Government of Maharashtra,
Mantralay, Madam Cama Road,
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Pleader, Bombay High Court

3. Circle Officer, Badlapur, Tal.
Ambernath Dist. Thane, to be served
through the office of Government
Pleader, Bombay High Court

4. The Chief Conservator of Forest,
Thane, near Microwave Tower, Bara
Bungalow Area, Krishna Borkar
Marg, Kopri, Thane (E) - 400 603 To

be served through the office of Government Pleader, Bombay High Court

5. The Forest Range Officer (Conservation), Badlapur) Tal. Ambernath, Dist. Thane, to be served through the office of Government Pleader, Bombay High Court

6. Collector, Thane
To be served through the office of Government Pleader, Bombay High Court

.. Respondents

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Mr. Sumedh Modak a/w Mr. Aakash Bhopi i/by Mr. Vijay Killedar, for the Petitioner.

Ms Savita Prabhune, AGP a/w Mr. Karan Thorat, 'B' Panel Counsel, for the Respondent-State

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

DATED: 05th MAY, 2026

Judgment : [Per Manjusha Deshpande, J.]:

1. Both these Writ Petitions are filed by the same set of Petitioners raising a common grievance. Even the facts in both the Writ Petitions are one and the same, except the details of the land in question. The Petitioners challenge Mutation Entry No. 1180 taken in the Revenue Records in respect of their lands in Village- Mulgaon, Tal- Ambernath, Dist- Thane. Hence, both the Writ Petitions are being heard

and decided by way of this common judgment.

2. The Writ Petitions seek direction for setting aside Mutation Entry No. 1180 dated 28.05.2006 in the revenue record effected by Respondent No. 2 and certified by Respondent No. 3 on 30.05.2006.

The brief details of the land in Writ Petition No. 16682 of 2025 are as follows:

The Petitioners are the owners of the lands bearing Survey No. 74 Hissa No. 18, area admeasuring 69R-80P, Survey No. 78 Hissa No. 5, area admeasuring 68R-80P, Survey No. 78 Hissa No. 6, area admeasuring 1H-21R-40P, Survey No. 79 Hissa No. 1, area admeasuring 1H-72R-OP, Survey No. 82 Hissa No. 1A, area admeasuring 67R-80P and Survey No. 82 Hissa No. 1B, area admeasuring 27R-30P situated at Mauje Mulgaon, Tal. Ambernath, Dist. Thane. The Petitioners predecessor, one Mr. Baban Malu Boshte had purchased the said land vide registered Sale Deed dated 11.06.1990, which form part of Survey No. 74/18, the property bearing Survey No. 78/6 was purchased from one Mr. Barku Narayan Pawar vide Sale Deed dated 28.12.1995. The property in Survey No. 82/1P has been subdivided into Survey No. 82/1/A and 82/1/B in two parts. Similarly, property bearing Survey No. 78/5 was

purchased from one Ladku Narayan Pawar by registered Sale Deed dated 28.12.1990. Thus the Petitioners have become sole and absolute owner of the above lands. Mutation Entry No. 1180 dated 28.05.2006 is effected in the revenue record in respect of the above referred lands, at village- Mulgaon, Tal- Ambernath, Dist-Thane. The copy of the mutation entry obtained under the Right to Information Act, 2005 discloses that, a notice under Section 35(3) of the Indian Forest Act, 1927 (for short “the IFA, 1927”) had already been issued but entry of the same was not taken in the revenue records. However, pursuant to the Government notification dated 22.02.2005 and 14.07.2005, it was directed that the entry of the State of Maharashtra in possession column showing reserve forest should be taken and the name of the owner shall be taken in the other rights column. Accordingly, the mutation entry was recorded on 28.05.2006, treating it to be a “Private Forest” within the meaning of Section 2(f)(iii) of the Maharashtra Private Forest (Acquisition) Act, 1975 (for short “the MPFA Act, 1975”). Thus, being aggrieved by the aforementioned mutation entry, the Petitioners approach this Court.

The brief details of the land in Writ Petition No. 17453 of

2025 are as follows:

In this Writ Petition, the Petitioners have purchased the property bearing Survey No. 77/1 from one Smt. Bajyabai Jairam Boshte, vide registered Sale Deed dated 11.05.1994. The Petitioners' predecessor had purchased the property Survey No. 78/1 from one Mr. Parasu Walku Misal, by executing registered Sale Deed dated 15.03.1991. By virtue of execution of registered Sale Deed, the Petitioners have become absolute owners of the said land. When the Petitioner came across the Mutation Entry No. 1180 dated 28.05.2006 in the revenue records, in respect of the lands owned by them, they have obtained a copy of the said mutation entry on 20.06.2023, by filing an application under the Right to Information Act, 2005. The information received discloses that inquiry under Section 22A of the Maharashtra Private Forest Act, 1975 in respect of the survey number owned by the Petitioners is pending. The Petitioners have requested for the information about, the notice issued to the erstwhile owner under Section 35(3) of the IFA, 1927. A copy of notice as well as notification issued under Section 35(1) of the IFA, 1927 dated 17.05.2956 has been made available to the Petitioner. In response to the information of proof of notice issued to the

erstwhile owner, the office of Range Forest Officer, Badlapur has informed that no such acknowledgment of proof of service of notice is available with their office.

Consequent to the Mutation Entry No. 1180 entered on 28.05.2006, the lands enlisted in the mutation entry are being treated as private forest within the meaning of Section 2(f)(iii) of the MPFA Act, 1975.

3. On the background of the aforementioned facts, Mr. Sumedh Modak, learned counsel representing the Petitioners submits that, the Petitioners are the absolute owners of the said lands, which were purchased by way of registered Sale Deed. While purchasing the said lands, the 7/12 extract pertaining to the said lands, did not reflect any such entry showing the name of the 'Government of Maharashtra' in the possession column. As such, the Petitioners had purchased the lands with a clear title and without any encumbrance, ensuring that the said lands carried a marketable title.

It is submitted that, the mutation entry has been unilaterally recorded without considering the substantive rights crystallized in favour of the Petitioners through their predecessors.

It is submitted that when the Petitioners have sought

information about the proceedings initiated under Section 35 of the IFA, 1927, and the notices issued under Section 35(3) of the IFA, 1927. The Petitioners received a communication dated 15.07.2024 along with a copy of extracts of the register known as 'Golden Registered' containing the entries of Private Forest, with respect to which notices were issued to the erstwhile owners. On perusal of the said extract of the register it is revealed that, the inquiry under Section 22A of the MPFA Act, 1975 is still pending.

4. It is submitted that, Section 22A of the MPFA Act, 1975 provides for restoration of forest land to the original owner in the event total holding of such land becomes less than 12 Hectares on the appointed day on account of acquisition of such land, or if the land was already less than 12 Hectares on the day immediately prior to the appointed day. The register shows the remark that a notice is issued under Section 35(3) of the IFA, 1927. Consequent to the two notifications issued on 22.02.2005 and 14.07.2005, the name of the Government of Maharashtra has been ordered to be taken in the 7/12 extract of the lands enlisted in the said register.

It is the categorical stand of the Petitioners that, neither the Petitioners nor their predecessors have ever been served

with a copy of the notice under Section 35(3) of the IFA, 1927. Despite there Petitioners having acquired clear and marketable title, the impugned entry has been carried out, which has impeded the rights of the Petitioners. Thus, due to the grave prejudice caused to the Petitioners, they have no other alternative, but to approach this Court by way of filing the present Writ Petitions.

5. It is submitted that, the case of the Petitioners is squarely covered by the judgment of the Hon'ble Supreme Court in case of *Godrej and Boyce Manufacturing Company Limited & Anr. Vs. State of Maharashtra & Ors.*¹ as well as the decision of this Court in *Sunil Shamrao Patil & Anr. Vs. State of Maharashtra & Ors.*².

It is therefore prayed that, in view of the aforementioned decisions, Mutation Entry No. 1180, which causes prejudice to the rights of the Petitioners qua the aforementioned lands, need to be quashed and set aside.

6. The learned AGP, Ms Prabhune for the Respondents- submits that the State has filed affidavit in Writ Petition No. 16682 of 2025 and she would adopt the same affidavit in Writ Petition No. 17453 of 2025. The affidavit has been filed by

¹ (2014) 3 SCC 430

² 2022 SCC OnLine Bom 1643

Respondent Nos. 4 and 5, i.e. the Chief Conservator of Forest, Thane, and the Range Forest Officer (Conservation), Thane. It is the stand of the Respondent Authorities that, pursuant to the order passed by this Court in PIL No. 17 of 2002, directions were issued by the State Government to the Authorities to update the land records of the properties acquired under the MPFA Act, 1975, vide circular dated 14.07.2005. On the basis of these directions, the Respondent Authorities while updating the records have effected Mutation Entry No. 1180 dated 28.05.2006.

7. It is submitted that, a notice under Section 35(3) was issued to the then land owner, pursuant to which, a notification under Section 35(1) of the IFA, 1927 has been issued, which was published in the Government Gazette on 29.11.1958. The copy of the notification dated 35(1) of the IFA, 1927 is annexed to the affidavit. She would further submit that, notification under Section 35(1) of the IFA, 1927 was also published in the Maharashtra Government Gazette dated 29.11.1958. Although the notification was issued in the year 1958, the revenue records remained to be updated at the relevant time, which were updated pursuant to the directions issued, vide notification dated 14.07.2005.

When we have made a specific query to the learned AGP whether they have a proof of service of notice issued to the predecessors in title of the Petitioners, she was not able to give any satisfactory answer, rather her answer was that, no such proof was available with the office of the Respondents. She is relying on the notification issued under Section 35(1), of the IFA, 1927, which according to her, presupposes that, the notice under Section 35(3) was issued and served on the then owners of the lands.

8. We have heard the respective parties and we have also perused the documents on record annexed to the Writ Petitions as well as the reply affidavit filed by the Respondent-Authorities.

The ownership of the Petitioners in respect of the aforementioned lands is established through the registered Sale Deeds. The dispute raised by the Petitioners is limited to the extent of the Mutation Entry No. 1180, which was effected pursuant to the Government notification dated 22.02.2005 and 14.07.2005, whereby the name of the Government has been entered in the possession column of the Revenue Records. We have perused the notification issued under Section 35(1) of the IFA, 1927, which shows that a notice was

issued to one Shashishekhar Bhaskar Madgundkar of Village- Mulgaon, Tal- Kalyan, Dist- Thane, who was the owner of the 'forest' specified in the schedule under Section 35(3) of the IFA, 1927. The contents of notification show that objection was raised by the said owner to the notification and evidence was produced by him, and after hearing, the said notification has been issued under Section 35(1) of the IFA, 1927.

Although the notification dated 17.05.1956 discloses that, notice was issued to the erstwhile owner. The Respondent- Authorities have failed to produce any proof of such notice being served on the said owner. The information received under the RTI dated 15.07.2024, discloses that in response to the information requested by the Petitioners about proof of notice issued to the then owner, it is informed that, no such acknowledgment is available in the records of the office. This information has been issued by the Range Forest Officer, Badlapur.

9. In the present case, the Petitioners as well as their predecessors had no knowledge about any such notice or notification being issued. The Respondent- Authorities do not possess any proof about service of notice on the then owner of the land. They are merely relying on the notification issued

under Section 35(1) of the IFA, 1927, contents of which show that notice was issued to one Shashishekhar Bhaskar Madgundkar. It refers to a schedule dated 29.11.1958 attached to the notification. It does not disclose any survey number, it covers an area of 1400 acres. The information received by the petitioner dated 15.07.2024, includes a notice purportedly issued to the then owner under Section 35(3) of the IFA, 1927, which does not disclose the name of the owner, it only mentions that, the name of the owner is mentioned on the rear-side of the notice. There is no proof of service of the said notice, which is admitted by the Respondent Authorities. Thus, though the notification is issued under Section 35(1) of the IFA, 1927, service of notice under Section 35(3) is not proved. Section 35(3) itself mandates, that no notification under Section 35(1) can be issued unless notice is issued to the owner under Section 35(3). In view of the broader interpretation given to the word 'issued' by the Hon'ble Supreme Court, it becomes imperative to prove service of notice to the owner. The extracts of the 'Golden Register', contains only the details of the lands declared as 'Private Forest', and the notices issued to erstwhile owners. There is no proof of service of these notices.

This approach of the Respondent-Authorities is clearly contrary to the ratio laid down by the Hon'ble Supreme Court in ***Godrej and Boyce Manufacturing Company Limited & Anr.***, (*supra*), which requires that, not only proof of notice issued under Section 35(3), but even proof of service of such notice. In absence of service of notice, it cannot be presupposed that there was an effective service of such notice. This view has been further reiterated in the decision of this Court in ***Sunil Shamrao Patil & Anr.*** (*supra*), which squarely applies to the present case, which reads thus:

17. Thus, the law settled by the Supreme Court in the case of Godrej & Boyce needs to be applied to the facts of the present case. Considering the statements made in the Affidavit in Reply of Shri. Nandkishor Nanasaheb on behalf of Respondent Nos. 1, 2 and 3, it is not even the case made out that notices under sub-Section 3 of Section 35 of the Forest Act, 1927 were served upon the erstwhile owners of the said land. It is not even a case made out that a Notification under sub-Section 1 of Section 35 was issued with respect to the said land. The only reliance placed in the affidavit is to some notice issued in the month of April 1958 to one Mahadu Bhavna Bhalekar as reflected in the 'Golden Register'. In the absence of any proof of service of notice, sub clause (iii) of clause (f) of Section 2 of the MPFA is not applicable to the said land. Hence, the said land cannot be termed to be a

'Private Forest' under the MPFA. Hence, the said land which is subject matter of the Petition cannot be said to vest in the State Government under sub-Section 1 of Section 3 of the MPFA.

18. With respect to entry made in the revenue record, the same is based on assumption that said land being a 'Private Forest' stands vested in the State Government. In view of the law laid down in the case of Godrej & Boyce and in view of the statements made in the Affidavit in Reply on behalf of Respondents Nos. 1, 2 and 3, the said land survey Nos. 28/1/A, 68, 69 and 70 cannot be said to be 'Private Forest' under sub-clause (iii) of clause (f) of Section 2 of the said MPFA and, therefore, there is no vesting in the State Government by virtue of Section 3 of the MPFA. Only on this ground, the prayer of the Petitioners for quashing and setting aside the impugned mutation entry No. 1736 dated 23rd July 2001 in respect of the said land needs to be accepted.

The notification under Section 35(1) was issued almost 70 years ago and in the intervening period, the title of the lands has undergone change of hands on few occasions. When the Petitioners have purchased the land, there was no such entry of 'Forest' in the revenue record, the Respondents themselves have admitted that though the notification under Section 35(1) of IFA, 1927 was issued on 17.05.1956, but the entry to that effect has not been taken in the revenue record,

which was taken only after the circular was issued by the Government dated 14.07.2005.

The other document issued to the Petitioner under the RTI Application is the extract of the enquiry under Section 22-A of the MPFA Act, 1975, in respect of Survey No. 1 to 90 of the Village- Mulgaon. The remarks column of the document shows, an order directing to enter the name of 'State of Maharashtra' in the possession column of the 7/12 extract, and the name of the owner in the other rights column. This entry has been taken, pending the enquiry under Section 22-A of the MPFA Act, 1975 in furtherance of the circular dated 14.7.2005. It also refers to notice issued under Section 35(3) of the MPFA Act, 1975.

10. In the decision of *Godrej and Boyce Manufacturing Company Limited & Anr., (supra)* the Hon'ble Supreme Court has already pronounced that a notice under Section 35(3) of the IFA, 1927 is not sufficient for any land being declared as 'Private Forest'. The word 'issued' in Section 2(f)(iii) of the MPFA Act, 1975 r/w Section 35 of the IFA, 1927, needs to be given a broad meaning in the surrounding context in which it is used.

In view of the various judicial pronouncements right

from *Godrej and Boyce Manufacturing Company Limited & Anr.*, (*supra*), it is time and again held by the Hon'ble Supreme Court as well as this Court, that proof of issuance of notice is necessary before issuing notification under Section 35(1), which is undoubtedly absent in the present case. Hence, we have no hesitation in holding that, the Mutation Entry No. 1180 in respect of the lands owned by the Petitioners in Survey No. 1 to 90 of Mulgaon, Tal Ambernath, Dist Thane, which is taken on the basis of the notice issued under Section 35(3) of MPFA Act, 1975 deserves to be set aside.

However, we make it clear that the above observations made in these Writ Petitions are restricted to the extent whether the lands in question are 'Private Forest' within the meaning of Section 2(f)(iii) of the MPFA Act, 1975.

In the wake of the aforesaid observations, both the Writ Petitions are allowed in terms of prayer clause (b).

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

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