BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
Original Application No.40/2023 (WZ)

Yogesh Mudhara ... Applicant

v/s.

M/s. Super Dream Real Estate Private Limited & Ors ... Respondents

SAY ON BEHALF OF THE RESPONDENTS NO. 8 to 14.

MOST RESPECTFULLY SHOWETH: -

We, Mr. Rajkumar Nanikram Pamnani (Respondent No. 8), Mr. Vivek Maheshchandra Mangla (Respondent No. 9), Mrs. Sangita Ratan Awasarmol (Respondent No. 10), Mr. Dilip Sahadu Gaikwad, (Respondent No. 11), Khushal Nemchand Gangar (Respondent No. 12), Sangita Manish Jain (Respondent No. 13), & Mr. Rabiram Gopinath Haldar (Respondent No. 14), do hereby state that:

NOTARY SUNITA S. GOLE Dist. Thane (M.S.) Regn.No.10294/13 Expiry Date 24 Sept.2028 GOVT. OF INDIA

1. We say that, we have been served with the true copy of the Application upon order of this Hon'ble Forum and in reply thereto, we have to say and submit as under,

2. At the outset, we say that, the Application of the Applicant is false, frivolous, vexatious, bad-in-law and the same is filed with obtuse motive and malafide intention, without there being any cause of action and as such, the present Application deserves to be dismissed with costs.

3. **We say that, the true and correct facts are as under,**

   i. The land in question, identified as Survey No. 12/2 and 12/3, is located in the village of Yeoor, Taluka Patonapada, District Thane, and hereinafter referred

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to as the "Said Property." The Provident Investment Co. Ltd. (Respondent No. 3), an entity under the jurisdiction of the Madhya Pradesh Government, originally held the lease for this property. Subsequently, Mr. Durgaprasad Jugalkishore Loyalka entered into a Lease Agreement. Mr. Durgaprasad Jugalkishore Loyalka later executed a sub-lease Agreement in favor of Mr. Shyamlal Thakur, and Mr. Shyamlal Thakur, entered into a Sub-Lease Agreement on September 25, 2004, with respondent no.1. Since that time, the Said Property has been in the possession and occupation of Respondent No.01 as a sub-lease. A photocopy of the aforementioned Sub-Lease Agreement is attached and marked as **Exhibit "A."**

ii. It is imperative to mention that, despite of that the Applicant initiated the current proceedings under sections 14 and 15 of the National Green Tribunal Act. That the grievances presented in the Application do not fall within the purview of Section 14 of the said Act. Section 14, for instance, envisages that this Hon'ble Tribunal holds jurisdiction over all Civil Cases in which substantial questions related to the Environment are at stake. However, throughout the Application, there is no indication of how the issues raised by the Applicant qualify as substantial questions related to the Environment, as outlined in Section 14 of the Act. Therefore, solely on this basis, the Application is liable to be summarily dismissed. It is essential to note that, under **Section 14 of the Act,** the term **"substantial question"** carries a legal connotation, meaning that not every question raised can be deemed substantial within the framework of this Act. In conclusion, as previously mentioned, the Applicant has failed to establish a case involving a "substantial question."

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iii. Furthermore, in accordance with Section 14, sub-section 3, the Application must be submitted within

six months from the date when the cause of action for the dispute first arose. It is worth acknowledging that the Applicant invoked the cause of action at some point in the year 2020, which exceeds the stipulated six-month period as outlined in subsection 3 of Section 14. It's essential to emphasize that the legislature deliberately employed the phrase "such dispute first arose." In other words, there is no basis to argue that the Applicant's cause of action is recurring. Consequently, in light of this explicit legal provision in sub-section 3 of Section 14, the Application is liable to outright rejection.

iv. It seems that, when addressing the issue of limitation, the Applicant is attempting to argue that, the cause of action is recurring, and therefore, the Application falls within the prescribed time limit. However, the language used in sub-section 3 of Section 14 is unambiguous and explicitly states that the "cause of action first arose." The legal precedents cited by the Applicant are founded on entirely different circumstances and, as such, are not applicable to the current case.

v. Now, turning to the matter of claiming compensation and damages under Section 15 of the said Act, it is crucial to emphasize that such compensation and damages can only be sought by the "victim" as defined under this Section. In other words, no individual other than the victim or victims can make claims for compensation and damages. The Application in question fails to mention any instance of victimization resulting from the alleged violation. As a result, this Application, even under Section 15, lacks merit and is liable for dismissal.

vi. It is submitted that, the crux of the current matter revolves around whether the development of the land in question is permissible or not. In this regard, the

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Respondents rely on the **Letter dated 25/07/2003, marked as Exhibit "B,"** issued by the Government of Madhya Pradesh Finance Department. This letter unequivocally states that the Provident Investment Company is an undertaking of the Madhya Pradesh Government. Furthermore, it clarifies that, following a decision made by the Government (i.e., the Madhya Pradesh Government), it has been confirmed that the lessee of the plot in question, the plot central to this matter, is entitled to develop the said property, and the Madhya Pradesh government has no objection to it. Therefore, it is abundantly clear that there are no legal obstacles to the development of the land in question.

vii. Furthermore, it is submitted that, as previously mentioned, the Provident Investment Company Ltd. is an entity under the Madhya Pradesh Government and was duly authorized to oversee the affairs of the property currently under consideration in this matter. The company issued **a Letter dated 27th November 2003**, addressed to The Assistant Director of Town Planning, The Thane Municipal Corporation, concerning a No Objection Certificate (NOC) for the property identified as Gut No.12, Hissa No. 02 & 03, measuring 16 acres and 10 ¾ Gunthas, situated at Revenue Village Yeoor, Taluka and District Thane. In this Letter, the said company granted authorization to one Suresh Vasantji Shah (Alias Gada) to submit plans and designs, prepared by his architect, to the aforementioned office for the construction of Farm Houses on the said property. Based on this Letter issued by the company, the plans to be submitted can be considered by Suresh Vasantji Shah (Alias Gada). **(A copy of the Letter dated 27/11/2003 is attached as Exhibit "C.").**

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viii. It appears that, based on the Letter dated 06th December 2016, marked as **Exhibit 'G'** by the Applicant in his Application and addressed to the Municipal Commissioner, Thane, the Provident

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Investment Company Ltd. had requested the demolition of all illegal constructions on its premises. However, the Applicant, even though he has included a copy of the Letter dated 14/08/2017 issued by the Municipal Corporation, Thane, in response to the aforementioned letter, which states that the Corporation cannot proceed further without receiving all the details of the alleged unauthorized construction as per the rules and regulations. Therefore, it is submitted that the allegations are vague in nature and cannot be considered for any purpose. The Applicant is taking undue advantage of his own missteps, as he was informed that no action could be taken without providing the necessary details.

ix. It is submitted that, concerning the alleged violation of environmental laws as stated in paragraphs IV and V of his Application, the central government, on 5th December 2016, exercised its powers under Section 3 of the Environmental (Protection) Act, 1986, and Rule 5(3) of the Environmental (Protection) Rules, 1986, to declare an area of 59.456 sq.km within a range of 100 meters to four kilometers from the boundary of the Sanjay Gandhi National Park as the Eco Sensitive Zone. According to the notification issued on 5th December 2016, the entire Yeoor village falls within the purview of the 'Eco Sensitive Zone,' and any construction activity within the ESZ area necessitates approval in line with the provisions of the approved development plan and regulations under the Maharashtra Regional and Town Planning Act, 1966.

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x. A bear perusal of this notification clearly reveals that it is a Draft Notification, and it is to be finalized prior to enacting the law, following consultation with various authorities including Environment, Forest, Urban Development, Tourism, Municipal, Revenue, Agriculture, Maharashtra State Pollution Control Board, Irrigation, and the Public Works Department. It is also stated in this Draft Notification that

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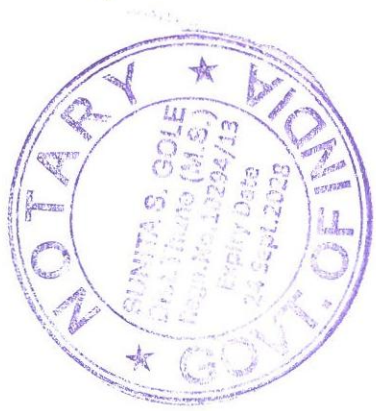
objections must be invited from individuals likely to be affected before finalization. Consequently, care has been taken to consider the interests of those who might be affected. In other words, it is not arbitrary, as alleged by the Applicant. Regardless, the undeniable fact is that this is solely a draft notification, awaiting approval from the competent authorities. Therefore, it is most respectfully submitted that the Application, relying on this draft notification, is premature and thus lacks a valid cause of action.

xi. It is evident that, in light of the considerations mentioned earlier, the Applicant has requested direction from this Hon'ble Tribunal to the State Government. In doing so, he implicitly acknowledges that there is no violation as defined by the law. In the prayer clause, the Applicant is seeking directions to initiate the preparation of the Zonal Master Plan for the Eco Sensitive Zone (ESZ). However, this relief cannot be granted at either the interim stage or the final stage for the simple reason that the said notification has yet to be finalized and published by the Government.

xii. It appears that the Applicant has a tendency to submit applications under the Right to Information Act. In the current matter, he has provided copies of multiple applications made under the said Act. In one instance, he alleges that there are numerous illegal bungalow constructions in Yeoor Village, but in the present case, he has selectively filed complaints, seemingly with a malicious intent to harass the Respondents for his own personal gain. Consequently, it is submitted that, under the guise of being a social activist, he is misusing the legal process and exploiting his self-proclaimed image as a social activist.



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xiii. It appears that the Applicant has approached various authorities and has filed numerous cases seeking the same relief, including with the Thane Mahanagar Palika, Thane, Lokayata Maharashtra State, E.O.W. and also under the Right to Information Act. As a result of the multiple false cases filed by the Applicant, the Farm Houses of respondent Nos. 10 & 13 have been demolished illegally recently by the T.M.C. without affording any fair hearing. That thereafter the other respondents have approached to the Hon'ble Thane Court which was pleased to grant interim protection and protected the other respondents farm houses from demolition.

xiv. It is evident that the Applicant has cited certain judgments and attempted to draw parallels with the facts of the present case. The Respondents have gone through these judgments and found that the facts of those cases differ significantly, but the legal principles established in those cases are entirely distinct. Consequently, those judgments do not provide any meaningful assistance to the Applicant's case.

xv. Regarding the interim relief sought, direction of this Hon'ble Forum to demolish the seven alleged bungalows, such a request cannot be granted without a thorough examination of the merits of the matter to ascertain whether these constructions indeed qualify as illegal and in violation of relevant laws, including environmental regulations. It is essential to highlight that the Applicants fails to specify how there is a violation of environmental laws, in accordance with the established legal precedent. It is well-settled in the law that mere allegation of violation of environmental laws is insufficient without providing the necessary details to support the claim.

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4. It is submitted that, so far as the grounds A, B, C, D, E, F, G, H, I mentioned in the application are concerned, it is submitted that:

a) With reference to **Ground "A"** the contents in this paragraph have already been addressed by this Respondents earlier. With respect to the argument that the said company had requested the Thane Municipal Corporation not to approve any development on its land. Respondents further states that, it is not their case that they have ~~not~~ claimed that Thane Municipal corporation has granted them permission to construct on the lease hold land. So also the applicant has not claimed that Thane Municipal Corporation has granted permission to the Respondents to construct. Therefore, the contention mentioned in the annexure "M" on which the Applicant has relied upon is to be ignored outrightly.

b) With reference to **Ground "B",** the contents of this paragraph are denied, as there is nothing on record to indicate that the land in question is designated as an "Agricultural G Zone." Consequently, the issue of an alleged violation does not arise.

c) With regard to **Ground "C"** and without waiving the arguments made in the previous section, it is submitted that the Applicant is attempting to portray the alleged constructions as bungalows, implying that their construction violates the law by not having Municipal Corporation approval. It is essential to note here that the land in question contains borewells, fencing, and other infrastructure necessary for a farm house. Therefore, the claim that the seven bungalows have been constructed is without a basis. Consequently, this allegation cannot be considered as a valid ground. Infact to protect the pollution the respondent nos. 8 to 14 have planted several hundreds of trees / plants, vegetables etc. on the land in question i.e. Farm Houses.

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d) With reference to **Grounds "D, E & F,"** the content of these paragraphs has been addressed by this Respondents, emphasizing that the notification in question is a draft notification. Therefore, the Application lacks a valid cause of action and can be deemed premature.

e) With reference to **Grounds "G & H"**, the content appears to be a reference to the Order dated 19th March 2020 issued by this Hon'ble Tribunal in this matter, which directed the State Administration to conduct an assessment in the Eco Sensitive Area (E.S.A). However, the Applicant has not provided a convincing explanation as to how this is relevant to the present proceeding that he has initiated.

f) With reference to **Ground "I"**, it appears that, the references to air, water, and noise are concerned the Applicant himself acknowledges the recommendations for preventing air, water, and noise pollution. However, in the present application, there is no mention of these recommendations. Consequently, this cannot be considered as a valid ground for consideration by this Hon'ble Tribunal.

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5. Therefore, it is submitted that all the grounds presented by the Applicant are baseless and do not assign with the legal framework to demonstrate any alleged violation of the law. As a result, the Application is subject to dismissal.

6. It is further submitted that this is a case of premises on lease. The lands in dispute were acquired through lease deeds between respondent no. 1 on the one hand and the Respondents No. 8 to 14 on other.

7. So far as, the grounds to be considered by this Hon'ble Tribunal, it is submitted that the Hon'ble Supreme Court's decision in the case of "Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others v/s State of Gujarat and Others," Civil Appeal No. 1046 of 2019, demonstrates that the Hon'ble NGT has not addressed the substantive ground of challenge.

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As previously mentioned, all the grounds put forth by the Applicant, when examined from any perspective, do not constitute substantive grounds of challenge. It is, therefore, submitted that the Application lacks substantive grounds of challenge as required under the NGT Act and should, therefore, be rejected. (A copy of the judgment in Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others v/s State of Gujarat and Others, Civil Appeal No. 1046 of 2019, is attached as **Exhibit "D").**

8. The said land is a private lease hold land. That the Respondent relies upon the judgment in case of **Godrej Boyce Manufacturing Company Limited and another v/s. State of Maharashtra and others Civil Appeal No. 1102/2014** (The copy of said Judgment is marked as **Exhibit "E"**). In this matter the Hon'ble Supreme Court held that, when there is large scale of construction over the land and no action has been taken, by the Government authorities empower, then the reasonable reason may assume that, whatever construction was going on is in accordance with the law and the citizen cannot be held responsible for the inaction of the State. It is also pertinent to note that, the Hon'ble Bombay High Court in case of **OZONE LAND AGRO PROVATE LIMITED V/S. STATE OF MAHARASHTRA**, have elaborately discussed the importance of the above referred Hon'ble Supreme Court Judgment, (The copy of Judgment in case of OZONE LAND AGRO PROVATE LIMITED V/S. STATE OF MAHARASHTRA is at **Exhibit "F").** Hence this respondent is relying upon Hon'ble Bombay High Court's judgment.

9. It is further submitted that, so far as the reservation of land is concerned, the Hon'ble Supreme Court in case of Godrej Boyce Manufacturing Company Limited and another v/s. State of Maharashtra and others, Civil Appeal no. 1086/2015 held that, after the lapse of prescribed period of 6 months, the reservation of land in question is deemed to be released. It is therefore, submitted that, in the absence of the acquisition proceeding under the law, the land owner is free to develop the same in accordance with the law. (The copy of judgment of Godrej Boyce Manufacturing Company Limited and another

NOTARY SUNITA S. GOLE Dist. Thane (M.S.) Regn.No.10294/13 Expiry Date 24 Sept.2028 GOVT. OF INDIA

SUNITA Dist. Thane Regn.No. Expiry 24 Sept. GOVT. OF

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v/s. State of Maharashtra and others, Civil appeal no. 1086/2015 is at **Exhibit "G"**).

Under these facts and circumstances and the legal position, the present application is liable to be rejected with heavy costs.

Note - It is humbly submitted that, due to Physical Illness of our Advocate we could not file our say within Six weeks as directed by this Hon'ble Tribunal on the last date of hearing.

Thus there is delay of about one month to file the say in time. It thus prayed that said delay may be condoned and say may hence be taken on record.

Place : Thane
Date : 11.11.2023

Mr. Rajkumar Nanikram Pamnani
(Respondent No. 8)

Mr. Vivek Maheshchandra Mangla
(Respondent No. 9)

Mrs. Sangita Ratan Awasarmol
(Respondent No. 10)

Mr. Dilip Sahadu Gaikwad
(Respondent No. 11)

Mr. Khushal Nemchand Gangar
(Respondent No. 12)

Mrs. Sangita Manish Jain
(Respondent No. 13)

Mr. Rabiram Gopinath Haldar
(Respondent No. 14)

NOTARY
SUNITA S. GOLE
Dist. Thane (M.S.)
Regn.No.10294/13
Expiry Date
24 Sept. 2028
GOVT. OF INDIA

Adv. For Respondent Nos. 8 to 14

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Verification

I **Mr. Vivek Maheshchandra Mangla i.e. Respondent No. 9** for myself, for Respondent Nos. **8 & 10 to 14**, do hereby solemnly declare that, what is stated in the foregoing paragraph of the present affidavit in reply is true to my own knowledge and what is stated in the remaining paragraph thereof is true to my information and belief and I believe the same to be true.

Solemnly declare at Thane
This 11th Day of November 2023

Respondent no. 09

Interpreted, explained and Identified by me,

Advocate for Respondent no's 8 to14

BEFORE ME
NOTARY
SUNITA S. GOLE
ADVOCATE & NOTARY
Off.:Shop No.3, Near Food Box Hotel,
Behind Sai Baba Mandir, Thane Court Naka
Thane (W)-400601. Mob.:9819815553

NOTED & REGISTERED
Sr. No. 26331 2023

11 NOV 2023

NOTARY SUNITA S. GOLE Dist.Thane (M.S.) Regn.No.10294/13 Expiry Date 24 Sept.2028 GOVT. OF INDIA

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BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
Original Application No.40/2023 (WZ)

YOGESH MUDHARA ... **APPLICANT**
V/S.
M/s. Super Dream Real Estate Private Limited & Ors ...**RESPONDENTS**

LIST OF DOCUMENTS & ATHORITIES FILED BY RESPONDENTS NO. 8 to 14

Exh.	Date	Particulars	Pg.
A	25.09.2004	Photo copy Sub-Lease Agreement in favour of Mr. Shyamlal Thakur and the Respondent No. i.e. M/s Super Dream Real Estate Pvt. Ltd.	15-32
B	25.07.2003	Photo copy of the letter issued by the Madhya Pradesh Finance Department stating that lease is entitled to develop and that they have no-objection.	33
C	27.11.2003	NOC given by The Provident Investment Company Ltd, (A Government of Madhya Pradesh Undertaking) to Thane Municipal Corporation	35
D	2012	Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others Vs. State of Gujarat and others in Civil Appeal No. 1046 of 2012.	37-52
E		Godrej Boyce Manufacturing Company Limited and another Vs. State of Maharashtra and others in Civil Appeal No. 1102/2014	53-88
F		Ozone Land Agro Provate Limited Vs. State of Maharashtra	89-101
G		Godrej Boyce Manufacturing Company Limited and another Vs. State of Maharashtra and others in Civil Appeal No. 1086/2015.	102-107

Filed in the Court
On: 11.11.2023

Adv. For Respondent No.8 to14.

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ठाणे भारत सहकारी बँक लि.
Thane Bharat Sahakari Bank Ltd.
Scheduled Bank
शाखा / Br. Main दिनांक / Date 21/9/04
मुद्रांक शुल्क / Stamp Duty रु./Rs. 6300/-
सेवा आकारणी शुल्क / Service Charges रु./Rs. 10/-
एकूण / Total रु./Rs. 6310/-
अक्षरी रकम / Amount in Words Rupees Six Thousand Three Hundred Ten only
मुद्रांक शुल्क भरणाऱ्याचे नाव / Name of stamp duty paying party M/s Super Dream
पत्ता / Address Real Estate Pvt Ltd A-701, Centre Point, Panchpakhadi, Thane.
समोरच्या पक्षकाराचे नाव / Name of counter party M/s. Shyamal H. Thakur
व्यवहाराच्या उद्देशाचे कारण / Purpose of transaction Stamp duty
ठाणे भारत सहकारी बँक लि. THANE BHARAT SAHAKARI BANK LTD. Main Branch
Signature of the Drawer
RECEIVED
Cash
Authorised signatory
रोखपाल / Cashier
Party Copy

DEED OF SUB-LEASE

NOTARY S. R. KHARBETE THANE (MAH) Reg. No. 6551 GOVERNMENT OF INDIA

This Deed of Sub- Lease made and entered into at Thane of this 7th day of September 2004 by and between Shyamal Thakur Indian Inhabitant, Adult having office at Srishti House, N.S.Road, Mulund (W) Mumbai 400080, Occupation : Business of Bombay hereinafter referred to as the "lessor" (which expression shall unless otherwise repugnant to the context or meaning thereof shall be deemed to mean and include his heirs, executors, administrators and assigns) of the one part and M/s Super Dream Real Estate Pvt. Ltd., having office at A/701, Centre point, Punch Pakhadi, Thane, Occupation : Business of Thane, hereinafter referred to as "the sub lessees" (Which expression shall unless otherwise repugnant to the context or meaning thereof shall be deemed to mean and include their heirs, executors, administrators and assigns) of the other part

INDIA NON JUDICIAL MAHARASHTRA Rs.100 16:16

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NOTARY D. R. SAWANT GREATER MUMBAI (MAHARASHTRA) Regd. No. 6551 Expiry Date 08-08-2018 GOVT. OF INDIA

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WHEREAS

The lessor is seized of and sufficiently entitled to and in possession as a Sub-lessee of the plot of land bearing No. 7B admeasuring 1250 sq. mtrs. out of the proposed lay out for the land bearing Gut No. 12 Hissa No. 2 and 3 admeasuring 16 acres and 10 ¾ Gunthas situate, lying and being at Revenue, village Yeoor, with in the limits of the Municipal Corporation of the city of Thane, Registration District and Sub-District Thane, Taluka and District Thane and more particularly described in the schedule written hereunder and delineated on the plan hereof hereto annexed and shown thereon by red coloured boundary lines free form all encumbrances hereinafter for the sake of brevity referred to "as the said Plot"

The property bearing Gut No. 12, Hissa No. 2 and 3, admeasuring 16 acres and 10 ¾ Gunthas situate at village Yeoor with in the limits of the Municipal Corporation of the city of Thane Taluka and District Thane, Registration District and Sub. District Thane described above is, hereinafter referred to as the "said property" and the same originally belonged to the Provident Investment Company Ltd..

Vide registered indenture of lease dated 27th March, 1967 hereinafter referred to as "the first -deed of lease" said Provident Investment Company Ltd. therein referred to as the lessor of the One Part granted the lease in respect of the said property to and in favour of Shri. Durgaprasad Jugalkishore Loyalka therein referred to as the "lessee" of the other part for the consideration and upon the terms and conditions more particularly mentioned therein

Vide registered deed of sub-lease dated 31st October 1992 hereinafter referred to as the second deed of lease said Shri. Durgaprasad Jugalkishore Loyalka referred to therein as "the Lessor" on the basis of the first deed of lease, therein and hereafter referred to as the "Head lease" granted in favour of the lessor herein the sub-lease in

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NOTARY D. R. SAWANT GREATER (MUMBAI) (MAHARASHTRA) Regd. No. 6531 Expiry Date 08-08-2018 GOVT. OF INDIA

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respect of the said plots and in respect of the different plots forming part of the said property in favour of some other persons for the consideration and upon the terms and conditions more particularly mentioned therein which conditions are accepted by the sublease herein.

The sub Lessees hereby desire to take and acquire the said plots on sub-lease and hence the lessor herein has agreed with the lessees to grant to the sub lessees the said plots on sub -lease basis and more particularly described in the schedule written hereunder for the residue in the un-expired period of the said term of 50 years of the head lease mentioned hereinabove for the rent reserved and for a total lumpsum premium and/or consideration of Rs.1,25,000/- (Rupees One Lac Twenty Five Thousand Only). The lessor has given the sublease of the said plots mentioned in the schedule written hereunder to the lessees herein on as is and where is basis and the sub lessees are accepting the same accordingly.

NOW THEREFORE THIS INDENTURE WITNESSETH AS FOLLOWS:

1. In consideration of what is stated hereinabove and in consideration of sub lessee's having paid to the lessor by way of total lumpsum premium of Rs.1,25,000/- (Rs. One Lac Twenty Five Thousand Only) by Cheque dated 15/10/04. bearing No. 793401. drawn on Union Bank of India bank in favour of the lessor, being full, final and complete premium and consideration under this deed of sublease, the lessor doth hereby demise unto the sub lesses the said plots namely the plots of land bearing 7 B admeasuring 1250 sq.mtrs. hereinafter referred to as the said plot out of the land bearing CTS No. 12, Hissa No. 2 and 3 admeasuring 16 acre 10 ½ gunthas hereinafter referred to as the "Said Property" situate, lying and being at Revenue, Village Yeoor, within the limits of the Municipal Corporation of the city of Thane Registration at District and sub-district Thane, Taluka and

S.V.Bhatt O.S. N.H.

NOTARY (D. R. SAWANT, GREATER MUMBAI, MAHARASHTRA) Regd. No. 6531 Expiry Date 08-08-2016 GOVT. OF INDIA

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District Thane and shown on the plan annexed hereto by Red coloured boundary lines free from all encumbrance. TO HOLD the same unto the sublease paying the annual rent of Rs. 25/p.a to the head lessor. The sublease herein shall be liable to pay rent to head lessor from date of this deed. upto 26th M. 2017 (ie 13 yrs)

2. SUBJECT to the clause 15 hereunder the period of this sub lease shall be for the residue in the un expired period of the said term of 50 years of the Head Lease Deed.

3. The rent of the demised premises consisting of the said property more particularly described in the schedule hereunder written will be Rs. 25/- annually and the same shall be paid by the Sub Lessees to the Head Lessor for and on behalf of the Lessor herein. Similarly Annual Revenue Tax of Rs. _____ of such amount as may be determined by the Revenue Authority from time to time shall be paid by the sub lessees only.

4. It is agreed that any increase of lease rent for any reason, shall be borne and paid by the Sub- Lessees above and that the Lessor shall not be liable to bear and pay such increase.

5. The lessor DOTH HEREBY covenant with sub lessees that the first deed of lease is subsisting and the lessor has absolute authority to sublease unto the sub lessees the sub demised said plot or premises.

6. The sub lessees herein agree to pay and discharge all rates, taxes, assessments, imposition, dues and outgoings whatsoever which may hereafter be payable or charged upon the said premises to the Government, Semi Government or local Authority.

Sd/- D.S Gad

NOTARY S. B. KHAMBETE THANE (M.H.) GOVERNMENT OF INDIA

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NOTARY D. R. SAWANT GREATER MUMBAI MAHARASHTRA Regd. No. 6531 Expiry Date 08-06-2018 GOVT. OF INDIA

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7. The Sub lessees herein agree to make the necessary applications to the Revenue Authorities for entering their name in the record of rights of the demised plot or premises and the lessor will give his consent / no objection statement etc. for the said purpose.

8. The sub lessees will perform and observe the covenants on the part of the lessor contained in the said Head Lease thereby reserved and all other covenants and conditions in the said head lease contained and on the part of the lessor to be performed and observed and will at all the times keep the lessors indemnified against all liabilities including the cost, damages, and in any way relating to the same so far as aforesaid.

9. The sub lessees if they want to convert the demised premises into N.A. they should obtain necessary sanction from the Collector, Thane etc. and they will be liable to pay N.A. charges.

10. The sub lessees shall not use the demised land in any unlawful manner or for any such purpose like quarrying etc. which ultimately damage the said plot.

11. The sub Lessees shall not cut without competent sanction any fruit bearing trees unless such trees obstruct the construction and beneficial enjoyment of the said plot and unless consent is obtained from concerned Government previous TNC forest Department.

NOTARY S. B. KHAMBETE THANE GOVERNMENT OF INDIA

12. The sub Lessees will be at Liberty to plant trees, construct building, dig well etc. and develop and improve the said plot according to their own wish in accordance to the first deed of lease.

टपाल तिकीट ₹ १००

13. The sub lessees will have right to further sub lease the sub demise said plot or any portion thereof during the period of this sub lease subject to the terms

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NOTARY D. R. SAWANT (GREATER MUMBAI) MAHARASHTRA Regd. No. 6531 Expiry Date 08-08-2018 OF INDIA

(25)

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provided in first and second deed of lease and with proper approval of head lessor.

14. The Sub Lessees will be at liberty to make utmost use of the demised said plot or premises according to their own wishes till the expiry of the period of the sub lease in accordance to the Head Lease Deed.

15. The lessor has agreed that the sub lessees are entitled to get the Head Lease Deed dated 27/3/1967 renewed as provided therein at their cost by, directly approaching, negotiating and setting the terms and conditions with the head Lessor namely Provident Investment Company Ltd. WITHOUT PREJUDICED to the said obligations the lessor simultaneously with these presents has also executed Power of Attorney for this purpose in favour of the lessees inter-alia to deal with the Head Lessor etc. to get the first deed of lease revised and to negotiate for the same and to fix and settle such renewal on such terms and conditions as they may deem fit. PROVIDED ALWAYS that the cost, charges and expenses as well as the terms and conditions and other obligations for such renewal are paid and borne and observed by the Sub -Lessees and they undertake to indemnify and keep the lessor indemnified for the same.

16. PROVIDED FURTHER AND IT IS HEREBY AGREED AND DECLARED THAT the stamp duty and the registration charges in respect of the Indenture of Sub Lease and renewal there of shall be born and paid by the Sub Lessees.

17. The sub Lessees have been given copy of the Indenture of first and second deed of Lease dated 27.03.67. and 31.10.92. respectively and sub lessees have agreed to observe and fulfill all the terms and conditions of the same for and on behalf of Lessor herein agreed to indemnify the Lessor.

N.H.

NOTARY
S. A. KHAMBETE
GOVERNMENT OF INDIA

NOTARY
S. R. SAWANT
GOVT. OF INDIA
Regd. No. 6531
Expiry Date
08-08-2018

(26)

(27)

2.2

18. The Sub Lessees indemnify the Lessor and shall keep the Lessor indemnified for all times to come against any demand and claim or action made against the Less or for contravention or for nonobservance of the terms and conditions of first and second deed of lease by the sub lessees and the sublease shall be solely responsible for their or omissions and all civil criminal liabilities if any. The lessor has granted this sublease on as is where is basis.

19. The lessor has put the lessees in actual and physical possession of the said demised plot with a right to hold, acquire and posses the same as the sub lessees thereon have to carry on the construction of the farm houses etc. in accordance with the plan to be sanctioned by the Municipal Corporation of the city of Thane and / or by the authorities concerned and for the said purpose to approach government semi government and local offices including Tahasildar, commissioner of police Income tax officer , Urban Land ceiling authority. The sub lessees are authorized by the lessor to carry on the survey of the said demised plot and to erect a compound around the same. The sub lessees are further allowed, authorized and empowered by the lessor to prepare sign and submit the plans, specifications, drawings, designs etc. for the construction of the farm houses, row houses, building/s etc. for the purpose of receiving sanction and approval thereto from the Municipal Corporation of the city of Thane and/or from the authorities concerned and for the said purpose to appoint architects, engineers, RCC consultants at the cost and expenses of the sub lessees.

20. The lessor hereby covenant to the lessees that the lessor has not created and third party interest in respect of the said demised plot and/or any part thereof in any manner whatsoever and that the title of the said property is free clear, marketable and free from all encumbrances and that the lessor is the only person holding right, title and interest therein as aforesaid.

D. S. G...

N.H. ...

NOTARY S. D. KHAMBETE GOVERNMENT OF INDIA

NOTARY ... REGN. NO. 6331 Expiry Date ...-2018 GOVT. OF INDIA

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21. The lessor's right in land given for common road shall remain unaffected and sublease shall not disturb the common access or roads in the layout and can only have it's common enjoyment. The benefits of the said entire layout on proposed D.P. Road and incidentals including TDR are retained by the lessor herein.

IN WITNESS WHEREOF THE LESSOR AND THE SUB LESSEES HAVE HEREUNTO AND SET AND SUBSCRIBED THEIR RESPECTIVE HANDS ON THE DAY 25th AND THE YEAR Sept FIRST HEREINABOVE WRITTEN.

SCHEDULE OF THE PLOTS REFERRED TO HEREINABOVE

All those pieces or parcels of land, hereditaments and premises namely the plot of land bearing No. 7 B admeasuring 1250 sq.mtrs out the land bearing Gut No. 12, Hissa No.2 & 3 admeasuring 16 acres 10 ¾ Gunthas situate, lying and being at Revenue Village Yeoor, within the limits of the Municipal Corporation of the city of Thane, registration District and sub District Thane, Taluka and District Thane and bounded by the following properties.

Boundaries of Plot No. 7B

On or towards East	Plot 7A
On or towards West	Plot 7 C
On or towards North	Gurucharan land of village
On or towards South	Plot 13 B

Signed, Sealed and Delivered)
by the withinnamed Lessor)
SHRI. SHYAMLAL THAKUR)
in the presence of .....)

1.

2.

NOTARY
S. B. KHAMBETE
THANE (MAH)
Reg. No. 7044
B. Com, LL.B.
GOVERNMENT OF INDIA

NOTARY
SAHANT
THANE (MAH)
No. 6331
Date 25-06-2018
GOVT. OF INDIA

D.S. Gada

30

(31)

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Signed, Sealed and Delivered)
by the withinnamed Sub-Lessees)
For Super Dream Real Estate Pvt.Ltd.)
1) Shri.Suresh Vasanji Shah alias Gada) — SVShah.
2) Mrs.Deepa Suresh Shah alias Gada) — D.S. Shah.
in the presence of .....)

1.
2.

RECEIPT

Received of and from the withinnamed sub-lessees the sum of Rs.1,25,000/- (Rupees ~~Three~~ one Lac Twenty Five Thousand Only) by cheque bearing No. 793401 dated 15/10/04 drawn on Union Bank of India in my favour being the full, final and complete premium and consideration for the said plot and as mentioned in clause No.1 of this Deed of Sublease Development.

Witnesses :
1.
2.

NOTARY S. B. KHAMBETE THANE (MAH) Reg. No. 7044 B. Com, LL.B. GOVERNMENT OF INDIA

Say received

Lessor

Shyamlal Thakur

हस्त क्रमांक-५
दस्त क्रमांक 6945/2004
दि. 15/10/2004

NOTARY SUNANT TAMBAI Regn. No. 5531 Validity Date 23-06-2018 GOVT. OF INDIA

(32)

Exh B

(33)

GOVERNMENT OF MADHYA PRADESH
FINANCE DEPARTMENT

No. 75/PIC/2003 Bhopal dated 25th July, 2003

To

The Municipal Commissioner,
Thane Municipal Corporation,
Thane.

Sub: Sanctioning of development plan of the land bearing Gut No.12, Hissa No.2 and 3 at village Yewoor, Thane (West), Maharashtra.

Sir,

We refer to our various letter resting with our letter dated 5th September, 1997.

We have advised you that the Provident Investment Company Ltd. is an undertaking of the Government of Madhya Pradesh and is managing properties situated at Panchpakhady, Majiwade and Yewoor, District Thane. As the matter of disposing of these properties was under active consideration of the Government, we had earlier requested you that till a decision in the matter is taken, on development plan in respect of these properties be granted or sanctioned.

We would now like to inform you that pursuant to a decision taken by the Government, we confirm that the lessee of the above plots are entitled to develop the said property and we do not have any objection to development of the property by them and to your sanctioning the development plans submitted by them in accordance with rules and regulations applicable thereto.

(Sd/-)
Dy. Secretary
Government of Madhya Pradesh
Finance Department

NOTARISED
H. D. PATIL B.A. LL.M.
Advocate High Court & Notary
(Regd.) Regd. 4803, Govt. of India.
U.O. Code No. 2000110000
23 FEB 2010

No. 75/PIC/2003 Bhopal dated 25th July, 2003

1. General Manager, The Provident Investment Co. Ltd. Edward Villa, No.11 A, Cuffe Parade, Colaba, Mumbai-5.

Dy. Secretary
Government of Madhya Pradesh
Finance Department

NOTARISED
S. B. KHAMBETE
ADV. & NOTARY
102, Tanvi Bldg., Opp. Rupee Co-op. Bank, Govind Bachaji Road, Chital, Thane (W)-400 601.
Mob. [illegible]441
31 MAR 2012

(34)

Exh. C

(35)

THE PROVIDENT INVESTMENT COMPANY LTD.

(A GOVERNMENT OF MADHYA PRADESH UNDERTAKING)

Edward Villa, 11A, Capt. Prakash Pethe Marg,
Cuffe Parade, Colaba, Mumbai-400 005.

Ref. No.)
PT/136/2003

27th November, 2003.

The Assistant Director of Town Planning,
The Thane Municipal Corporation,
Thane.

Reg: NOC for property Gut No.12, Hissa No.2 and 3 admeasuring 16 acres and 10 ¾ Gunthas, situate at Revenue Village Yeoor, Taluka and District Thane.

Dear Sir,

Vide registered indenture of lease dated 27th March, 67 we have granted the lease in respect of the property bearing Gut No.12, Hissa No.2 and 3, totally admeasuring 16 acres and 10 ¾ Gunthas situate at Village Yeoor Taluka and District Thane in favour of Shri Durgaprasad Jugalkishor Loyalka. On the basis of the said registered indenture of lease dated 27th March 67 said Durgaprasad Jugalkishor Loyalka granted the sub-lease dated 31st October, 92 in respect of the said property to and in favour of Shri Kamlesh Thakur and others. Said Shri Kamlesh Thakur and others have authorized Shri Suresh Vasantji Shah (Alies Gada) to submit the plans in your office for the construction of farm houses on the said property.

We hence hereby authorize said Shri Suresh Vasantji Shah (Alies Gada) to submit the plans, designs etc. in your office prepared by his architect for the construction of the farm houses on the said property in respect of the said Gut No.12, Hissa No.2 and 3, admeasuring 16 acres and 10 ¾ Gunthas. The persons holding different plots therein shall submit the plans for the construction of the proposed farm houses through said Shri Suresh Vasantji Shah (Alies Gada) as per affidavit submitted by him on 30th September, 2003.

Thanking you,

Yours faithfully,
For THE PROVIDENT INVESTMENT CO. LTD.

(GENERAL MANAGER)

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NOTARISED

H. D. PATHARE B.A. LL.B.
Advocate High Court & Notary
(Regd.) Regd. 1603, Govt. of India,

23 FEB 2010

36.

Exh D

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Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 1046 of 2019

Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others — Appellants

Versus

State of Gujarat and Others — Respondents

JUDGMENT

Dr Justice Dhananjaya Y Chandrachud, J

1 Admit.

2 This appeal under Section 22 of the National Green Tribunal Act 2010[1] arises from a judgment and order of the Principal Bench of the National Green Tribunal[2] dated 28 September 2018, by which it dismissed OA No 81 of 2014 (WZ).

3 OA No 81 of 2014 (WZ), instituted under Sections 14 and 15 of the NGT Act, was

1 "NGT Act"
2 "NGT"

pending before the NGT for nearly four years since July 2014. It had been filed by the appellants, who are environmental organisations and individuals directly affected by the degradation of the environment in the area in question. The OA pertained to the issue of the dumping of unsegregated and untreated Municipal Solid Waste[3] at an open landfill site admeasuring 188 hectares at Survey No 111 /A, Block No 177, Khajod Village, Taluka Choryasi in the district of Surat, which is surrounded by thirty-five villages. The landfill site had been set up by the fourth respondent, Surat Municipal Corporation[4], which had started dumping 850 Metric Tonnes of waste per day on 24 January 2003. The extent of dumping increased to 1600 Metric Tonnes of waste per day by 16 January 2014. It was alleged, *inter alia*, that the dumping of waste in the open area without prior treatment was in violation of the Municipal Solid Waste (Handling and Management) Rules 2000 and Bio Medical Waste (Management and Handling) Rules 1998. Further, while SMC had been issued multiple warnings during site visits and inspections, the situation did not improve. It was alleged that the waste disposal led to an irreversible contamination of local water bodies and ground water, caused severe air pollution due to the burning of waste, damaged the ecology of the nearby villages and was affecting the health of the citizens and livestock in the vicinity. The appellants sought directions, *inter alia*, for: *(i)* restraining the dumping of MSW at the landfill site; *(ii)* restoration of the environment in the surrounding areas; *(iii)* restitution of the landfill site to its original condition; *(iv)* compensation to all those affected in the nearby villages upon

3 "MSW"
4 "SMC"

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determination of damages by a committee set up to assess the landfill site; and *(v)* implementation of the Solid Waste Management Rules 2016[5].

4 The Western Zone Bench of the NGT issued notice on 8 August 2014. A series of orders emanated from the Western Zone Bench of the NGT in connection with the issues raised. It would suffice to note a few of those orders:

(i) On 20 March 2015, the NGT noted that "*prima facie* there is ring of truth in the averments made by the Applicants, to indicate that MSW plant, is being mismanaged" and that the burning of the untreated MSW was causing severe air pollution affecting the health of the residents of the nearby villages. Interim directions were issued to prevent this from taking place during the pendency of the OA;

(ii) On 22 December 2015, the NGT again reproached SMC for not preparing a proper action plan and audit for the management of MSW in the district of Surat. However, on the appellant's issue of their participation in the management of the landfill site, the NGT noted that it would be decided during the final hearing;

(iii) On 7 March 2016, the NGT directed the Commissioner of SMC to be present and to provide a statement on the following issues: *(a)* extent of waste collected, treated and disposed of in accordance with the mandate of the Municipal Solid Waste (Handling and Management) Rules 2000; *(b)* the officers who have failed

5 "SWM Rules"

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to enforce the Rules and have failed to comply with the directions of the NGT; *(c)* the time schedule within which proper waste management will be done in the area in terms of the Rules; and *(d)* filing an undertaking that waste management shall be done in letter and spirit;

(iv) On 16 May 2017, the NGT noted that in pursuance of its previous directions, SMC had filed an affidavit indicating, *inter alia*, the action plan which it proposed to execute for handling the problem of MSW within its jurisdiction. The NGT was informed that the issue pertaining to the closure of the Khajod dumping site was pending before the Standing Committee of SMC. Hence, the NGT directed the Standing Committee to take a decision and issue a work order for commencing the work of the closure of the open dumping site within a month. Moreover, SMC was directed to place on the record the details of the lands where the projects are to be commissioned;

(v) On 19 September 2017, a statement was made on behalf of SMC that it is under an obligation to comply with the SWM Rules and that the site at Khajod is designated for a landfill, an MSW processing plant and a waste-to-energy plant of 100 TPD on a public-private partnership basis;

(vi) Pursuant to the order of the NGT dated 19 September 2017, the appellants formulated certain action points for implementation of the SWM Rules. On 26 September 2017, an undertaking was filed on behalf of SMC by the Municipal

Commissioner setting out the steps which would be taken for dealing with MSW, transportation, storage, and processing as well as on other related matters. The undertaking stipulated that there shall be no landfilling or dumping of unprocessed and unsegregated MSW after two years subject to "100% working of the Solid Waste Processing Plant" and certain other conditions;

(vii) On 6 November 2017, an order was passed by the NGT setting out that it would be hearing SMC, *inter alia*, on the qualified nature of the undertaking which was furnished by it, having regard to the SWM Rules and on the proposed use of the Khajod landfill site, despite its potential as a landfill site being concluded. The NGT also indicated that it would be hearing submissions on the commissioning of the waste-to-energy plant and the waste-to-compost plant within a given time frame;

(viii) An order was passed by the NGT on 5 December 2017, dealing particularly with the issue of quantification of compensation to the farmers due to the damage caused by the burning of solid waste and ground water pollution;

(ix) On 2 July 2018, the NGT issued directions stating that the submissions which were urged before it by SMC were unacceptable. The NGT declined to accept the contention that the waste-to-energy plant could only be completed by December 2019, and directed that it ought to be completed by March 2018; and

(x) On 17 July 2018, the NGT noted that SMC's current action plan *prima facie* did not fulfill the requirements of Clause J of Schedule-I of the SWM Rules in relation to closure and rehabilitation of old dumping sites and legacy waste. Hence, it directed SMC to file an affidavit recording its compliance.

5 A considerable amount of judicial time and attention was entailed during the course of the hearings associated with the above orders. Earlier Benches of the NGT at the Western Zone Bench had been monitoring the status of compliance with the SWM Rules. The NGT was seized with diverse aspects pertaining to the disposal of MSW by SMC, including the modalities which have to be followed while commissioning projects in the future for the conversion of waste to energy.

6 Rather surprisingly, when the proceedings came up on 28 September 2018 before the Principal Bench of the NGT, the OA was disposed of on the ground that in another OA – OA No 606 of 2018 – the NGT had constituted Apex, Regional and State Level Committees to monitor the implementation of the SWM Rules. The OA filed by the appellants was thus closed with liberty to represent the case and ventilate all grievances before the appropriate committee. For convenience of reference, the order passed by the NGT is extracted below:

> "As this OA relates to implementation of Solid Waste Management Rules, 2016, we are of the considered opinion that it is covered by the order passed by the larger Bench of the Tribunal dated 20th August, 2018 in OA No 606 of 2018.
>
> The Applicant would be at liberty to represent its case and ventilate

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all grievance before the Committee which shall look into it and finally decide the same.

Consequently, OA No 81 of 2014 stands disposed of. There shall be no order as to cost.

M.A. No. 1392 of 2018 and 1393 of 2018

These Applications do not survive for consideration as the main Application has been decided and are accordingly dismissed."

7 At this juncture, it is also important to elaborate on NGT's judgment and order dated 31 August 2018 in OA No 606 of 2018. Those proceedings arose from writ petitions filed before this Court in relation to the proper implementation of SWM Rules across the country, which were later transferred to the NGT. The NGT noted in its decision that though it had earlier issued directions for the implementation of the SWM Rules, they had not been complied with. Later, in a meeting organised by the Central Pollution Control Board with all the States and Union Territories, it was recommended that the NGT should form Apex, Regional and State Level Committees for the implementation of the SWM Rules and the directions issued by the NGT, and that these Committees should submit quarterly reports to the NGT. Thus, the NGT directed the following:

(i) The Apex Monitoring Committee was set up for one year, till further orders. Its role was to interact with the relevant Ministries and the Regional Monitoring Committees, and it could formulate guidelines/directions which may be useful to the Regional Monitoring Committees and the States/Union Territories. It

was to meet preferably every month, and also preferably meet the Regional Monitoring Committees once a month. It shall then submit its report to the NGT every quarter. Further, it was also directed that the Committee set up a website for dissemination of information, so as to enable public participation;

(ii) The Regional Monitoring Committees were set up for one year, till further orders, for each zone – North, East, West, South and Central. They were to ensure effective implementation of the SWM Rules, and that mixing of bio-medical waste with MSW does not take place and bio-medical waste is processed in accordance with the Bio-Medical Waste Management Rules 2016. The Committees were to preferably meet every week, and meet the Apex Monitoring Committee, have *inter se* interactions and meet the States when necessary. They were to submit their reports to the Apex Monitoring Committee twice a quarter, and also submit a report to the NGT after the first quarter. Much like the Apex Monitoring Committee, the Regional Monitoring Committees were also directed to set up websites; and

(iii) The State Level Committees were set up for one year, till further orders, for each State and Union Territory. They were to preferably meet with local bodies once every two weeks, and the local bodies were to furnish them reports twice a month. They were to decide on technical and policy issues in accordance with the SWM Rules and consistent with the directions of Apex and Regional

> Monitoring Committees. Further, they were to send their reports to the Regional Monitoring Committee on a monthly basis. It was also directed that public involvement may be encouraged and status of MSW be placed in the public domain.

The NGT directed that the Committees would be at liberty to issue directions for execution of the orders of the NGT to any authority.

8 Ms Shilpa Chohan, learned Counsel appearing on behalf of the appellants, has submitted that relegating the appellants to a committee was wholly inappropriate having regard to the progress which had been achieved by the Western Zone Bench of the NGT in unravelling various aspects of the case. Moreover, it is urged that the jurisdiction to provide restitution and award compensation is entrusted to the NGT and hence, it was not appropriate or proper to dispose of the OA by relegating the decision to a committee.

9 On the other hand, Mr Tejas Patel, learned Counsel appearing on behalf of SMC, submits that the appellants have produced absolutely no material on the basis of which a claim for compensation can be made. Moreover, it was urged that they have a remedy of ventilating their grievances before the appropriate committee.

10 The OA was filed by the appellants under Sections 14 and 15 of the NGT Act. Section 14[6] of the NGT Act vests the NGT with jurisdiction over all civil cases where a

6 "14. Tribunal to settle disputes.—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such

substantial question relating to the environment is involved, and such question arises out of the implementation of the enactments specified in Schedule I to the statute. Sub-Section (1) of Section 15 is in the following terms:

> "15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—
>
> (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
>
> (b) for restitution of property damaged;
>
> (c) for restitution of the environment for such area or areas,
>
> as the Tribunal may think fit."

11 In **Mantri Techzone (P) Ltd. v. Forward Foundation**[7], a three-Judge Bench of this Court outlined that Section 15(1)(c) of the NGT Act entrusts broad powers to the NGT. Speaking for the Court, Justice S Abdul Nazeer held:

> "43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever

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question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

7 (2019) 18 SCC 494

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> the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment."

12 The OA filed by the appellants raised issues falling within the jurisdiction of the NGT under Section 14, since it relates to the implementation of the SWM Rules. The SWM Rules have been notified pursuant to the powers conferred by Sections 3, 6 and 25 of the Environment (Protection) Act 1986, which is Entry 5 in Schedule I of the NGT Act. None of the prayers sought by the appellants are of a nature that cannot be granted by the NGT in accordance with its powers under Section 15(1) of the NGT Act. The OA was being continuously heard by the Western Zone Bench of the NGT since August 2014, and it had already issued significant interim directions.

13 Hence, the issue before us is only whether the Principal Bench of the NGT correctly directed the appellants to now approach one of the Committees set up by it, rather than continue with the proceedings in the OA. To understand this, we must first consider the role of such committees which are set up by courts and tribunals alike.

14 It is first important to differentiate expert committees which are set by the courts/tribunals from those set up by the Government in exercise of executive powers or under a particular statute. The latter are set up due to their technical expertise in a given area, and their reports are, subject to judicially observed restraints, open to judicial review before courts when decisions are taken solely based upon them. The precedents of this court unanimously note that courts should be circumspect in rejecting

the opinion of these committees, unless they find their decision to be manifestly arbitrary or *mala fide*[8]. On the other hand, courts/tribunals themselves set up expert committees on occasion. These committees are set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these expert committees does not substitute the adjudicatory role of the court or tribunal. The role of an expert committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory for all stakeholders.

15 Sections 14 and Section 15 entrust adjudicatory functions to the NGT. The NGT is a specialized body comprising of judicial and expert members. Judicial members bring to bear their experience in adjudicating cases. On the other hand, expert members bring into the decision-making process scientific knowledge on issues concerning the environment. In **Hanuman Laxman Aroskar v. Union of India**[9], a two-Judge Bench of this Court noted that the NGT is an expert adjudicatory body on the

8 Basavaiah (Dr.) v. Dr. H.L. Ramesh, (2010) 8 SCC 372 (in relation to appointment in an academic institution); State of Kerala v. RDS Project Ltd., (2020) 9 SCC 108 (in relation to safety of a flyover project)
9 (2019) 15 SCC 401

environment. The Court held:

> "133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment...
>
> 134. NGT is an expert adjudicatory body on the environment."

The NGT does not have a dearth of 'expertise' when it comes to the issues of environment.

16 Section 15 empowers the NGT to award compensation to the victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for the restitution of the environment. The NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative expert committees. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities. Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees. In **Sanghar Zuber Ismail** v. **Ministry of Environment, Forests and Climate Change and Another**[10], a three-Judge Bench of this Court noted that the NGT cannot refuse to hear a challenge to an Environmental Clearance under Section 16(h) of the NGT Act and delegate the process of adjudicating on compliance to

10 2021 SCC OnLine SC 669

an expert committee. The Court held:

> "8...the NGT has not dealt with the substantive grounds of challenge in the exercise of its appellate jurisdiction. Constitution of an expert committee does not absolve the NGT of its duty to adjudicate. The adjudicatory function of the NGT cannot be assigned to committees, even expert committees. The decision has to be that of the NGT. The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal."

17 The NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative expert committee. An expert committee may be able to assist the NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by the NGT. This is not a delegable function. Thus, the order impugned in the appeal cannot be sustained. The consequence of the impugned order is to efface the meticulous exercise which was carried out by the earlier Benches. Valuable time has been lost in the meantime and crucial issues pertaining to the environment in the present case have been placed on the back-burner.

18 Hence, we are of the view that it would be appropriate to set aside the impugned order and to restore OA No 81 of 2014 (WZ) to the file of the NGT. We accordingly allow the appeal and set aside the impugned order dated 28 September 2018. OA No 81 of 2014 (WZ) is restored to the file of the NGT. The NGT shall commence with the hearing of the proceedings from the stage which was arrived at before the impugned order dated 28 September 2018 was passed. Unfortunately, more than three years have

passed in the meantime, a delay which could have been avoided had the NGT proceeded to adjudicate upon the issues which were raised before it.

19 This Court has not expressed any opinion on the merits of the issues which are raised before the NGT. The NGT will take an appropriate view and issue appropriate directions in continuation of the directions which hold the field, after hearing the parties.

20 The Court was apprised that the impugned order was passed by the Principal Bench since the Western Zone Bench of the NGT was not functioning at the relevant time. Hence, OA No 81 of 2014 (WZ) may now be heard by the Bench which is assigned with the requisite jurisdiction to hear the subject matter of the OA.

21 The appeal is accordingly allowed in the above terms.

22 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Bela M Trivedi]

New Delhi;
January 21, 2022
CKB

ITEM NO.18 Court 4 (Video Conferencing) SECTION XVII

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No.1046/2019

KANTHA VIBHAG YUVA KOLI SAMAJ PARIVARTAN TRUST & ORS. Appellant(s)

VERSUS

THE STATE OF GUJARAT & ORS. Respondent(s)

Date : 21-01-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Appellant(s) Ms. Shilpa Chohan, Adv.
Mr. Ssawahiq Siddique, Adv.
Dr. Pratyush Nandan, Adv.
Mr. Rajesh Singh, AOR

For Respondent(s) Ms. Aastha Mehta, Adv.
Ms. Deepanwita Priyanka, Adv.

Ms. Ruchi Kohli, AOR

Mr. Avijit Roy, AOR

Mr. Tejas Patel, AOR
Mr. Kaushal Pandya, Adv.

UPON hearing the counsel the Court made the following

O R D E R

of death penalty and can, in appropriate cases, order that the sentences would run consecutively and not concurrently. The above sentencing policy has been adopted by this Court in several cases since then, the latest being *Gurvail Singh* v. *State of Punjab*[8]. We have indicated that this a case where the accused is involved in twenty-four criminal cases, of which three are for the offence of murder and two are for attempting to commit murder. In such circumstances, if the appellant is given a lesser punishment and let free, he would be a menace to the society.

23. We are of the view that this is a fit case where 20 years of rigorous imprisonment, without remission, to the appellant, over the period which he has already undergone, would be an adequate sentence and will render substantial justice. Ordered accordingly.

24. The appeals stand disposed of as above.

(2014) 3 Supreme Court Cases 430

(BEFORE R.M. LODHA, MADAN B. LOKUR AND KURIAN JOSEPH, JJ.)

GODREJ AND BOYCE MANUFACTURING COMPANY LIMITED AND ANOTHER .. Appellants;

Versus

STATE OF MAHARASHTRA AND OTHERS .. Respondents.

Civil Appeals No. 1102 of 2014† with Nos. 1103-120 of 2014 and SLP (C) No. 34691 of 2011, decided on January 30, 2014

A. Constitution of India — Arts. 300-A and 14 — Deprivation of property by authority of law — Strict compliance with procedure prescribed by law for deprivation of property — Mandatory requirement of — Notice requirements/Proper opportunity to object to deprivation of property not complied with as prescribed by law [S. 36(3) of Forest Act, 1927] — Held, deprivation was ineffective and property did not stand transferred to/did not vest in State and remained with the owner — Land Acquisition Act, 1894 — S. 5-A — Natural Justice — Audi Alteram Partem — Right to Hearing — Proper or Fair Hearing

B. Environment Protection and Pollution Control — Forests — Maharashtra Private Forests (Acquisition) Act, 1975 (29 of 1975) — S. 2(f)(iii) — Private forest in respect of which notice issued under S. 35(3), Forest Act, 1927 before 1975 State Act came into force, so as to transfer property therein to State — Issuance of notice without service upon landowner even though notice published in Gazette — Other requirements as to proper opportunity to owner to object to deprivation of its property also not complied with — Inefficacy/Insufficiency of, for any land being declared a "private forest" under 1975 Act — Hence, ownership of land concerned did not stand transferred to/did not vest in State

8 (2013) 10 SCC 631 : (2014) 1 SCC (Cri) 364

† Arising out of SLP (C) No. 10677 of 2008. From the Judgment and Order dated 24-3-2008 of the High Court of Bombay in WP No. 2196 of 2006

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— Disputed land designated as "residential" in development plans and permission granted by Municipal Corporation to construct multi-storeyed buildings thereupon — Notice issued to appellant Company under S. 35(3) of 1927 Act that land was a forest which vested in State and notice published in Bombay Government Gazette of 6-9-1956, but not served upon appellant — Six stop-work notices issued to appellant in 2006 that disputed land was "affected" by the reservation of a private forest and therefore no construction could be carried out therein without the permission of Central Government — Writ petition thereagainst, dismissed by High Court — Held, mere issuance of a notice under the provisions of S. 35(3) of Forest Act, 1927 without compliance with the remaining requirements of S. 35(3), is not sufficient for any land being declared a "private forest" as defined in S. 2(f)(iii) of 1975 Act — In the facts and circumstances, the State not having taken any action for almost 60 yrs, even assuming that disputed lands are forest lands, State cannot be allowed to demolish the massive constructions made thereon over the last half a century — High Court orders set aside — Notices impugned in the writ petitions, quashed

— Forest Act, 1927 — Ch. V — Salsette Estates (Land Revenue Exemption Abolition) Act, 1951 (47 of 1951) — S. 4 — Forest (Bombay Amendment) Act, 1948 (62 of 1948) — Forest (Bombay Amendment) Act, 1955 (24 of 1955) — Forest (Maharashtra Unification and Amendment) Act, 1960 (6 of 1961) — Urban Land (Ceiling and Regulation) Act, 1976, S. 6

C. Environment Protection and Pollution Control — Forests — Maharashtra Private Forests (Acquisition) Act, 1975 (29 of 1975) — S. 2(f)(iii) — Private forest in respect of which "notice has been issued" under S. 35(3), Forest Act, 1927 — Word "issued" in S. 2(f)(iii) — Meaning and mode of interpretation — Deviation from rule of literal construction — Warrantedness — Scheme of S. 35, Forest Act, 1927, considered and relied on for interpretation of — Held, "issued" in S. 2(f)(iii) of 1975 Act must include service of show-cause notice upon the noticee owner as postulated in S. 35 of the Forest Act, 1927 — *Chintamani Gajanan Velkar*, (2000) 3 SCC 143, overruled on this point — Interpretation of Statutes — Basic Rules — Literal or strict construction — Abandonment of literal construction — When warranted — Constitution of India — Arts. 300-A and 14 — Words and Phrases — "Issued", "notice issued"

D. Environment Protection and Pollution Control — Forests — Maharashtra Private Forests (Acquisition) Act, 1975 (29 of 1975) — S. 2(f)(iii) — Private forest in respect of which "notice issued" under S. 35(3), Forest Act, 1927 — Service of notice — Purpose — Held, necessity of ensuring service of notice upon the noticee owner, is to protect the interests of the owner of the forest so as to afford such owner an opportunity to object to deprivation of its property, as such owner 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 — It is also to prevent damage to or destruction of a forest — Constitution of India — Arts. 300-A and 14 — Land Acquisition Act, 1894 — S. 5-A — Natural Justice — Audi Alteram Partem — Right to Hearing — Proper or Fair Hearing

E. Interpretation of Statutes — Basic Rules — Liberal construction/interpretation — Abandonment of literal construction — When warranted — When provisions of a statute inexorably suggest a subtext other than literal, then the context becomes important

F. Environment Protection and Pollution Control — Forests — Maharashtra Private Forests (Acquisition) Act, 1975 (29 of 1975) — Ss. 2(c-i) & (f) — Applicability — "Forest" — "Means and includes" in definition of forest in S. 2(c-i) — Effect — "Means and includes" used in definition of "forest" in S. 2(c-i) does not detract or take away from the primary meaning of the word "forest" — Lands part of development plan, within municipal limits and covered by Urban Land Ceiling Act, held, are not "forest" within primary meaning of that word, or even within extended meaning thereof in S. 2(c-i) — On facts, in case of the lead appellant *G*, as per the consent decree dated 8-1-1962 passed by High Court the disputed land was not a wasteland nor was it a forest land — Insofar as other appeals are concerned, the disputed lands were built upon, from time to time, either for industrial purposes or for commercial purposes or for residential purposes — Hence, none of the disputed lands are "forest" — Interpretation of Statutes — Basic Rules — Plain or ordinary meaning — Primary meaning of a word — Limits on deemed or extended meaning given in statute

The appellant acquired land described in the perpetual lease/kowl as "wasteland" and one of the purposes of the lease was to cultivate the wasteland. On 27-8-1951 the State of Bombay passed the Salsette Estates (Land Revenue Exemption Abolition) Act, 1951. According to the State, the disputed land was not appropriated or brought under cultivation before 14-8-1951 and, therefore, it vested in or was the property of the State by virtue of Section 4 of the Salsette Estates Act. This was disputed by the appellant and the High Court passed a consent decree on 8-1-1962 to the effect that except for an area of 31 gunthas, all other lands were appropriated and brought under cultivation by the appellant before 14-8-1951 and are therefore the property of appellant. Further, it was held that these events established two facts:

(*i*) Even according to the State, the disputed land was "wasteland" and not a "forest". This was significant since the Forest Act, 1927 did not apply to "wasteland" [due to the Forest (Bombay Amendment) Act, 1948] with effect from 4-12-1948.

(*ii*) It was acknowledged by the State that the disputed land (even if it was a forest) was appropriated or brought under cultivation by the lead appellant *G* before 14-8-1951.

A development plan for the City of Bombay was published on 7-1-1967 and the next development plan was published in 1991. In both the development plans, the disputed land was designated as "R" or "Residential". On publication of the first development plan, the appellant applied for and was granted permission, on various dates, by the Municipal Corporation to construct residential buildings on the disputed land. It constructed four such buildings on the basis of permissions granted from time to time and these building were occupied for residential purposes by its staff. On 17-2-1976 the Urban Land (Ceiling and Regulation) Act, 1976 came into force. Since the disputed land was in excess of the ceiling limit, the appellant filed statements (under Section 6 of the 1976 Act) and sought

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exemption from the competent authority for utilising the excess/surplus vacant lands for industrial and residential purposes, and pursuant to the grant of exemption, the appellant applied for and was granted permission by Municipal Corporation of Greater Bombay to construct multi-storeyed buildings on the disputed land. Over a period of time, it had constructed more than 40 multi-storeyed residential buildings (ground + 4 and ground + 7), one club house and five electric substations. It was said that over a couple of thousand families were occupying these buildings and that further construction had also been made, pursuant to permission granted, of a management institute and other residential buildings.

Completely unknown to the appellant and not disclosed by the State even when the consent decree was passed by the High Court, a notice had been issued under Section 35(3) of the Forest Act, 1927 (as amended) and published in the Bombay Government Gazette of 6-9-1956 in respect of the disputed land. The notice was not served upon the appellant and, it was submitted, that the notice was never acted upon. Sometime in 1975 the State Legislature passed the Maharashtra Private Forests (Acquisition) Act, 1975 (Private Forests Act, 1975). The abovesaid notice after its publication in the Gazette was not acted upon either under the provisions of the Forest Act, 1927 as amended from time to time nor under the Private Forests Act, 1975. Admittedly, no attempt was made by the State to take over possession of the disputed land at any point of time. On the contrary, permissions were granted to the appellant from time to time for the construction of buildings on the disputed land, which permissions were availed of by the appellant for the benefit of thousands of its employees and others.

On or about 24-5-2006, the appellant received six stop-work notices issued by the Assistant Engineer of Municipal Corporation concerned stating that the Deputy Conservator of Forests, Thane Forest Division, by a letter dated 8-5-2006 had informed that the disputed land was "affected" by the reservation of a private forest and therefore no construction could be carried out therein without the permission of the Central Government under the Forest (Conservation) Act, 1980. The appellant filed a writ petition in the High Court praying, inter alia, for a declaration that the lands owned by it are not forest land; that the letter issued by the Deputy Conservator of Forests as well as the six stop-work notices dated 24-5-2006 be declared as illegal, ab initio null and void and that the mutation in the revenue records be also declared illegal. Similar writ petitions were filed by other similarly situated persons. The High Court dismissed all the writ petitions.

The appellants had thus filed the present appeals.

Allowing the appeals, the Supreme Court

Held :

The mere issuance of a notice under the provisions of Section 35(3) of the Forest Act, 1927 is not sufficient for any land being declared a "private forest" within the meaning of that expression as defined in Section 2(*f*)(*iii*) of the Maharashtra Private Forests (Acquisition) Act, 1975. The word "issued" in Section 2(*f*)(*iii*) of the Maharashtra Private Forests Acquisition Act, 1975 read with Section 35 of the Forest Act, 1927 must not be given a literal interpretation but a broad meaning. The word must be given a broad meaning in the surrounding context in which it is used. Lastly, assuming the disputed lands are forest lands, the State cannot be allowed to demolish the massive constructions made thereon over the last half a century, in the facts and circumstances of these appeals. (Para 1)

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Oberoi Constructions (P) Ltd. v. *State of Maharashtra*, (2008) 3 Bom CR 408, *reversed*

Bombay Environmental Action Group v. *State of Maharashtra*, PIL No. 17 of 2002, order dated 22-6-2005 (Bom); *Godrej & Boyce Mfg. Co. Ltd.* v. *State of Maharashtra*, (2010) 12 SCC 509; *Godrej & Boyce Mfg. Co. Ltd.* v. *State of Maharashtra*, (2014) 3 SCC 469; *Godrej & Boyce Mfg. Co. Ltd.* v. *State of Maharashtra*, SLP (C) No. 10677 of 2008, order dated 5-5-2008 (SC), *referred to*

The "means and includes" definition of forest in Section 2(*c-i*) of the Private Forests Act, 1975 does not detract or take away from the primary meaning of the word "forest". In the case of the appellant, the admitted position, as per the consent decree dated 8-1-1962 is that the disputed land was not a wasteland nor was it a forest. Insofar as the other appeals are concerned, the disputed lands were built upon, from time to time, either for industrial purposes or for commercial purposes or for residential purposes. Under the circumstances, by no stretch of imagination can it be said that any of these disputed lands are "forest" within the primary meaning of that word, or even within the extended meaning given in Section 2(*c-i*) of the Private Forests Act, 1975. (Paras 44 and 48)

Jagir Singh v. *State of Bihar*, (1976) 2 SCC 942 : 1976 SCC (Tax) 204; *Robinson* v. *Barton-Eccles Local Board*, (1883) LR 8 AC 798 (HL), *relied on*

Black Diamond Beverages v. *CTO*, (1998) 1 SCC 458; *J.C. Waghmare* v. *State of Maharashtra*, AIR 1978 Bom 119, *affirmed*

William Fielden Craies: *Craies on Statute Law* (7th Edn., Sweet & Maxwell Ltd., UK, 1971), *referred to*

Undoubtedly, the first rule of interpretation is that the words in a statute must be interpreted literally. But at the same time if the context in which a word is used and the provisions of a statute inexorably suggest a subtext other than literal, then the context becomes important. Applying the law laid down by the Supreme 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, 1927 since that scheme needs to be kept in mind while considering "issued" in Section 2(*f*)(*iii*) of the Private Forests Act, 1975.

(Paras 51, 54 and 55)

R.L. Arora v. *State of U.P.*, AIR 1964 SC 1230 : (1964) 6 SCR 784, *followed*

TELCO Ltd. v. *State of Bihar*, (2000) 5 SCC 346; *Joginder Pal* v. *Naval Kishore Behal*, (2002) 5 SCC 397, *affirmed*

A notice under Section 35(3) of the Forest Act, 1927 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, 1927 is inherent in the very language used in the provision and the very purpose of the provision. Additionally, Section 35(4) of the Forest Act, 1927 provides that a notice under Section 35(3) of the Forest Act, 1927 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, 1927. On the failure of

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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, 1927. (Paras 55 and 56)

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 of the leading appellant, *G*, such a direction was in fact given and *G* 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, *G* was liable to be punished under Section 35(7) of the Forest Act, 1927 if it cut or removed any tree or timber or fired or cleared any vegetation. 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, 1927, which can be only to prevent damage to or destruction of a forest. If the notice under Section 35(3) of the Forest Act, 1927 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, 1927. Such an interpretation cannot be given to Section 35 of the Forest Act, 1927 nor can a limited interpretation be given to the word "issued" used in the context of Section 35 of the Forest Act, 1927 in Section 2(*f*)(*iii*) of the Private Forests Act, 1975. (Paras 56 and 57)

Finally, Section 35(5) of the Forest Act, 1927 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" 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, 1927 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. (Para 58)

Although a word has to be construed in the context in which it is used in a statute, by making a reference in Section 2(*f*)(*iii*) of the Private Forests Act, 1975 to "issue" in Section 35 of the Forest Act, 1927, it is clear that the word is dressed in borrowed robes. Once that is appreciated [and it was unfortunately overlooked in *Chintamani Gajanan Velkar*, (2000) 3 SCC 143] then it is quite clear that "issued" in Section 2(*f*)(*iii*) of the Private Forests Act, 1975 must include service of the show-cause notice as postulated in Section 35 of the Forest Act, 1927. (Paras 59 to 62)

J.C. Waghmare v. *State of Maharashtra*, AIR 1978 Bom 119, *distinguished*

Chintamani Gajanan Velkar v. *State of Maharashtra*, (2000) 3 SCC 143, *overruled on this point*

CIT v. *Bababhai Pitamberdas*, 1993 Supp (3) SCC 530; *Banarsi Debi* v. *ITO*, AIR 1964 SC 1742 : (1964) 7 SCR 539; *CWT* v. *Kundan Lal Behari Lal*, (1975) 4 SCC 844 : 1975 SCC (Tax) 469, *considered*

G. Environment Protection and Pollution Control — Forests — Maharashtra Private Forests (Acquisition) Act, 1975 (29 of 1975) — S. 2(f)(iii) — Private forest in respect of which notice "issued" under S. 35(3), Forest Act, 1927 — No time period specified for taking decision on

show-cause notice issued under S. 35(3), Forest Act, 1927 — Presumption as to time-period for taking action — It must be decided within a reasonable time — Show-cause notice issued but no decision taken for 18 yrs, held, makes the show-cause notice a dead letter — Basic principles of good governance must be followed by every member of the Executive branch of the State at all times keeping the interests of all citizens in mind as also the larger public interest — It is the responsibility and duty of the State to ensure that its laws are implemented with reasonable dispatch

— Natural Justice — Audi Alteram Partem — Right to Hearing — Notice/Show-Cause — Constitution of India — Arts. 300-A and 14 — Administrative Law — Administrative Action — Administrative or Executive Function — Failure to Exercise Power/Delay in exercising power — No time period specified for taking decision on show-cause notice — Held, presumption — It must be decided within a reasonable time

H. Environment Protection and Pollution Control — Forests — Maharashtra Private Forests (Acquisition) Act, 1975 (29 of 1975) — S. 2(f)(iii) — Private forest — Notice issued under S. 35(3), Forest Act, 1927 before enactment of Private Forest Act, 1975 — Whether a "pipeline notice" — Notice after its issuance in 1956-1957 not acted upon till 1975 i.e. about 18 yrs — Held, S. 2(f)(iii) of Private Forests Act, 1975 is in a sense a saving clause for pipeline notices issued under S. 35(3) of the Forest Act, 1927 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 S. 35(1) of Forest Act, 1927, depending on the objections raised by the landowner — However, S. 2(f)(iii) of Private Forests Act, 1975 is not intended to apply to notices that had passed their shelf-life and only "pipeline notices" issued in reasonably close proximity to the coming into force of the Private Forests Act, 1975 were "live" and could be acted upon — In present case, "pipeline" cannot extend from 1956-1957 up to 1975 — Natural Justice — Audi Alteram Partem — Right to Hearing — Notice/Show-Cause — Subsistence/Survival of notice — Duration of — Pipeline notice — What is — Duration for which remains alive — Constitution of India, Arts. 14 and 300-A

I. Environment Protection and Pollution Control — Forests — Maharashtra Private Forests (Acquisition) Act, 1975 (29 of 1975) — S. 2(f)(iii) — Land declared as private forest by issue of notice — No decision taken thereupon or attempts made to take possession by State — Whether there was collusion between landowners and State — Allegations of, negatived — Held, it is difficult at this distant point of time (about 60 yrs from date of notice) to conclude, one way or the other, whether there was or was not any collusion (as alleged) or whether it was simply a case of poor governance by the State — Possession of disputed land was not taken over or attempted to be taken over for decades and the issue was never raised when it should have been, therefore, to raise it now after a lapse of so many decades is unfair to appellants, the institutions, the State and the residents of the tenements that have been constructed in the meanwhile — Forest Act, 1927 — S. 35(3) — Equity — Delay/laches

Held :

In the absence of any time period having been specified for deciding a show-cause notice issued under Section 35 of the Forest Act, 1927, it must be presumed that it must be decided within a reasonable time. (Para 64)

According to the State, a show-cause notice was issued to the appellant in 1957 (and assuming it was served) but no decision was taken thereon till 1975, that is, for about 18 years. This is an unusually long period and undoubtedly much more than a reasonable time had elapsed for enabling the State to take a decision on the show-cause notice. Therefore, the show-cause notice must, for all intents and purposes be treated as having become a dead letter and the seed planted by the State yielded nothing. The entire problem may also be looked at from the perspective of the citizen rather than only from the perspective of the State. No citizen can reasonably be told after almost half a century that he/she was issued a show-cause notice (which was probably not served) and based on the show-cause notice his/her land was declared a private forest about three decades ago and that it vests in the State. Basic principles of good governance must be followed by every member of the Executive branch of the State at all times keeping the interests of all citizens in mind as also the larger public interest. The failure of the State to take any decision on the show-cause notice for several decades is indicative of its desire not to act on it. This opinion is fortified by a series of events that have taken place between 1957 and 2006, beginning with the consent decree of 8-1-1962 in Suit No. 413 of 1953 whereby the disputed land was recognised as not being forest land; permission to construct a large number of buildings (both residential and otherwise) as per the Development Plans of 1967 and then of 1991; exemptions granted by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 leading to making unhindered but permissible constructions; and finally, the absence of any attempt by the State to take possession of the "forest land" under Section 5 of the Private Forests Act, 1975 for a couple of decades. The subsequent event of the State moving an application in *Godavarman*, IAs Nos. 2352-53 of 2008 in WP No. 202 of 1995, virtually denying the existence of a private forest on the disputed land also indicates that the State had come to terms with reality and was grudgingly prepared to accept that, even if the law permitted, it was now too late to remedy the situation. This view was emphatically reiterated by the Central Empowered Committee in its Report dated 13-7-2009. (Paras 67 to 69)

Ramlila Maidan Incident, In re, (2012) 5 SCC 1 : (2012) 2 SCC (Civ) 820 : (2012) 2 SCC (Cri) 241 : (2012) 1 SCC (L&S) 810; *Mansaram* v. *S.P. Pathak*, (1984) 1 SCC 125; *Santoshkumar Shivgonda Patil* v. *Balasaheb Tukaram Shevale*, (2009) 9 SCC 352 : (2009) 3 SCC (Civ) 749, *affirmed*

It was alleged that there was collusion between the appellants and the State of Maharashtra to defeat the purpose of the Private Forests Act, 1975. It is stated that prior to the said Act coming into force, the Secretary in the Revenue and Forests Department of the State Government had written to the Collector on 27-8-1975 enclosing a copy of the said Act and informing that under Section 5 thereof, the Range Forest Officers and the Divisional Forest Officers will be authorised to take possession of the private forests from the landowners. It is stated that the letter was issued to enable the Collector to coordinate with the Divisional Forest Officers to ensure that the large private forests are taken over physically as early as possible. Subsequently, by another letter (variously

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described as dated 3-2-1977, 14-2-1977 and 3-2-1979) the Secretary in the Revenue and Forests Department advised the Conservator of Forests to go slow with the taking over of possession of private forests in Thane, Kulaba and Ratnagiri Districts. It is difficult at this distant point of time to conclude, one way or the other, whether there was or was not any collusion (as alleged) or whether it was simply a case of poor governance by the State. The fact remains that possession of the disputed land was not taken over or attempted to be taken over for decades and the issue was never raised when it should have been. To raise it now after a lapse of so many decades is unfair to *G*, the other appellants, the institutions, the State and the residents of the tenements that have been constructed in the meanwhile. (Paras 70 and 71)

Given this factual scenario, Section 2(*f*)(*iii*) of the Private Forests Act, 1975 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, 1975 were "live" and could be acted upon. The fact that the Private Forests Act, 1975 repealed some sections of the Forest Act, 1927, particularly Sections 34-A and 35 thereof is also significant. Section 2(*f*)(*iii*) of the Private Forests Act, 1975 is in a sense a saving clause for pipeline notices issued under Section 35(3) of the Forest Act, 1927 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, 1927, 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, 1975 was intended to apply to "live" and not stale notices issued under Section 35(3) of the Forest Act, 1927. (Paras 72 and 74)

J. **Environment Protection and Pollution Control — Forests — Maharashtra Private Forests (Acquisition) Act, 1975 (29 of 1975) — S. 2(f)(iii) — Nature and interpretation — It is an expropriatory legislation and must be strictly construed — Interpretation of Statutes — Particular Statutes or Provisions — Expropriatory/Land acquisition or use-restriction statutes — Strict construction — Constitution of India, Arts. 300-A and 14**

Held :

Section 2(*f*)(*iii*) of the Private Forests Act, 1975 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, 1975 must not only be reasonably construed but also strictly so as not to discomfit a citizen and expropriate his/her property. (Para 73)

State of M.P. v. *Vishnu Prasad Sharma*, AIR 1966 SC 1593 : (1966) 3 SCR 557, *followed*

Khub Chand v. *State of Rajasthan*, AIR 1967 SC 1074 : (1967) 1 SCR 120; *Hindustan Petroleum Corpn. Ltd.* v. *Darius Shapur Chenai*, (2005) 7 SCC 627, *affirmed*

K. **Environment Protection and Pollution Control — Forests — Private forest — Issue of notice to landowners — Possession of forest land by State after 18 yrs — Construction of residential and commercial buildings on such lands over time after obtaining valid statutory and development permissions — Demolition of constructions to "restore" the "forest" — Permissibility of — Enforceability against appellant landowners and individual citizens — Principle of "caveat emptor", held, inapplicable in present case**

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— State remained completely inactive when construction was going on for a few decades — When such a large-scale activity involving the State is being carried on over vast stretches of land exceeding a hundred acres, it is natural for a reasonable citizen to assume that whatever actions are being taken are in accordance with law — On facts, appellants followed due legal process in making the constructions that they made and all that can be said of the State is that it enabled the appellants to obtain valid permissions from various authorities, from time to time, to make constructions over a long duration — Appellants and individual citizens cannot be faulted or punished for that — Conduct of State, deprecated — In the facts and circumstances, State directed to ensure that none of the persons concerned in these appeals is prejudiced in any manner whatsoever — Maharashtra Private Forests (Acquisition) Act, 1975 (29 of 1975) — S. 2(f)(iii) — Forest Act, 1927 — S. 35(3) — Estoppel, Acquiescence and Waiver — Applicability — Constitution of India, Art. 300-A

L. Environment Protection and Pollution Control — Forests — Maharashtra Private Forests (Acquisition) Act, 1975 (29 of 1975) — S. 2(f)(iii) — Lands in respect of which show-cause notice "issued" under S. 35(3), Forest Act, 1927 — Possession of land claimed by State to be forest land by State and thus State seeking demolition of constructions — Purchasers of tenements or commercial establishments thereupon for which State had given statutory permissions and provided municipal facilities — Doctrine of caveat emptor — Applicability — Principle of caveat emptor would be applicable in normal circumstances and not in extraordinary circumstances — Doctrines and Maxims — *Caveat emptor* — Transfer of Property Act, 1882 — Ss. 55(1)(a) and 3 — Defects that buyer with ordinary care could discover — Constitution of India, Art. 300-A

Held :

The next question is whether at all the unstated decision of the State to take over the so-called forest land can be successfully implemented? What the decision implies is the demolition, amongst others, of a large number of residential buildings, industrial buildings, commercial buildings, Bhabha Atomic Energy Complex and Employees State Insurance Scheme Hospital and compulsorily rendering homeless thousands of families, some of whom may have invested considerable savings in the disputed lands. What it also implies is demolition of the municipal and other public infrastructure works already undertaken and in use, clearing away the rubble and then planting trees and shrubs to "restore" the "forest" to an acceptable condition. (Para 75)

The broad principle laid down by the Supreme Court is not in doubt. An unauthorised construction, unless compoundable in law, must be razed. In question are the circumstances leading to the application of the principle and the practical application of the principle. More often than not, the municipal authorities and builders conspiratorially join hands in violating the law but the victim is an innocent purchaser or investor who pays for the maladministration. In such a case, how is the victim to be compensated or is he or she expected to be the only loser? If the victim is to be compensated, who will do so? (Para 77)

The remedy of demolition cannot be applied per se with a broad brush to all cases. The State also seems to have realised this and that is perhaps the reason why it moved the application that it did in *Godavarman*. (Para 82)

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Looking at the issue from the point of view of the citizen and not only from the point of view of the State or a well-meaning pressure group, it does appear that even though the basic principle is that the buyer should beware and therefore if the appellants and the purchasers of tenements or commercial establishments from the appellants ought to bear the consequences of unauthorised construction, the well-settled principle of caveat emptor would be applicable in normal circumstances and not in extraordinary circumstances as these appeals present, when a citizen is effectively led up the garden path for several decades by the State itself. The present appeals do not relate to a stray or a few instances of unauthorised constructions and, therefore, fall in a class of their own. In a case such as the present, if a citizen cannot trust the State which has given statutory permissions and provided municipal facilities, whom should he or she trust? (Para 83)

Assuming the disputed land was a private forest, the State remained completely inactive when construction was going on over acres and acres of land and of a very large number of buildings thereon and for a few decades. The State permitted the construction through the development plans and by granting exemption under the Urban Land (Ceiling and Regulation) Act, 1976 and providing necessary infrastructure such as roads and sanitation on the disputed land and the surrounding area. When such a large-scale activity involving the State is being carried on over vast stretches of land exceeding a hundred acres, it is natural for a reasonable citizen to assume that whatever actions are being taken are in accordance with law otherwise the State would certainly step in to prevent such a massive and prolonged breach of the law. The silence of the State in all the appeals led the appellants and a large number of citizens to believe that there was no patent illegality in the constructions on the disputed land nor was there any legal risk in investing on the disputed land. Under these circumstances, for the State or Bombay Environment Action Group to contend that only the citizen must bear the consequences of the unauthorised construction may not be appropriate. It is the complete inaction of the State, rather its active consent that has resulted in several citizens being placed in a precarious position where they are now told that their investment is actually in unauthorised constructions which are liable to be demolished any time even after several decades. There is no reason why these citizens should be the only victims of such a fate and the State be held not responsible for this state of affairs; nor is there any reason why under such circumstances the Supreme Court should not come to the aid of victims of the culpable failure of the State to implement and enforce the law for several decades. (Para 84)

In none of these cases is there an allegation that the State has acted arbitrarily or irrationally so as to voluntarily benefit any of the appellants. On the contrary, the facts show that the appellants followed the due legal process in making the constructions that they did and all that can be said of the State is that its Rip Van Winkleism enabled the appellants to obtain valid permissions from various authorities, from time to time, to make constructions over a long duration. The appellants and individual citizens cannot be faulted or punished for that. These appeals raise larger issues of good administration and governance and the State has, regrettably, come out in poor light in this regard. It is not necessary to say anything more on the subject except to conclude that even if the State were to succeed on the legal issues, there is no way, on the facts and circumstances of these appeals, that it can reasonably put the clock back and ensure that none of the persons concerned in these appeals is prejudiced in any manner whatsoever. (Paras 85 and 86)

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K. Ramadas Shenoy v. *Town Municipal Council, Udipi*, (1974) 2 SCC 506; *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*, (1999) 6 SCC 464; *Pleasant Stay Hotel* v. *Palani Hills Conservation Council*, (1995) 6 SCC 127; *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*, (1991) 3 SCC 341, *distinguished on facts*

B-D/52866/C

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Chronological list of cases cited *on page(s)*

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25. AIR 1964 SC 1230 : (1964) 6 SCR 784, *R.L. Arora* v. *State of U.P.* 460*d*
26. (1883) LR 8 AC 798 (HL), *Robinson* v. *Barton-Eccles Local Board* 459*f*

The Judgment of the Court was delivered by

MADAN B. LOKUR, J.— Leave granted. The principal question for consideration is whether the mere issuance of a notice under the provisions of Section 35(3) of the Forest Act, 1927 is sufficient for any land being declared a "private forest" within the meaning of that expression as defined in Section 2(*f*)(*iii*) of the Maharashtra Private Forests (Acquisition) Act, 1975. In our opinion, the question must be answered in the negative. Connected therewith is the question whether the word "issued" in Section 2(*f*)(*iii*) of the Maharashtra Private Forests Acquisition Act, 1975 read with Section 35 of the Forest Act, 1927 must be given a literal interpretation or a broad meaning. In our opinion the word must be given a broad meaning in the surrounding context in which it is used. A tertiary question that arises is, assuming the disputed lands are forest lands, can the State be allowed to demolish the massive constructions made thereon over the last half a century? Given the facts and circumstances of these appeals, our answer to this question is also in the negative.

2. This is a batch of 20 appeals and they were argued on the basis of the facts as in the appeal of Godrej. In each appeal, the minute details would, of course, be different but the legal issues are the same and all the appeals were argued by the learned counsel on the basis that the legal issues and questions of law are the same. For convenience, we have taken into consideration the facts in the appeal of Godrej.

Facts

3. Godrej acquired land in Vikhroli in Salsette Taluka in Maharashtra by a registered deed of conveyance dated 30-7-1948 from Nowroji Pirojsha, successor-in-interest of Framjee Cawasjee Banaji who, in turn, had been given a perpetual lease/kowl for the land by the Government of Bombay on 7-7-1835.

4. The land was described in the perpetual lease/kowl as "wasteland" and one of the purposes of the lease was to cultivate the wasteland. We are concerned in this appeal with an area of 133 acres and 38 gunthas of land bearing old Survey Nos. 117, 118 and 120 [new Survey Nos. 36 (Part), 37 and 38]. For convenience this land is hereafter referred to as "the disputed land".

Consent decree in the Bombay High Court

5. On 27-8-1951 the Legislative Assembly of the State of Bombay passed the Salsette Estates (Land Revenue Exemption Abolition) Act, 1951. This statute was brought into force on 1-3-1952. Section 4 of the Salsette Estates Act provided that wastelands granted under a perpetual lease/kowl not appropriated or brought under cultivation before 14-8-1951 shall vest in and be the property of the State.[1]

6. According to the State, the disputed land was not appropriated or brought under cultivation before 14-8-1951 and, therefore, it vested in or was the property of the State by virtue of Section 4 of the Salsette Estates Act. This factual position was disputed by Godrej and to resolve the dispute, Suit No. 413 of 1953 was filed by Godrej in the Bombay High Court praying, inter alia, for a declaration that it was the owner of the disputed land in Village Vikhroli as the successor-in-title of Framjee Cawasjee Banaji; that the provisions of the Salsette Estates Act had no application to the disputed land and, that the disputed land had been appropriated by Godrej before 14-8-1951 for its industrial undertaking.

7. The suit was contested by the State by filing a written statement but eventually the Bombay High Court passed a consent decree on 8-1-1962 to the effect that except for an area of 31 gunthas, all other lands were appropriated and brought under cultivation by Godrej before 14-8-1951 and are the property of Godrej. The consent decree reads, inter alia, as follows:

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1 "4. *Wastelands, etc. to vest in Government.*—(*a*) All wastelands in any estate which under the terms of the kowl are not the property of the estate-holder,

(*b*) all wastelands in any estate which under the terms of the kowl are the property of the estate-holder but have not been appropriated or brought under cultivation before 14-8-1951, and

(*c*) all other kinds of property referred to in Section 37 of the Code situate in an estate which is not the property of any individual or an aggregate of persons legally capable of holding property other than the estate-holder and except insofar as any rights of persons may be established in or over the same and except as may be otherwise provided by any law for the time being in force, together with all rights in or over the same and except as may be otherwise provided by any law for the time being in force, together with all rights in or over the same or appertaining thereto, are and are hereby declared to be the property of the State and it shall be lawful to dispose of and sell the same by the authority in the manner and for the purposes prescribed in Section 37 or 38 of the Code, as the case may be."

"AND THIS COURT by and with such consent DOTH FURTHER DECLARE that it is agreed by and between the parties of the following lands, namely,

Sl. No.	*Area*
	A.G.A.
15 Part	0-21-0
16 Part	0-10-0
	0-31-0

in the village of Vikhroli vest in Government under Section 4(*c*) of the said Act (Salsette Estates Act).

AND THIS COURT by and with such consent DOTH FURTHER DECLARE that it is agreed by and between the parties that save and except the lands mentioned above all other lands in the Village of Vikhroli were appropriated or brought under cultivation before the fourteenth day of August one thousand nine hundred and fifty-one and are the property of the plaintiff...."

8. These events establish two facts:

(*i*) Even according to the State, the disputed land was "wasteland" and not a "forest". This is significant since the Indian Forest Act, 1927 did not apply to "wasteland" [due to the Indian Forest (Bombay Amendment) Act, 1948] with effect from 4-12-1948.

(*ii*) It was acknowledged by the State that the disputed land (even if it was a forest) was appropriated or brought under cultivation by Godrej before 14-8-1951.

Development plan for the City of Bombay

9. A development plan for the City of Bombay (and Greater Bombay including Vikhroli) was published on 7-1-1967 and the next development plan was published in 1991. In both the development plans, the disputed land was designated as "R" or "Residential". On publication of the first development plan, Godrej applied for and was granted permission, on various dates, by the Municipal Corporation of Greater Bombay to construct residential buildings on the disputed land. Godrej is said to have constructed four such buildings on the basis of permissions granted from time to time and these buildings were occupied for residential purposes by its staff.

10. On 17-2-1976 the Urban Land (Ceiling and Regulation) Act, 1976 came into force. Since the disputed land was in excess of the ceiling limit, Godrej filed statements (under Section 6 of the Act) and sought exemption from the competent authority for utilising the excess/surplus vacant lands for industrial and residential purposes (under Section 20 of the Act). Pursuant to the request made by Godrej, it was granted exemption by the State Government, as prayed for and subject to certain conditions which included (both initially and subsequently by a corrigendum) the construction of tenements for the benefit of its employees to be used as staff quarters.

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11. Pursuant to the grant of exemption, Godrej applied for and was granted permission by Municipal Corporation of Greater Bombay to construct multi-storeyed buildings on the disputed land. According to Godrej, over a period of time, it has constructed more than 40 multi-storeyed residential buildings (ground + 4 and ground + 7), one club house and five electric substations. It is said that over a couple of thousand families are occupying these buildings and that further construction has also been made, pursuant to permission granted, of a management institute and other residential buildings.

Amendments to the Forest Act, 1927

12. Chapter V of the Forest Act, 1927 relates to the control over forests and lands not being the property of Government. It was amended (as far as we are concerned) on three occasions by the State of Bombay or Maharashtra, as the case may be.[2]

13. The first amendment was by the Indian Forest (Bombay Amendment) Act, 1948 being Bombay Act 62 of 1948. By this amendment (which came into force on 4-12-1948), the three significant changes that we are concerned with were: (*i*) insertion of Section 34-A in the Forest Act[3] whereby an inclusive definition of "forest" was incorporated for the purposes of the Chapter; (*ii*) substitution of Section 35(1) of the Forest Act[4] dealing with

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2 Changes brought about by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950 have not been incorporated in the narration of facts.

3 "34-A. *Interpretation*.—For the purposes of this Chapter 'forest' includes any land containing trees and shrubs, pasture, lands and any other land whatsoever which the Provincial Government may, by notification in the Official Gazette, declare to be a forest."

4 "35. *Protection of forests for special purposes*.—(1) The Provincial Government may, by notification in the Official Gazette—

(*i*) regulate or prohibit in any forest—

(*a*) the breaking up or clearing of the land for cultivation;

(*b*) the pasturing of cattle;

(*c*) the firing or clearing of the vegetation;

(*d*) the girdling, tapping or burning of any tree or the stripping off the bark or leaves from any tree;

(*e*) the lopping and pollarding of trees;

(*f*) the cutting, sawing, conversion and removal of trees and timber; or

(*g*) the quarrying of stone or the burning of lime or charcoal or the collection or removal of any forest produce or its subjection to any manufacturing process;

(*ii*) regulate in any forest the regeneration of forests and their protection from fire;

when such regulation or prohibition appears necessary for any of the following purposes—

protection of forests for special purposes, including regulatory and prohibitory measures; (*iii*) the words "wastelands" or "land" occurring in sub-sections (2) and (3) of Section 35 of the Forest Act[5] were deleted. Therefore, "wastelands" were taken out of the purview of the Forest Act (as applicable to the State of Bombay) with effect from 4-12-1948.

14. The next amendment was made by the Indian Forest (Bombay Amendment) Act, 1955 being Bombay Act 24 of 1955. The three significant changes that we are concerned with were: (*i*) amendment to Section 35(3) of the Forest Act[6]; (*ii*) insertion of sub-sections (4), (5) and (6) in Section 35 of

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(*a*) for the conservation of trees and forests;

(*b*) for the preservation and improvement of soil or the reclamation of saline or water-logged land, the prevention of land-slips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

(*c*) for the improvement of grazing;

(*d*) for the maintenance of a water supply in springs, rivers and tanks;

(*e*) for the maintenance, increase and distribution of the supply of fodder, leaf manure, timber or fuel;

(*f*) for the maintenance of reservoirs or irrigation works and hydroelectric works;

(*g*) for protection against storms, winds, rolling stones, floods and drought;

(*h*) for the protection of roads, bridges, railways and other lines of communication; and

(*i*) for the preservation of the public health."

5 "35. ***Protection of forests for special purposes.***—(1) * * *

(2) The State Government may, for any such purpose, construct at its own expense, in any forest, such work as it thinks fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government."

6 "35. ***Protection of forests for special purposes.***—(1)-(2) * * *

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue by an officer authorised by the State Government in that behalf of a notice to the owner of such forest calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government."

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the Forest Act[7]; (*iii*) insertion of Section 36-A (manner of serving notice and order under Section 36) in the Forest Act.[8]

15. The next amendment was by the Indian Forest (Maharashtra Unification and Amendment) Act, 1960 being Maharashtra Act 6 of 1961. The two changes brought about were: (*i*) the words "six months" in sub-section (4) of Section 35 of the Forest Act were substituted by the words "one year" [9]; (*ii*) sub-sections (5-A) and (7) were inserted in Section 35 of the Forest Act.[10]

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7 "35. *Protection of forests for special purposes*.—(1)-(3) * * *

(4) A notice to show cause why a notification under sub-section (1) should not be made, may require that for any period not exceeding six months, or till the date of the making of a notification, whichever is earlier, the owner of such forest and all persons who are entitled or permitted to do therein any or all of the things, specified in clause (*i*) of sub-section (1), whether by reasons of any right, title or interest or under any licence or contract or otherwise, shall not, after the date of the notice and for the period or until the date aforesaid, as the case may be, do any or all the things specified in clause (*i*) of sub-section (1), to the extent specified in the notice.

(5) A notice issued under sub-section (3) shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the service of summons and shall also be published in the manner prescribed by rules.

(6) Any person contravening any requisition made under sub-section (4) in a notice to show cause why a notification under sub-section (1) should not be made shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both."

8 "36-A. *Manner of serving notice and order under Section 36*.—The notice referred to in sub-section (1) of Section 36 and the order, if any, made placing a forest under the control of a Forest Officer shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the service of summons."

9 "35. *Protection of forests for special purposes*.—(2)-(3) * * *

(4) A notice to show cause why a notification under sub-section (1) should not be made, may require that for any period not exceeding one year, or till the date of the making of a notification, whichever is earlier, the owner of such forest and all persons who are entitled or permitted to do therein any or all of the things specified in clause (*i*) of sub-section (1), whether by reasons of any right, title or interest or under any licence or contract or otherwise, shall not, after the date of the notice and for the period or until the date aforesaid, as the case may be, do any or all the things specified in clause (*i*) of sub-section (1), to the extent specified in the notice."

10 "35. *Protection of forests for special purposes*.—(1)-(5) * * *

(5-A) Where a notice issued under sub-section (3) has been served on the owner of a forest in accordance with sub-section (5), any person acquiring thereafter the right of ownership of that forest shall be bound by the notice as if it had been served on him as an owner and he shall accordingly comply with the notice, requisition and notification, if any, issued under this section.

* * *

Notice issued to Godrej

16. Completely unknown to Godrej and not disclosed by the State in Suit No. 413 of 1953 even till 8-1-1962 when the consent decree was passed by the Bombay High Court, a notice bearing No. WT/53 had been issued to Godrej under Section 35(3) of the Forest Act (as amended) and published in the Bombay Government Gazette of 6-9-1956 in respect of the disputed land in Village Vikhroli. Godrej subsequently learnt of the notice from a search in the records of the Department of Archives. The search revealed that the notice, as published in the Gazette, bore no date and according to Godrej, the notice was not served upon it and, it was submitted, that the notice was never acted upon. Indeed, subsequent events cast a doubt on whether the notice was at all issued to or served on Godrej.

17. Notice No. WT/53 reads as follows:

"Notice No. WT/53

In pursuance of sub-section (3) of Section 35 of the Indian Forest Act, 1927 (16 of 1927), read with Rule 2 of the Rules published in Government Notification, Agriculture and Forests Department, No. 5133/48513-J, dated the 19th day of September, 1950, I, J.V. Karamchandani, the Conservator of Forests, Western Circle, hereby give notice to—

The Manager, Godrej Boyce and Manufacture Factory, at and Post Vikhroli, B.S.D. calling on him to appear within two months from the date of receipt of this notice before the Divisional Forest Officer, West Thana, to show cause why the accompanying notification (hereinafter referred to as 'the notification') should not be made by the Government of Bombay under sub-section (1) of the said Section 35 in respect of the forest specified in the Schedule hereto appended and belonging to him.

2. If the said Manager, Godrej Boyce and Manufacture Factory, at and Post Vikhroli, B.S.D., fails to comply with this notice, it shall be assumed that the said Manager, Godrej Boyce and Manufacture Factory, at and Post Vikhroli, B.S.D., has no objection to the making of the notification.

3. I further require that for a period of six months or till the date of the making of the notification, whichever is earlier, the said Manager, Godrej Boyce and Manufacture Factory, at and Post Vikhroli, B.S.D. and all persons who are entitled or permitted to do, therein, any or all of the things specified in clause (1) of sub-section (1) of the said Section 35, whether by reason of any right, title or interest or under any licence or contract, or otherwise, shall not after the date of this notice, and for the period or until the date aforesaid, as the case may be, do any of the following things specified in clause (1) of sub-section (1) of the said Section 35, namely:

(*a*) the cutting and removal of trees and timber,

(*b*) the firing and clearing of the vegetation.

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(7) Any person contravening any of the provisions of a notification issued under sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine, or with both."

Schedule

District Thana, Taluka Salsette, Village Vikhroli

a S. No. 118; area, 63 acres 23 gunthas, boundaries: north—boundary of Pavai; east—boundary of Haralayi; south—S. No. 117; west—boundary of Ghatkopur.

S. No. 117; area, 36 acres, 35 gunthas, boundaries: north—S. No. 118; east—S. No. 120; south—S. No. 112; west—boundary of Ghatkopur.

S. No. 120; area, 33 acres, 13 gunthas, boundaries: north—boundary of b Haralayi; east—Agra Road; south—S. No. 115; west—S. Nos. 116, 117."

Maharashtra Private Forests (Acquisition) Act, 1975

18. Sometime in 1975 the State Legislature passed the Maharashtra Private Forests (Acquisition) Act, 1975. The Private Forests Act came into force on 30-8-1975 when it was published in the Official Gazette. We are concerned with the definition of "forest" and "private forest" as contained in c Section 2(*c-i*) and Section 2(*f*) respectively in the Private Forests Act. These definitions read as follows:

"2. (*c-i*) **'forest'** means a tract of land covered with trees (whether standing, felled, found or otherwise), shrubs, bushes, or woody vegetation, whether of natural growth or planted by human agency and existing or being maintained with or without human effort, or such tract of land on which such d growth is likely to have an effect on the supply of timber, fuel, forest produce, or grazing facilities, or on climate, stream flow, protection of land from erosion, or other such matters and includes—

(*i*) land covered with stumps of trees of forest;

(*ii*) land which is part of a forest or lies within it or was part of a forest or was lying within a forest on the 30th day of August, 1975;

e (*iii*) such pasture land, water-logged or cultivable or non-cultivable land, lying within or linked to a forest, as may be declared to be forest by the State Government;

(*iv*) forest land held or let for purpose of agriculture or for any purposes ancillary thereto;

(*v*) all the forest produce therein, whether standing, felled, found or f otherwise;

* * *

(*f*) **'private forest'** means any forest which is not the property of Government and includes—

(*i*) any land declared before the appointed day to be a forest under Section 34-A of the Forest Act;

g (*ii*) any forest in respect of which any notification issued under sub-section (1) of Section 35 of the Forest Act, is in force immediately before the appointed day;

(*iii*) any land in respect of which a notice has been issued under sub-section (3) of Section 35 of the Forest Act, but excluding an area not exceeding two hectares in extent as the Collector may specify in this h behalf;

(*iv*) land in respect of which a notification has been issued under Section 38 of the Forest Act;

(*v*) in a case where the State Government and any other person are jointly interested in the forest, the interest of such person in such forest;

(*vi*) sites of dwelling houses constructed in such forest which are considered to be necessary for the convenient enjoyment or use of the forest and lands appurtenant thereto;"

19. We are also concerned with Section 3 (vesting of private forests in State Government), Section 5 (power to take over possession of private forests) and Section 6 (settlement of disputes) of the Private Forests Act. These provisions read as follows:

"3. *Vesting of private forests in State Government.*—(1) Notwithstanding anything contained in any law for the time being in force or in any settlement, grant, agreement, usage, custom or any decree or order of any court, tribunal or authority or any other document, with effect on and from the appointed day, all private forests in the State shall stand acquired and vest, free from all encumbrances, in, and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State Government, and all rights, title and interest of the owner or any person other than Government subsisting in any such forest on the said day shall be deemed to have been extinguished.

(2) Nothing contained in sub-section (1) shall apply to so much extent of land comprised in a private forest as is held by an occupant or tenant and is lawfully under cultivation on the appointed day and is not in excess of the ceiling area provided by Section 5 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (27 of 1961), for the time being in force or any building or structure standing thereon or appurtenant thereto.

(3) All private forests vested in the State Government under sub-section (1) shall be deemed to be reserved forests within the meaning of the Forest Act.

* * *

5. *Power to take over possession of private forests.*—Where any private forest stands acquired and vested in the State Government under the provisions of this Act, the person authorised by the State Government or by the Collector in this behalf, shall enter into and take over possession thereof, and if any person resists the taking over of such possession, he shall without prejudice to any other action to which he may be liable, be liable to be removed by the use of such force as may be necessary.

6. *Settlement of disputes.*—Where any question arises as to whether or not any forest is a private forest, or whether or not any private forest or portion thereof has vested in the State Government or whether or not any dwelling house constructed in a forest stands acquired under this Act, the Collector shall decide the question, and the decision of the Collector shall, subject to the decision of the tribunal in appeal which may be preferred to the tribunal within sixty days from the date of the decision of the Collector, or the order of the State Government under Section 18, be final."

20. Finally, it may be mentioned that by Section 24 of the Private Forests Act, Sections 34-A, 35 and 36-A of the Forest Act were repealed.[11]

21. The narrative of the events discloses that Notice No. WT/53 after its publication in the Gazette was not acted upon either under the provisions of the Forest Act as amended from time to time or under the Private Forests Act. Admittedly, no attempt was made by the State to take over possession of the disputed land at any point of time. On the contrary permissions were granted to Godrej from time to time for the construction of buildings on the disputed land, which permissions were availed of by Godrej for the benefit of thousands of its employees.

Judgment in Waghmare[12]

22. The constitutional validity of the Private Forests Act (including Section 3 thereof) was challenged in the Bombay High Court on the ground of legislative competence of the State Legislature to enact the statute. This issue was referred to a Bench of five Judges and the decision of the High Court is reported as *J.C. Waghmare* v. *State of Maharashtra*[12]. During the course of hearing, the Bench also considered as to "What is it that the State Legislature has intended to include in the expression 'forest produce' for the purpose of vesting the same in the State Government under Section 3 of the Act?" While answering this question, the High Court felt it necessary to "consider the true effect of the artificial definitions of the two expressions 'forest' and 'private forest' given in Section 2(*c-i*) and Section 2(*f*) read with Section 3 of the impugned Act".

23. In doing so, the Bombay High Court held that a landowner who had been issued a notice under Section 35(3) of the Forest Act (but was not heard) has an opportunity to contend that his or her land is not a "forest" within the meaning of Section 2(*c-i*) of the Private Forests Act and that the land does not vest automatically in the State by virtue of Section 3 of the Private Forests Act. This position was not contested, but conceded by the learned counsel appearing for the State of Maharashtra in the High Court. The High Court held in para 30 of the Report as follows: (*J.C. Waghmare case*[12], AIR p. 145)

> "*30.* ... It is thus clear that sub-clauses (*i*), (*ii*) and (*iv*) of Section 2(*f*) deal with declared, adjudicated or admitted instances of forests.

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11 "24. *Repeal of Sections 34-A to 37 of the Forest Act.*—(1) On and from the appointed day, Sections 34-A, 35, 36, 36-A, 36-B, 36-C and 37 of the Forest Act shall stand repealed.

(2) Notwithstanding anything contained in sub-section (1), on and from the date of commencement of the Maharashtra Private Forests (Acquisition) (Amendment) Act, 1978 (14 of 1978), Sections 34-A, 35, 36, 36-A, 36-B, 36-C and 37 of the Forest Act, shall, in respect of the lands restored under Section 22-A, be deemed to have been re-enacted in the same form and be deemed always to have been in force and applicable in respect of such lands, as if they had not been repealed."

12 *J.C. Waghmare* v. *State of Maharashtra*, AIR 1978 Bom 119

Sub-clause (*iii*) of Section 2(*f*) no doubt seeks to cover land in respect of which merely a notice has been issued to the owner of a private forest under Section 35(3) and his objections may have remained unheard till 30-8-1975 as Section 35 has stood repealed on the coming into force of the Acquisition Act. Here also, as in the case of owners of land falling under sub-clause (*iii*) of Section 2(*c-i*), his objections, if any, including his objection that his land cannot be styled as forest at all can be heard and disposed of under Section 6 of the Acquisition Act, and this position was conceded by the counsel appearing for the State of Maharashtra. Sub-clause (*v*) includes within the definition of private forest the interest of another person who along with Government is jointly interested in a forest, while sub-clause (*vi*) includes sites of dwelling houses constructed in such forest which are considered to be necessary for the convenient enjoyment or use of forest and lands appurtenant thereto."

24. It was further held in para 32 of the Report as follows: (*J.C. Waghmare*[12], AIR p. 146)

"*32*. In the first place, the scheme [of the Private Forests Act] clearly shows that under Section 3 all private forests vest in the State Government and since both the expressions—'forest' as well as 'private forest'—have been defined in the Act what vests in the State Government is 'private forest' as per Section 2(*f*) and in order to be 'private forest' under Section 2(*f*) it must be 'forest' under Section 2(*c-i*) in the first instance and read in this manner the expression 'all the private forests' occurring in Section 3 will include 'forest produce'. It is not possible to accept the argument that the word 'forest' occurring in the composite expression 'private forest' should not be given the meaning which has been assigned to it in Section 2(*c-i*). ... Definitions in interpretation clauses may have no context (though this may not be true of all definitions) but therefore, all the more reason, why the word 'forest' in the composite expression 'forest-produce' in Section 2(*f*) should be given the meaning assigned to it in Section 2(*c-i*). Moreover, as stated earlier, the scheme itself suggests that what vests in the State under Section 3 are private forests as defined by Section 2(*f*) but such private forests must in the first instance be 'forests' as defined by Section 2(*c-i*) and read in that manner the forest produce would vest in the State Government along with the private forest under Section 3 of the Act."

25. The view of the Bombay High Court has been accepted by the State of Maharashtra and has not been challenged and has now attained finality.

26. It is important to note that the High Court in *J.C. Waghmare*[12] was not concerned with, nor did it advert to the right of a landowner to object to the notice under Section 35(3) of the Forest Act before the Private Forests Act came into force on the ground that his land was not a forest as defined in or notified under Section 34-A of the Forest Act. This will be dealt with below.

12 *J.C. Waghmare* v. *State of Maharashtra*, AIR 1978 Bom 119

Judgment in Chintamani Velkar[13]

27. The right to file objections to a notice under Section 35(3) of the Forest Act came up for consideration in *Chintamani Gajanan Velkar* v. *State of Maharashtra*[13]. In that case, Chintamani was issued a notice under Section 35(3) of the Forest Act on 29-8-1975. The notice was served on him on 12-9-1975. In the meanwhile, the Private Forests Act came into force on 30-8-1975. Chintamani raised a dispute under Section 6 of the Private Forests Act (as postulated in *Waghmare*[12]) contending that his land was not a forest and did not vest in the State in terms of Section 3 of the Private Forests Act.

28. The only question that arose for consideration in *Chintamani Velkar*[13] was whether or not Chintamani's land was a forest within the meaning of that word as defined in Section 2(*c-i*) of the Private Forests Act. That issue had already been decided, as a matter of fact, by the Maharashtra Revenue Tribunal against Chintamani and it was held that his land was a forest. The matter ought to have rested there. However, this Court went into a further question, namely, whether the mere issuance of a notice under Section 35(3) of the Forest Act per se attracted Section 2(*f*)(*iii*) of the Private Forests Act. This Court noticed (in para 18 of the Report) that where a final notification is issued under Section 35(1) of the Forest Act [obviously after hearing the objections of the landowner in compliance with the requirements of Section 35(3) thereof], the entire land of the landowner would automatically vest in the State on the appointed date, that is, 30-8-1975 when the Private Forests Act came into force. In such a case, the landowner would, ex hypothesi have an opportunity of showing in the objections to the Section 35(3) notice that the land is not a "forest" as defined under Section 34-A of the Forest Act. If the landowner succeeded in so showing, then clearly a final notification under Section 35(1) of the Forest Act could not be issued. But if the landowner did not succeed in so showing, only then could a final notification under Section 35(1) of the Forest Act be issued. It must be recalled, at this stage, that the words "or land" under Section 35(3) of the Forest Act had been deleted by the Indian Forest (Bombay Amendment) Act, 1948 being Bombay Act 62 of 1948 and, additionally therefore, such an objection could validly have been raised.

29. Consequently, the situation that presented itself in *Chintamani*[13] was that though a notice was issued to the landowner under Section 35(3) of the Forest Act before 30-8-1975, it could not be decided before that date when the Private Forests Act came into force. (Such a notice was referred to as a "pipeline notice" by Mr F.S. Nariman). Clearly, the recipient of a pipeline notice would be entitled to the benefit of *Waghmare*[12] but this seems to have been overlooked by this Court in *Chintamani*[13]. However, to mitigate the hardship to a pipeline noticee who is not given the benefit of *Waghmare*[12] this Court read Section 2(*f*)(*iii*) of the Private Forests Act and observed

13 *Chintamani Gajanan Velkar* v. *State of Maharashtra*, (2000) 3 SCC 143

12 *J.C. Waghmare* v. *State of Maharashtra*, AIR 1978 Bom 119

(perhaps as a sop to the landowner) that: (*Chintamani case*[13], SCC p. 149, para 18)

> "*18.* ... the Maharashtra Legislature thought that the entire property covered by the notice in the State need not vest but *it excluded 2 hectares* out of the forest land held by the landholder. That was the consideration for not allowing the benefit of an inquiry under Section 35(3) and for not allowing the notification to be issued under Section 35(1) of the 1927 Act." (emphasis in original)

It is in this background that this Court narrowly construed the words "a notice has been issued under sub-section (3) of Section 35 of the Forest Act" occurring in Section 2(*f*)(*iii*) of the Private Forests Act as not requiring "service of such notice before 30-8-1975, nor for an inquiry nor for a notification under Section 35(1)."[14]

30. In a sense, therefore, not only is there a difference of views between *Waghmare*[12] and *Chintamani*[13] but *Chintamani*[13] has gone much further in taking away the right of a landholder.

Proceedings in the High Court

31. On or about 24-5-2006, Godrej received six stop-work notices issued by the Assistant Engineer of Bombay Municipal Corporation concerned stating that the Deputy Conservator of Forests, Thane Forest Division, by a letter dated 8-5-2006 had informed that the disputed land was "affected" by the reservation of a private forest and therefore no construction could be carried out therein without the permission of the Central Government under the Forest (Conservation) Act, 1980.

32. On enquiries made by Godrej subsequent to the receipt of the stop-work notices, it came to be known that the Bombay High Court had given a direction on 22-6-2005 in *Bombay Environmental Action Group* v. *State of Maharashtra*[15] on the claim of the petitioner therein that in the entire State of Maharashtra the land records were incomplete and a large number of problems were encountered because of not updating the land records which in any event is also an obligation on the State. Accordingly, the High Court gave a direction granting time to the State of Maharashtra up to 31-5-2006 to complete the entire land records in the State and further directed that quarterly reports regarding the progress of the work be filed before the Registrar General of the High Court.

33. Godrej learnt that this triggered an ex parte mutation of the revenue records by the State to show that the disputed land was "affected" by the provisions of the Private Forests Act. Godrej also learnt that Notice No. WT/53 (referred to above) had been published in the Bombay Government Gazette of 6-9-1956, but not served on it.

34. On these broad facts, Godrej filed Writ Petition No. 2196 of 2006 in the Bombay High Court praying, inter alia, for a declaration that the lands

13 *Chintamani Gajanan Velkar* v. *State of Maharashtra*, (2000) 3 SCC 143

14 *Chintamani Gajanan Velkar* v. *State of Maharashtra*, (2000) 3 SCC 143, para 19

12 *J.C. Waghmare* v. *State of Maharashtra*, AIR 1978 Bom 119

15 PIL No. 17 of 2002, order dated 22-6-2005 (Bom)

(74)

owned by it in Village Vikhroli are not forest land; that the letter dated 8-5-2006 issued by the Deputy Conservator of Forests as well as six stop-work notices dated 24-5-2006 be declared as illegal, ab initio null and void and that the mutation in the revenue records be also declared illegal.

35. During the proceedings in the High Court it came to be known that about 170 notices similar to Notice No. WT/53 had been issued to various parties in 1956-1957, including to Bhabha Atomic Energy Complex and Employees State Insurance Scheme Hospital. However, the lands of Bhabha Atomic Energy Complex and Employees State Insurance Scheme Hospital were not touched by the State.

36. The writ petition (along with several other similar writ petitions) was contested by the State and it was submitted inter alia that in view of the judgment of this Court in *Chintamani*[13], the disputed land stood vested in the State in terms of Section 3 of the Private Forests Act. By the impugned order dated 24-3-2008[16], the High Court dismissed all the writ petitions. Among other things, it was held in para 152 of the impugned judgment[16]: (Bom CR p. 470)

> "*152*. In the light of the authoritative pronouncement in *Chintamani case*[13] we see no substance in the argument that the construction activities on the land being in accordance with the sanctioned plans and approvals so also the lands being part of the development plan and affected by Urban Land Ceiling Act, State's action impugned in these petitions is without any jurisdiction or authority in law. All arguments with regard to the user of the land today has no legal basis. User today is after development or continuing development. Once development is on private forest, then, the same could not have been permitted or carried out. Mere omission or inaction of the State Government cannot be the basis for accepting the arguments of the petitioners."

37. The High Court rejected the contention that: (Bom CR p. 453)

> "*123*. ... mere issuance of a notice under Section 35(3) without any notification being published in the Official Gazette within the meaning of Section 35(1) would not mean that the land is excluded from the purview of the Private Forests (Acquisition) Act enacted by the Maharashtra Government."[17]

It was also held that: (Bom CR p. 456)

> "*126*. ... Once the State Government issues such notice [under Section 35(3) of the Forest Act], then, the intention is apparent. The intention is to regulate and prohibit certain activities in forest. Merely because such a notice is issued by it in 1957 and 1958 but it did not take necessary steps in furtherance thereof, does not mean that the notices have been abandoned as contended by the petitioners. There is no concept of 'abandonment or disuse' in such case. Apart from the fact that

13 *Chintamani Gajanan Velkar* v. *State of Maharashtra*, (2000) 3 SCC 143
16 *Oberoi Constructions (P) Ltd.* v. *State of Maharashtra*, (2008) 3 Bom CR 408
17 *Oberoi Constructions (P) Ltd.*, (2008) 3 Bom CR 408, para 123

these concepts could not be imported in a modern statute, we are of the view that they cannot be imported and read into statute of the present nature. Statutes which are meant for protecting and preserving forests and achieve larger public interest, cannot be construed narrowly as contended. The interpretation, therefore, if at all there is any ambiguity or scope for construction has to be wider and subserving this public interest so also the intent and object in enacting them. The reason for the State Government not being able to pursue the measures for preserving and protecting the forest wealth is obvious."[18]

Further, it was held that: (Bom CR p. 466)

"*149.* ... The Development Plan proposal and designation so also the user cannot conflict with the character of the land as a private forest. To accept the arguments of the petitioners would mean that despite vesting the private forest continues as a land covered by the development plan and being within the municipal limits it looses its character as a private forest. A private forest is a forest and upon its vesting in the State Government by virtue of the Private Forests (Acquisition) Act would remain as such. Therefore, we see no conflict because of any change in the situation. Vesting was complete on 30-8 1975. On 30-8-1975 the lands with regard to which the notice was issued under Section 35(3), being a private forest vested in the State, it was a private forest always and, therefore, there is no question of the development plan or any proposal therein superimposing itself on its status."[19]

38. Feeling aggrieved by the dismissal of the writ petitions in the Bombay High Court, Godrej and other aggrieved writ petitioners preferred petitions for special leave to appeal in this Court.

Proceedings in this Court

39. During the pendency of these appeals, the State filed IAs Nos. 2352-53 of 2008 in WP No. 202 of 1995 [*T.N. Godavarman* v. *Union of India* (Forest Bench matters)] in which it was prayed, inter alia, as follows:

"(1) The lands coming under the provisions of the Maharashtra Private Forests (Acquisition) Act, 1975 which were put to non-forestry use prior to 25-10-1980 [when the Forest (Conservation) Act, 1980 came into force] by way of having been awarded approval of plans, commencement certificates, IODS or non-agriculture permissions by the competent authorities be treated deleted from the category of forests and the non-forestry activity be allowed on such lands without charging CA, NPV or equivalent non-forest land or any charges whatsoever.

* * *

(3) The Collectors of all the districts be directed to pass appropriate orders under Section 6 or 22-A of the Maharashtra Private Forests (Acquisition) Act, 1975 either on an application or suo motu as provided for it under the Act, for all the pieces of lands coming under the provisions of the Act under their jurisdiction within 30 days.

18 *Oberoi Constructions (P) Ltd.*, (2008) 3 Bom CR 408, para 126

19 *Oberoi Constructions (P) Ltd.*, (2008) 3 Bom CR 408, para 149

(76)

(66)

(4) For the lands restored under the Act on which residential complexes have come up/are coming up wherein non-agriculture permissions (NA) and buildings were fully constructed and completion certificate and occupation certificate were issued by the competent authorities after 25-10-1980 but before 18-5-2006 when the 'stop-construction work' notices were issued, only afforestation charges be collected for afforesting equivalent forest land. Neither equivalent non-forest land nor the net present value be charged to them, as these areas are their own private lands."

Significantly, it was stated in the applications as follows:

"26. As stated earlier since the records did not reveal that these are acquired private forests the erstwhile owners went on selling these lands to several persons who also in turn went on selling them to the strangers without there being any fault on their part. Subsequently developers purchased these lands and after getting requisite permissions from the Planning Authority carried on constructions thereon. Thereafter individuals and members of the public who wanted accommodation for housing probably invested their lifetime savings and/or raising loans entered into transactions of purchasing the flats constructed on these lands without their fault. In some of these areas commercial activities have also come up with due permission from the government authorities. In such cases, injustice is being alleged by the subsequent purchasers who claimed to be bona fide purchasers. This has necessitated the State of Maharashtra to come out with the present application. Abstract of constructions made on private forest lands in Mumbai Suburban and Thane City makes it very clear that the problem is more severe for the common man. Errors were also committed while declaring the lands as having been acquired by the Government under the Maharashtra Private Forests (Acquisition) Act, 1975. Some of the lands/properties owned by the Government like Bhabha Atomic Energy Complex and Employees State Insurance Scheme Hospital also came to be declared as acquired under the Maharashtra Private Forests (Acquisition) Act, 1975."

40. The Forest Bench referred the matter to the Central Empowered Committee which, in its Report dated 13-7-2009 noted in Paras 25 and 26 as follows:

"25. It is thus clear that after the issue of notices under Section 35(3) or the notification under Section 35(1) of the Indian Forest Act, no follow-up action was taken by the State Government. Even after the Private Forests Act came into force, neither physical possession of the land was taken nor were the areas recorded as 'forest'. A substantial part of such area falls in urban conglomerations and have been used for various non-forest purpose including construction of buildings for which permissions have been granted by the State Government authorities concerned. Sale/Purchase and resale have taken place and third-party interests have been generated. People are residing for last 30-40 years in hundreds of buildings constructed with the then valid approvals. It was

only after the order dated 26-5-2005 of the Hon'ble Bombay High Court, that these areas are now being treated as falling in the category of 'forest'. Many of such areas are surrounded all around by other buildings and within metropolitan areas and are no longer suitable for afforestation or to be managed as 'forest'.

26. In the above complex background, at this belated stage, it is neither feasible nor in public interest to demolish the existing buildings/structures, relocate the existing occupants/owners and physically convert such area into forest. CEC in these circumstances considers that the balance of convenience lies in granting permission under the Forest (Conservation) Act for dereservation and non-forest use of such area on a graded scale of payment depending upon the category/sub-category in which such land falls."

41. The Central Empowered Committee made certain other recommendations as a result of which Godrej paid an amount of Rs 14.7 crores towards NPV and this has been recorded in the order passed by the Forest Bench in its order dated 17-2-2010[20]. The relevant extract of the order dated 17-2-2010[20] passed by the Forest Bench reads as under: (SCC pp. 509-10, paras 1-3)

"*1.* Pursuant to the report filed by CEC regards the property owned and possessed by the Godrej and Boyce Mfg. Co. Ltd., a sum of Rs 14,71,98,590 was deposited as NPV and the deposit of this amount has been confirmed by the learned counsel appearing for the State.

2. We have passed an interim order of status quo restraining the petitioners from further construction on the lands and also not to create third-party rights. That interim order is vacated. The petitioners are at liberty to go on with the construction and complete it. The direction of not to create third-party rights is also vacated. This order is subject to the order, if any, to be passed by MoEF in this regard and also subject to the final outcome of this matter.

3. The learned counsel for the petitioner states that he will not claim any refund of the amount so deposited."

42. When the present set of appeals came up for hearing before this Court on 9-2-2011[21], the correctness of *Chintamani*[13] was doubted by the learned counsel on the question whether the word "issued" as occurring in Section 2(*f*)(*iii*) of the Private Forests Act in the context of "any land in respect of which a notice has been issued under sub-section (3) of Section 35 of the Forest Act" should be interpreted literally or whether it postulates service of notice on the landholder. It is under these circumstances that these appeals were listed before us.

20 *Godrej & Boyce Mfg. Co. Ltd.* v. *State of Maharashtra*, (2010) 12 SCC 509

21 *Godrej & Boyce Mfg. Co. Ltd.* v. *State of Maharashtra*, (2014) 3 SCC 469

13 *Chintamani Gajanan Velkar* v. *State of Maharashtra*, (2000) 3 SCC 143

(78) (65)

The primary question

43. The initial question is whether the disputed land is at all a forest within the meaning of Section 2(*c-i*) of the Private Forests Act.

44. It is quite clear from a reading of *Waghmare*[12] that the "means and includes" definition of forest in Section 2(*c-i*) of the Private Forests Act does not detract or take away from the primary meaning of the word "forest". We are in agreement with this view.

45. In *Jagir Singh* v. *State of Bihar*[22] the interpretation of the word "owner" in Section 2(*d*) of the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 came up for consideration. While interpreting "owner" which "means" and "includes", this Court held: (SCC p. 948, para 21)

> "21. The definition of the term 'owner' is exhaustive and intended to extend the meaning of the term by including within its sweep bailee of a public carrier vehicle or any manager acting on behalf of the owner. The intention of the legislature to extend the meaning of the term by the definition given by it will be frustrated if what is intended to be inclusive is interpreted to exclude the actual owner."

46. The proposition was more clearly articulated in *Black Diamond Beverages* v. *CTO*[23] wherein this Court considered the use of the words "means" and "includes" in the definition of "sale price" in Section 2(*d*) of the W.B. Sales Tax Act, 1954. It was held in para 7 of the Report: (SCC p. 461)

> "7. ... The first part of the definition defines the *meaning* of the word 'sale price' and must, in our view, be given its ordinary, popular or natural meaning. The interpretation thereof is in no way controlled or affected by the second part which 'includes' certain other things in the definition. This is a well-settled principle of construction."
>
> (emphasis in original)

47. In coming to this conclusion, this Court referred to a passage from *Craies on Statute Law*[24] which in turn referred to the following passage from *Robinson* v. *Barton-Eccles Local Board*[25]: (*Black Diamond Beverages case*[23], SCC p. 462, para 7)

> "7. ... '... "... An interpretation clause of this kind is *not meant to prevent* the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but to enable the word as used in the Act ... to be applied to some things to which it would not ordinarily be applicable." (AC p. 801)' "

48. In the case of Godrej, the admitted position, as per the consent decree dated 8-1-1962 is that the disputed land was not a wasteland nor was it a

12 *J.C. Waghmare* v. *State of Maharashtra*, AIR 1978 Bom 119

22 (1976) 2 SCC 942 : 1976 SCC (Tax) 204

23 (1998) 1 SCC 458

24 William Fielden Craies, *Craies on Statute Law* (7th Edn., Sweet & Maxwell Ltd., UK, 1971)

25 (1883) LR 8 AC 798 (HL)

forest. Insofar as the other appeals are concerned, the disputed lands were built upon, from time to time, either for industrial purposes or for commercial purposes or for residential purposes. Under these circumstances, by no stretch of imagination can it be said that any of these disputed lands are "forest" within the primary meaning of that word, or even within the extended meaning given in Section 2(*c-i*) of the Private Forests Act.

49. The next question is whether the notice said to have been issued to Godrej being Notice No. WT/53 can be described as a "pipeline notice". Again, the answer must be in the negative inasmuch as it cannot be reasonably said that the pipeline extends from 1956-1957 up to 1975. Assuming that a notice issued in 1956-1957 is a pipeline notice even in 1975, the question before us would, nevertheless, relate to the meaning and impact of "issued" in Section 2(*f*)(*iii*) of the Private Forests Act read with Section 35 of the Forest Act. This is really the meat of the matter.

50. Undoubtedly, the first rule of interpretation is that the words in a statute must be interpreted literally. But at the same time if the context in which a word is used and the provisions of a statute inexorably suggest a subtext other than literal, then the context becomes important.

51. In *R.L. Arora* v. *State of U.P.*[26] it was observed that: (AIR pp. 1236-37, para 9)

> "*9.* ... a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute."

52. Similarly, in *TELCO Ltd.* v. *State of Bihar*[27] it was held: (SCC p. 353, para 15)

> "*15.* .... The method suggested for adoption, in cases of doubt as to the meaning of the words used is to explore the intention of the legislature through the words, the context which gives the colour, the context, the subject-matter, the effects and consequences or the spirit and reason of the law. The general words and collocation or phrases, howsoever wide or comprehensive in their literal sense are interpreted from the context and scheme underlying in the text of the Act."

53. Finally, in *Joginder Pal* v. *Naval Kishore Behal*[28] it was held: (SCC p. 411, para 27)

> "*27.* ... It is true that ordinary rule of construction is to assign the word a meaning which it ordinarily carries. But the subject of legislation and the context in which a word or expression is employed may require a departure from the rule of literal construction."

26 AIR 1964 SC 1230 : (1964) 6 SCR 784
27 (2000) 5 SCC 346
28 (2002) 5 SCC 397

(80)

(70)

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.

59. Unfortunately, *Chintamani*[13] missed these finer details because it was perhaps not brought to the notice of this Court that Section 35 of the Forest Act as applicable to the State of Maharashtra had sub-sections beyond sub-section (3). This Court proceeded on the basis of Section 35 of the Indian Forest Act, 1927 as it existed without being aware of the amendments made by the State of Maharashtra and the erstwhile State of Bombay. This, coupled with the factually incorrect view that two hectares of forest land[29] were excluded for the benefit of the landholder led this Court to give a restrictive meaning to "issue".

60. In *Chintamani*[13] this Court relied on the decision rendered in *CIT* v. *Bababhai Pitamberdas*[30] to conclude that a word has to be construed in the context in which it is used in a statute and that, therefore, the decisions rendered in *Banarsi Debi* v. *ITO*[31] and *CWT* v. *Kundan Lal Behari Lal*[32] to the effect that: (*Chintamani case*[13], SCC p. 149, para 20)

> "*20.* ... the word 'issue' has been construed as amounting to 'service' are not relevant for interpreting the word 'issued' used in Section 2(*f*) [of the Private Forests Act]."

61. It is true, as observed above, that a word has to be construed in the context in which it is used in a statute. By making a reference in Section 2(*f*)(*iii*) of the Private Forests Act to "issue" in Section 35 of the Forest Act, it is clear that the word is dressed in borrowed robes. Once that is appreciated (and it was unfortunately overlooked in *Chintamani*[13]) then it is quite clear that "issued" in Section 2(*f*)(*iii*) of the Private Forests Act must include service of the show-cause notice as postulated in Section 35 of the Forest Act.

62. We have no option, under these circumstances, but to hold that to this extent, *Chintamani*[13] was incorrectly decided and it is overruled to this extent. We may add that in *Chintamani*[13] the land in question was factually held to be a private forest and therefore the subsequent discussion was not at all necessary.

13 *Chintamani Gajanan Velkar* v. *State of Maharashtra*, (2000) 3 SCC 143

29 The correct factual position is that Section 2(*f*)(*iii*) of the Private Forests Act excluded "an area not exceeding two hectares".

30 1993 Supp (3) SCC 530

31 AIR 1964 SC 1742 : (1964) 7 SCR 539

32 (1975) 4 SCC 844 : 1975 SCC (Tax) 469

63. Assuming that the word "issued" as occurring in Section 2(*f*)(*iii*) of the Private Forests Act must be literally and strictly construed, can it be seriously argued that it also has reference to a show-cause notice issued under Section 35(3) of the Forest Act at any given time (say in 1927 or in 1957)? Or would it be more reasonable to hold that it has reference to a show-cause notice issued in somewhat closer proximity to the coming into force of the Private Forests Act, or a "pipeline notice" as Mr Nariman puts it?

64. In the absence of any time period having been specified for deciding a show-cause notice issued under Section 35 of the Forest Act, it must be presumed that it must be decided within a reasonable time. Quite recently, in *Ramlila Maidan Incident, In re*[33] it was held: (SCC p. 95, para 229)

> "*229.* ... It is a settled rule of law that wherever provision of a statute does not provide for a specific time, the same has to be done within a reasonable time. Again reasonable time cannot have a fixed connotation. It must depend upon the facts and circumstances of a given case."

65. Similarly, in *Mansaram* v. *S.P. Pathak*[34] it was held: (SCC p. 136, para 12)

> "*12.* ... But when the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner. Exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time."

66. So also, in *Santoshkumar Shivgonda Patil* v. *Balasaheb Tukaram Shevale*[35] it was held: (SCC pp. 356-57, para 11)

> "*11.* It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein."

67. According to the State, a show-cause notice was issued to Godrej in 1957 (and assuming it was served) but no decision was taken thereon till 1975, that is, for about 18 years. This is an unusually long period and undoubtedly much more than a reasonable time had elapsed for enabling the State to take a decision on the show-cause notice. Therefore, following the law laid down by this Court, the show-cause notice must, for all intents and purposes be treated as having become a dead letter and the seed planted by the State yielded nothing.

68. The entire problem may also be looked at from the perspective of the citizen rather than only from the perspective of the State. No citizen can

33 (2012) 5 SCC 1, para 232 : (2012) 2 SCC (Civ) 820 : (2012) 2 SCC (Cri) 241 : (2012) 1 SCC (L&S) 810

34 (1984) 1 SCC 125

35 (2009) 9 SCC 352 : (2009) 3 SCC (Civ) 749

reasonably be told after almost half a century that he/she was issued a show-cause notice (which was probably not served) and based on the show-cause notice his/her land was declared a private forest about three decades ago and that it vests in the State. Is it not the responsibility of the State to ensure that its laws are implemented with reasonable dispatch and is it not the duty of the State to appreciate that the statute books are not meant to be thrown at a citizen whenever and wherever some official decides to do so? Basic principles of good governance must be followed by every member of the Executive branch of the State at all times keeping the interests of all citizens in mind as also the larger public interest.

69. In our opinion, the failure of the State to take any decision on the show-cause notice for several decades (assuming it was served on Godrej) is indicative of its desire not to act on it. This opinion is fortified by a series of events that have taken place between 1957 and 2006, beginning with the consent decree of 8-1-1962 in Suit No. 413 of 1953 whereby the disputed land was recognised as not being forest land; permission to construct a large number of buildings (both residential and otherwise) as per the Development Plans of 1967 and then of 1991; exemptions granted by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 leading to Godrej making unhindered but permissible constructions; and finally, the absence of any attempt by the State to take possession of the "forest land" under Section 5 of the Private Forests Act for a couple of decades. The subsequent event of the State moving an application in *Godavarman* virtually denying the existence of a private forest on the disputed land also indicates that the State had come to terms with reality and was grudgingly prepared to accept that, even if the law permitted, it was now too late to remedy the situation. This view was emphatically reiterated by the Central Empowered Committee in its Report dated 13-7-2009.

70. In its written submissions, the Bombay Environment Action Group has alleged collusion between Godrej and other appellants and the State of Maharashtra to defeat the purpose of the Private Forests Act. It is stated that prior to the said Act coming into force, the Secretary in the Revenue and Forests Department of the State Government had written to the Collector on 27-8-1975 enclosing a copy of the said Act and informing that under Section 5 thereof, the Range Forest Officers and the Divisional Forest Officers will be authorised to take possession of the private forests from the landowners. It is stated that the letter was issued to enable the Collector to coordinate with the Divisional Forest Officers to ensure that the large private forests are taken over physically as early as possible. Subsequently, by another letter (variously described as dated 3-2-1977, 14-2-1977 and 3-2-1979) the Secretary in the Revenue and Forests Department advised the Conservator of Forests to go slow with the taking over of possession of private forests in Thane, Kulaba and Ratnagiri Districts.

71. It is difficult at this distant point of time to conclude, one way or the other, whether there was or was not any collusion (as alleged) or whether it was simply a case of poor governance by the State. The fact remains that

possession of the disputed land was not taken over or attempted to be taken over for decades and the issue was never raised when it should have been. To raise it now after a lapse of so many decades is unfair to Godrej, the other appellants, the institutions, the State and the residents of the tenements that have been constructed in the meanwhile.

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*[36] 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*[37] and *Khub Chand* v. *State of Rajasthan*[38]. 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.

The second question

75. The next question is whether at all the unstated decision of the State to take over the so-called forest land can be successfully implemented. What the decision implies is the demolition, amongst others, of a large number of residential buildings, industrial buildings, commercial buildings, Bhabha Atomic Energy Complex and Employees State Insurance Scheme Hospital and compulsorily rendering homeless thousands of families, some of whom may have invested considerable savings in the disputed lands. What it also implies is demolition of the municipal and other public infrastructure works already undertaken and in use, clearing away the rubble and then planting trees and shrubs to "restore" the "forest" to an acceptable condition.

36 (2005) 7 SCC 627
37 AIR 1966 SC 1593 : (1966) 3 SCR 557
38 AIR 1967 SC 1074 : (1967) 1 SCR 120

According to the learned counsel for the State, this is easily achievable. But it is easier said than done.

76. According to Bombay Environment Action Group a patent, incurable illegality has been committed and the natural consequences (demolition) must follow. Reliance was placed, inter alia, on *K. Ramadas Shenoy* v. *Town Municipal Council, Udipi*[39], *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*[40], *Pleasant Stay Hotel* v. *Palani Hills Conservation Council*[41] and *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*[42] to suggest that no party should be allowed to take the benefit or advantage of their own wrong and a patent illegality cannot be cured.

77. The broad principle laid down by this Court is not in doubt. An unauthorised construction, unless compoundable in law, must be razed. In question are the circumstances leading to the application of the principle and the practical application of the principle. More often than not, the municipal authorities and builders conspiratorially join hands in violating the law but the victim is an innocent purchaser or investor who pays for the maladministration. In such a case, how is the victim to be compensated or is he or she expected to be the only loser? If the victim is to be compensated, who will do so? These issues have not been discussed in the decisions cited by Bombay Environment Action Group.

78. Insofar as the practical application of the principle is concerned, in *Shenoy*[39] permission was granted to convert a Kalyana Mantap-cum-Lecture Hall into a cinema hall. A reading of the decision suggests that no construction was made and it is not clear whether any money was actually spent on the project. The question of compensation, therefore, did not arise.

79. *M.I. Builders*[40] was an extreme case in which partial demolition was ordered since the agreement between the Lucknow Nagar Mahapalika and the builder was not only unreasonable for the Mahapalika, but atrocious. In para 59 of the Report, this Court said: (SCC pp. 522-23)

> "*59.* ... The agreement defies logic. It is outrageous. It crosses all limits of rationality. The Mahapalika has certainly acted in a fatuous manner in entering into such an agreement."

It was further held in para 71 of the Report that: (SCC p. 528)

> "*71.* ... The agreement smacks of arbitrariness, unfairness and favouritism. The agreement was opposed to public policy. It was not in public interest. The whole process of law was subverted to benefit the builder."

80. *Pleasant Stay Hotel*[41] was a case of deliberately flouting the law. The Hotel was granted sanction for the construction of two floors but despite the rejection of its revised plan, it went ahead and constructed seven floors. This

39 (1974) 2 SCC 506
40 (1999) 6 SCC 464
41 (1995) 6 SCC 127
42 (1991) 3 SCC 341

Court noted that, therefore, five floors had been constructed illegally and unauthorisedly. Under these circumstances, and subject to certain clarifications, the demolition order passed by the High Court was upheld. Payment of compensation in a case of knowingly and deliberately flouting the law does not arise.

81. In *Pratibha*[42] the eight unauthorised floors were constructed in clear and flagrant violation and disregard of the FSI. The demolition order had already attained finality in this Court and thereafter six of the unauthorised floors had been demolished and the seventh was partially demolished. This Court found no justification to interfere with the demolitions. Again, the issue of compensation does not arise in such a situation.

82. The application of the principle laid down by this Court, therefore, depends on the independent facts found in a case. The remedy of demolition cannot be applied per se with a broad brush to all cases. The State also seems to have realised this and that is perhaps the reason why it moved the application that it did in *Godavarman*.

83. Looking at the issue from the point of view of the citizen and not only from the point of view of the State or a well-meaning pressure group, it does appear that even though the basic principle is that the buyer should beware and therefore if the appellants and the purchasers of tenements or commercial establishments from the appellants ought to bear the consequences of unauthorised construction, the well-settled principle of caveat emptor would be applicable in normal circumstances and not in extraordinary circumstances as these appeals present, when a citizen is effectively led up the garden path for several decades by the State itself. The present appeals do not relate to a stray or a few instances of unauthorised constructions and, therefore, fall in a class of their own. In a case such as the present, if a citizen cannot trust the State which has given statutory permissions and provided municipal facilities, whom should he or she trust?

84. Assuming the disputed land was a private forest, the State remained completely inactive when construction was going on over acres and acres of land and of a very large number of buildings thereon and for a few decades. The State permitted the construction through the development plans and by granting exemption under the Urban Land (Ceiling and Regulation) Act, 1976 and providing necessary infrastructure such as roads and sanitation on the disputed land and the surrounding area. When such a large-scale activity involving the State is being carried on over vast stretches of land exceeding a hundred acres, it is natural for a reasonable citizen to assume that whatever actions are being taken are in accordance with law otherwise the State would certainly step in to prevent such a massive and prolonged breach of the law. The silence of the State in all the appeals before us led the appellants and a large number of citizens to believe that there was no patent illegality in the constructions on the disputed land nor was there any legal risk in investing on the disputed land. Under these circumstances, for the State or Bombay

42 *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*, (1991) 3 SCC 341

Environment Action Group to contend that only the citizen must bear the consequences of the unauthorised construction may not be appropriate. It is the complete inaction of the State, rather its active consent that has resulted in several citizens being placed in a precarious position where they are now told that their investment is actually in unauthorised constructions which are liable to be demolished any time even after several decades. There is no reason why these citizens should be the only victims of such a fate and the State be held not responsible for this state of affairs; nor is there any reason why under such circumstances this Court should not come to the aid of victims of the culpable failure of the State to implement and enforce the law for several decades.

85. In none of these cases is there an allegation that the State has acted arbitrarily or irrationally so as to voluntarily benefit any of the appellants. On the contrary, the facts show that the appellants followed the due legal process in making the constructions that they did and all that can be said of the State is that its Rip Van Winkleism enabled the appellants to obtain valid permissions from various authorities, from time to time, to make constructions over a long duration. The appellants and individual citizens cannot be faulted or punished for that.

86. These appeals raise larger issues of good administration and governance and the State has, regrettably, come out in poor light in this regard. It is not necessary for us to say anything more on the subject except to conclude that even if the State were to succeed on the legal issues before us, there is no way, on the facts and circumstances of these appeals, that it can reasonably put the clock back and ensure that none of the persons concerned in these appeals is prejudiced in any manner whatsoever.

Conclusion

87. Accordingly, for the reasons given, all these appeals are allowed and the impugned judgment and order[16] of the Bombay High Court is set aside in all of them and the notices impugned in the writ petitions in the High Court are quashed.

Orders in interlocutory applications

Civil appeals arising out of SLPs (C) Nos. 25747-48 of 2010

88. Delay condoned.

SLP (C) No. 34691 of 2011

89. Permission to file the special leave petition is declined. However, the petitioner is at liberty to take such appropriate action as is now permissible under the law.

Civil appeals arising out of SLPs (C) Nos. 10677, 10760, 11509 and 11640 of 2008

90. Applications for impleadment/intervention stand allowed.

16 *Oberoi Constructions (P) Ltd.* v. *State of Maharashtra*, (2008) 3 Bom CR 408

(78)

(88)

Civil appeals arising out of SLPs (C) Nos. 10760 and 11509 of 2008

91. Applications for modification of the order dated 5-5-2008[43] in these appeals and the applications for directions in all other appeals are disposed of in terms of the judgment pronounced.

(2014) 3 Supreme Court Cases 469

(*Record of Proceedings*)

(BEFORE AFTAB ALAM AND R.M. LODHA, JJ.)

GODREJ AND BOYCE MANUFACTURING COMPANY LIMITED AND ANOTHER .. Petitioners;

Versus

STATE OF MAHARASHTRA AND OTHERS .. Respondents.

SLPs (C) No. 10677 of 2008† with Nos. 10730, 10760, 11055, 11057, 11393, 11398, 11401, 11509, 11622, 11634, 11640, 12408, 15791, 16470, 21389, 24149 of 2008, 25747-48 of 2010, ... (CC No. 395 of 2011), ... (CC No. 526 of 2011) and WP (C) No. 240 of 2008, decided on February 9, 2011

Environment Protection and Pollution Control — Forests — Maharashtra Private Forests (Acquisition) Act, 1975 (29 of 1975) — S. 2(f)(iii) — Forest in respect of which notice "issued" under S. 35(3), Forest Act, 1927 before 1975 Act came into force — Applicability of, though notice not served upon landowner — Answered in the affirmative in *Chintamani Gajanan Velkar*, (2000) 3 SCC 143 — Correctness of, doubted — Directions for reconsideration of issue in question, passed — Matter referred to three-Judge Bench — Constitution of India, Arts. 300-A and 141

Chintamani Gajanan Velkar v. *State of Maharashtra*, (2000) 3 SCC 143, *referred to*

B-D/52867/C

Advocates who appeared in this case :

F.S. Nariman, R.F. Nariman, Ranjit Kumar, P.K. Samdani, Sunil Gupta, S. Ravishankar Prasad and C.U. Singh, Senior Advocates [Jai Munim, Ms Madhavi Divan, Ajay Bhargava, Ms Vanita Bhargava, Nitin Mishra (for M/s Khaitan & Co.), Ashok Kr Gupta I, E.C. Agrawala, Rakesh K. Sharma, Ms Sujata Kurdukar, Shailesh C. Mahimtura, Vinay Bandiwdekar, Amit Mehta, Jatin Zaveri, Kartikeya Desai, Hetu Arora, Joseph Pookkatt, Bhardwaj S. Iyengar, Prashant Kumar (for M/s AP & J Chambers), Nar Hari Singh, Vikas Mehta, Sanjib Sen, Shishir Deshpande and Amit Yadav, Advocates] for the Petitioners;

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43 *Godrej & Boyce Mfg. Co. Ltd.* v. *State of Maharashtra*, SLP (C) No. 10677 of 2008, order dated 5-5-2008 (SC), wherein it was directed:

"Issue notice. Status quo as on today shall be maintained. In this disputed land, which alleged to be forest land, there shall not be any further construction by the petitioners. The petitioners shall not create any third party rights hereinafter. The respondent shall not take any further action till the next date of hearing i.e. 22-8-2008. List on 22-8-2008."

† From the Judgment and Order dated 24-3-2008 in WP No. 2196 of 2006 of the High Court of Bombay

26. The Appellate Court shall consider the review petition filed by the petitioner afresh on its own merits, in accordance with law and after hearing all the parties. Nevertheless, the contention of the petitioner that

a] the dispute raised by the disputants cannot be split into two so as to hold that one part of the dispute is maintainable against a particular respondent and one part of the dispute is rendered untenable as against another respondent,

shall be gone into by the Appellate Court. Needless to state, all the parties concerned shall be heard in the matter.

27. It is expected that the Appellate Court shall decide review petition No. 3 of 1998 as expeditiously as possible and preferably within a period of six months from today. Rule is accordingly made partly absolute in the above terms.

Ordered accordingly.

2015(6) ALL MR 599

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

V. M. KANADE &
B. P. COLABAWALLA, JJ.

Ozone Land Agro Private Limited
Vs.
State of Maharashtra & Ors.

Writ Petition (L) No.922 of 2015.
18th June, 2015.

Mr. DARIUS KHAMBATTA, Sr. alongwith Mr. ASPI CHINOY, Sr., Mr. P.K. DHAKEPHALKAR, Sr. alongwith Mr. KARTIKEYA DESAI alongwith Mr. PRASHANT KAMBLE, Mr. Jagdish Reddy i/b KARTIKEYA & ASSOCIATES, Advs. for the Petitioners.

Mr. J.S. SALUJA, Adv. for the Respondents/ State.

(A) Maharashtra Private Forests (Acquisition) Act (1975), S.2 (f)(iii) – Forest Act (1927), S.35(3) – Deemed forest – Mutation entries, on basis of notice issued u/S.35(3) – Challenge – Notices were issued sometimes in 1950 – No proof of service – In affidavit-in-reply, respondent Govt. no where stated about service of said notice served on owners of land – As held by Apex Court in 2015(2) ALL MR 921 (S.C.), mere issuance of notice is not sufficient for declaration of deemed forest – Hence, mutation entries, not sustainable.

2015(2) ALL MR 921 (S.C.), 2015 (3) ALL MR 781 Foll. (Paras 11, 12)

(B) Constitution of India, Art.226 – Writ petition – Alternate remedy – Petitioner filed alternate remedy of appeal as directed by writ court – However, after such direction, position of law settled by Division Bench – Held, in view of peculiar facts, petitioners again have a right to approach writ court to seek appropriate remedy. (Paras 15, 16)

CASES CITED: PARA

Godrej and Boyce Manufacturing Company Limited and Anr. Vs. State of Maharashtra and Ors., 2015(2) ALL MR 921 (S.C.) : (2014) 3 SCC 430 ..... 9, 10, 12, 13, 15, 16

Satelite Developers Limited & Anr Vs. State of Maharashtra and Ors., 2015(3) ALL MR 781 ..... 10, 12, 15

Chintamani Gajanan Velkar Vs. State of Maharashtra and Ors., 2000(2) ALL MR 571 (S.C.) : (2000) 3 SCC 143 13

V. M. KANADE, J. :- Heard.

2. Rule. Rule is made returnable forthwith. Respondents waive service. By consent of the parties, Petition is taken up for final hearing.

3. By this Petition which is filed under Article 226 of the Constitution of India, Petitioners are seeking an appropriate writ, order

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and direction for setting aside the impugned Mutation Entry Nos. 162 and 186 in respect of the land admeasuring 323.75 hectares bearing Survey No.229, New Gut No.3 situated in Revenue Village Mormarewadi [Karanjgaon] Taluka Mawal, District Pune, more particularly described in the Schedule annexed to the Petition at Exhibit-A.

4. The short questions which fall for consideration before this Court are :

(i) whether issuance of notice under section 35(3) of the Indian Forest Act, 1927 alone is sufficient compliance for the said land being declared as a deemed forest within the meaning of section 2(f)(iii) of the Maharashtra Private Forests (Acquisition) Act, 1975?

(ii) whether Mutation Entries which have been made can be sustained in view of the judgment of the Apex Court in Godrej and Boyce Manufacturing Company Limited and another vs. State of Maharashtra and others, (2014) 3 SCC 430 and the judgment and order passed by this Court in Satelite Developers Limited & Anr vs. State of Maharashtra and Ors., 2015(3) ALL MR 781?

5. Brief facts which are relevant for the purpose of deciding this Petition are that one Gajanan Vishwanath Karve and members of his family were owners of the said land. It appears that the Petitioners entered into development agreement and/or Deeds of Conveyance with the said Karves and Power of Attorney was also given by the said Karves to the Petitioners. The Petitioners, after making inquiry, came to know that this land was declared as forest by the government authorities and therefore filed Writ Petition in this Court being Writ Petition No.283 of 2009, challenging the said Mutation Entries.

6. Division Bench of this Court, however, held that the Petitioners have raised disputed question of facts and therefore directed the Petitioners to exhaust the alternative remedy which was available to them of challenging the said Entries before the Sub-Divisional Officer, Taluka Mawal.

7. Petitioners, being aggrieved by the said judgment and order passed by this Court dated 18/2/2010 in Writ Petition No.283 of 2009, filed Special Leave Petition (Civil) No. 19347 of 2010 in the Apex Court. However, the said SLP was allowed to be withdrawn with liberty to approach the appropriate forum in accordance with law.

8. Petitioners accordingly filed an appeal being RTS/733/2012 before the Sub-Divisional Officer, Taluka Mawal. Despite the several applications being made by the Petitioners, said appeal was not expeditiously disposed of and is still pending.

9. In the meantime, the Apex Court in **Godrej and Boyce Manufacturing Company Limited and another vs. State of Maharashtra and others, (2014) 3 SCC 430 : [2015(2) ALL MR 921 (S.C.)]** where a similar issue was raised, by its judgment and order dated 30/01/2014 in terms held that mere issuance of notice under section 35(3) of the Indian Forests Act, 1927 was not sufficient and that the procedure which was required to be followed under the said section had to be followed and it would have to be established that the said notice had been served on the owners of the said land. It therefore held that the issuance of notices contemplated under section 2(f)(iii) were live notices or pipeline notices. The Apex Court held that under the amended Section 35(4), the period of existence of such notices was limited to six months which was later on increased to one year. The Apex Court observed that in order to save such live notices or pipeline notices, section 2(f)(iii) was inserted. It further held that therefore mere issuance of notice was not sufficient and it had to be established that these notices had been sent and procedure under Section 35(3) had been followed.

The Apex Court in **Godrej and Boyce Manufacturing Company Limited, [2015(2)**

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ALL MR 921 (S.C.)] (supra) in paras 1, 54, 55, 61, 62, 63, 72, 74 has observed as under:-

"1. Leave granted. The Principal question for consideration is whether the mere issuance of a notice under the provisions of Section 35(3) of the Forest Act, 1927 is sufficient for any land being declared a "private forest" within the meaning of that expression as defined in Section 2(f)(iii) of the Maharashtra Private Forests (Acquisition) Act, 1975. In our opinion, the question must be answered in the negative. Connected therewith is the question whether the word "issued" in Section 2(f)(iii) of the Maharashtra Private Forests Acquisition Act, 1975 read with Section 35 of the Forest Act, 1927 must be given a literal interpretation or a broad meaning. In our opinion the word must be given a broad meaning in the surrounding context in which it is used. A tertiary question that arises is, assuming the disputed lands are forest lands, can the State be allowed to demolish the massive constructions made thereon over the last half a century? Given the facts and circumstances of these appeals, our answer to this question is also in the negative."

"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."

"61. It is true, as observed above, that a word has to be construed in the context in which it is used in a statute. By making a reference in Section 2(f)(iii) of the Private Forests Act to "issue" in Section 35 of the Forest Act, it is clear that the word is dressed in borrowed robes. Once that is appreciated (and it was unfortunately overlooked in Chintamani [Chintamani Gajanan Velkar vs. State of Maharashtra, (2000) 3 SCC 143]) then it is quite clear that "issued" in Section 2(f)(iii) of the Private Forests Act must include service of the show-cause notice as postulated in Section 35 of the Forest Act."

"62. We have no option, under these circumstances, but to hold that to this extent, Chintamani [Chintamani Gajanan Velkar vs. State of Maharashtra, (2000) 3 SCC 143] was incorrectly decided and it is overruled to this extent. We may add that in Chintamani [Chintamani Gajanan Velkar vs. State of Maharashtra, (2000) 3 SCC 143]) the land in question was factually held to be a private forest and therefore the subsequent discussion was not at all necessary."

"63. Assuming that the word "issued" as occurring in Section 2(f)(iii) of the Private Forests Act must be literally and strictly construed, can it be seriously argued that it also has reference to a show-cause notice issued under Sections 35(3) of the Forest

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Act at any given time (say in 1927 or in 1957)? Or would it be more reasonable to hold that it has reference to a show-cause notice issued in somewhat closer proximity to the coming into force of the Private Forests Act, or a "pipeline notice" as Mr. Narinman puts it?"

"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."

"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."

10. Thereafter, Division Bench of this Court in **Satelite Developers Limited & Anr vs. State of Maharashtra and Ors., 2015(3) ALL MR 781** where also the similar issue was involved, following the judgment of the Apex Court in **Godrej and Boyce Manufacturing Company Limited, [2015(2) ALL MR 921 (S.C.)]** (supra), also held that notices which were issued in 50's and 60's and which were not served had ceased to have any effect and such notices could not be covered under Section 2(f)(iii) and therefore came to the conclusion that the land did not vest in the Government and did not become deemed forest merely on issuance of notice under Section 35(3) of the said Act.

This Court in **Satelite Developers Limited & Anr vs. State of Maharashtra and Ors., 2015(3) ALL MR 781** has observed in paras 10 and 11 as under:-

"10. We are of the view that ratio of the said judgment would squarely apply to the facts of the present case. Therefore, merely because entries are made in the revenue records in 2006 pursuant to the directions given by this Court in PIL that by itself would not vest these lands in the State Government since, admittedly, no further proceedings as contemplated under sections 35(3), 35(4) and 35(5) were initiated. As observed by the Apex court, since the notices which were issued under section 35(3) had limited shelf life, merely because the notices were issued in 1956 issuance of these notices by itself would not vest these lands in the State Government nor these lands would be deemed to be the forest lands. We have, therefore, no hesitation in coming to the conclusion that the issue involved in this case is no loner resintegra and is squarely covered by the judgment of the Apex Court in Godrej and Boyce Manufacturing Company Limited, (2014) SCC 430 (supra)."

"11. For the aforesaid reasons, the entires made in the revenue record by the revenue authorities on the basis of notices which were issued under section 35(3) of the Indian Forest Act are set aside. It is clarified that though these notices were issued under section 35(3) since there being no final Notification issued under section 35(1) provisions of section 2(f)(ii) and 2(f)(iii) of the Maharashtra Private Forests (Acquisition) Act, 1975 would not apply to the facts of the present case and these lands, therefore, would not be deemed to be the

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forest lands, unless the procedure prescribed under the Act is followed which, admittedly, has not been followed in this case. It has to be remembered that the State has a right to acquire the land or declare that the land vests in the State Government. Such a right can be exercised only after the procedure which is prescribed under the Act is followed. It is no doubt true that the question of environment is a burning issue and has to be taken into consideration. However, at the same time, rights of the citizens cannot be taken away without following the due process of law. In the present case, after 1956, no steps have been taken by the State Government and, therefore, we are of the view that citizens cannot be deprived of the rights in respect of the property owned by them."

11. In the present case also, the facts are almost identical. Notices under section 35(3) had been issued sometime in 50's. There is no proof of service. In the Affidavit-in-reply which has been filed by Respondent No.5 – Conservator of Forest, it has been in terms stated in various paragraphs that notices have been issued but nowhere it is stated that the notices have been served on the owners of the land.

12. Respondents have relied on the Entries made in what is called 'Golden Register' in support of their contention that the notices have been issued. However in view of the judgment of the Apex Court in **Godrej and Boyce Manufacturing Company Limited, [2015(2) ALL MR 921 (S.C.)]** (supra) and of this Court in **Satelite Developers Limited** (supra), mere issuance of notice is not sufficient and therefore merely by issuance of notice, the land could not be said to be deemed forest under Section 2(f)(iii).

13. The Apex Court in its judgment in **Godrej and Boyce Manufacturing Company Limited, [2015(2) ALL MR 921 (S.C.)]** (supra) while overruling the judgment in **Chintamani Gajanan Velkar vs State of Maharashtra and Others, (2000) 3 SCC 143 : [2000(2) ALL MR 571 (S.C.)]** has observed that this fine distinction which existed on proper reading and analysis of Section 35 was lost sight of by the Bombay High Court and the Apex Court in its earlier judgment in **Chintamani, [2000(2) ALL MR 571 (S.C.)]** (supra)

14. This being the legal position, when the matter was filed before this Court, the issue which has now been settled was not settled and, therefore, Division Bench of this Court relegated the Petitioners to exhaust the alternative remedy of filing the appeal before the Sub-Divisional Officer since the question whether notice was issued or not was a disputed question of fact.

15. After the judgment was delivered in **Godrej and Boyce Manufacturing Company Limited, [2015(2) ALL MR 921 (S.C.)]** (supra) by the Apex Court and in **Satelite Developers Limited** (supra) by this Court, Petitioners have now approached this Court again, in view of the settled position in law which position is settled after the Division Bench of this Court had directed the Petitioners to file an appeal. It is, therefore, rightly submitted by the learned Senior Counsel appearing on behalf of the Petitioners that in view of the settled position in law which was settled after the appeal was filed before the Sub-Divisional Officer, Petitioners, again, have a right to approach this Court and seek an appropriate order and direction for quashing the said Mutation Entries. The learned Senior Counsel appearing on behalf of the Petitioners, in our view, has rightly submitted that in view of the stand which has been now taken by the State Government in their affidavit-in-reply, it appears that despite the judgment of the Apex Court in **Godrej and Boyce Manufacturing Company Limited, [2015(2) ALL MR 921 (S.C.)]** (supra) and of this Court in **Satelite Developers Limited** (supra), State is still sticking to their old stand and, therefore, no fruitful purpose would be served in pursuing

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the appeal which is pending before the Sub-Divisional Officer.

16. We find considerable force in the submissions made by the learned Senior Counsel appearing on behalf of the Petitioners. Normally, in such cases, when the Petitioners had approached this Court and this Court had relegated the Petitioners to exhaust the alternative remedy, this Court would not have entertained the Petition again and would have asked the Petitioners to exhaust that remedy first as per the directions which were given in the judgment of this Court dated 18/02/2010 passed in Writ Petition No.283 of 2009. However, in the peculiar facts and circumstances of this case and more particularly in view of the judgment of the Apex Court in Godrej and Boyce Manufacturing Company Limited, [2015(2) ALL MR 921 (S.C.)] (supra) which has finally settled the issue, we find that it would be futile to again ask the Petitioners to go back to the Sub-Divisional Officer, who, apparently, in view of the affidavit-in-reply filed by the Respondents, would continue to take the same stand. We are of the view that, normally, State is expected to take a fair and reasonable stand and follow the law which is laid down by the Apex Court which is binding on all the parties in the country. However, we are surprised by the fact that same stand which was earlier taken in Chintamani is continued to be taken here in the reply filed by the Respondents to this Petition.

17. Both the questions in para 4 above are accordingly answered in the negative.

18. In the facts and circumstances of this case, therefore, we are inclined to entertain this Petition and pass the orders which are claimed by the Petitioners in terms of prayer clause (a) of the Petition. Petition is allowed in terms of prayer clause (a) of the Petition. Rule is made absolute accordingly.

Petition allowed.

2015(6) ALL MR 604

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

K. R. SHRIRAM, J.

Pushpaben Vishwambarlal Khetan & Ors.
Vs.
Heena Narendra Patel & Ors.

Chamber Summons No.803 of 2014
in Suit No.3474 of 2005.
2nd February, 2015.

Mr. SHARDUL SINGH, Adv. for the Plaintiffs.
Mr. VISHAL KANADE, Adv. for the Defendant No.1.

(A) Maharashtra Court Fees Act (1959), S.18 – Ceiling of maximum court fees – In case of multiple plaintiffs filing common suit – Whether, S.18 of Maharashtra Court Fees Act is applicable – Determination – 8 different plaintiffs filed defamation suit against defendants, claiming independent decrees of Rs.1 crore each – If plaintiffs were to file individual suits, total fees payable by plaintiffs would be around Rs.10,64,840/- – However, plaintiffs collectively have paid court fees only of Rs.3 lacs – Even if act of defendants is common against each plaintiff, each plaintiff would have to establish his case by individually leading evidence as if individual suit is filed by each – S.18 applicable – Thus, even by filing suit with joinder of parties, plaintiffs are liable to pay court fees Rs.10,65,840/-. 1995 (2) Mh.LJ 198, AIR (37) 195 Nagpur 189, 3 ALL 108 (F.B.), AIR 1971 Kerala 183 Disting. (Paras 11, 14, 15, 16)

(B) Maharashtra Court Fees Act (1959), S.8 – Chamber summons – Delay of 7 years – Although order directing Taxing Master/ Prothonotary to serve copy of report on parties, was passed on 27th July 2007, same was served only on 17th July 2014 – Applicant cannot be blamed, for delay – Chamber summons, not barred. (Para 7)

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earnest money even in cases where the submission and receipt of bids is itself subject to the condition that in the event of a withdrawal of the bid the earnest money stand forfeited. Inasmuch as the High Court remained totally oblivious of the true legal position while directing refund of the earnest money, it committed an error.

14. In the result this appeal succeeds and is, hereby, allowed. The order passed by the High Court is set aside and Writ Petition No.9620 (MB) of 2013 dismissed but without any order as to costs.

Appeal allowed.

2015(2) ALL MR 921 (S.C.)

(SUPREME COURT)

V. GOPALA GOWDA & R. BANUMATHI, JJ.

Godrej & Boyce Manufacturing Co. Ltd.
Vs.
State of Maharashtra & Ors.

Civil Appeal No.1086 of 2015.
21st January, 2015.

Mr. SIDDHARTH BHATNAGAR, Mr. SIDHARTH MOHAN, Mr. R. RHUL ARYA, Mr. T. MAHIPAL, Advs. for Appellant.

Mr. ANIRUDDHA P. MAYEE, Mr. S. SUKUMARAN, Mr. ANAND SUKUMAR, Mr. BHUPESH KUMAR PATHAK, Ms. MEERA MATHUR, Advs. for Respondents.

Maharashtra Regional and Town Planning Act (1966), Ss.127, 37(1) – Reservation of land – Lapsing of – Reservation of land of appellant for Railway use – Railways not interested in proposed acquisition of land for which it was reserved – State Govt. intending to modify the same for Development Plan Road after expiry of 10 years and 6 months – Notice period was over – Held, reservation has lapsed and it ensured to the benefit of the appellant and notification issued by State Govt. is liable to be set aside and quashed.

2007 ALL SCR 2232 Rel. on.

(Paras 16, 17)

CASES CITED: PARA

Prakash R. Gupta Vs. Lonavala Municipal Council & Ors., 2009 ALL SCR 728 : (2009) 1 SCC 514 12

Shrirampur Municipal Council, Shrirampur Vs Satyabhamabai Bhimaji Dawkher & Ors., 2013(3) ALL MR 477 (S.C.) : (2013) 5 SCC 627 16

Girnar Traders (2) Vs. State of Maharashtra, 2007 ALL SCR 2232 : (2007) 7 SCC 555 16

Municipal Corpn. of Greater Bombay Vs. Hakimwadi Tenants' Asson., (1988) Supp SCC 55 16

Girnar Traders (3) Vs. State of Maharashtra, 2011 ALL SCR 176 : (2011) 3 SCC 1 16

V. GOPALA GOWDA, J. :- Leave granted.

2. The appellant whose land bearing CTS Nos. 31(pt), 7 (pt), 70 to 78, 80(pt) and 81, measuring 2188 sq. mtrs. at Vikhroli were reserved in the Development Plan in the year 1991 for acquisition by the Ministry of Railways for laying additional railway tracks between "Thane and Kurla", has questioned the correctness of the notification dated 5.8.2008 issued by the Urban Development Department of the respondent No. 1-State Government under Section 37(1) of the Maharashtra Regional Town Planning Act (for short "the MRTP Act") proposing the modification in the Development Plan deleting the reservation of land in question from Railway reservation and adding reservation for Development Plan Road, before the High Court of Bombay questioning the power of the State Government regarding the proposed modification in the Development Plan after the period of 10 years specified under Section 127 of the MRTP Act, was expired and

the State Government has failed to take steps for acquisition of the land involved in these proceedings reserved for the purpose of laying additional railway tracks between "Thane and Kurla", which was not interfered with by the High Court by recording its reasons in the impugned order dated 12.12.2011, passed in the Writ Petition No. 2274 of 2011, is under challenge in these proceedings, urging various legal contentions.

3. The brief facts of the case are as under:-

In the year 1991, appellant's land in question were reserved under the Sanctioned Development Plan of Greater Mumbai for acquisition of respondent No.2 herein – Union of India, Ministry of Railways for laying down additional Railway tracks between "Thane and Kurla".

No steps were taken by the concerned authorities despite passing of 10 years period as contemplated under Section 127 of the MRTP Act to acquire the reserved land of the appellant. The appellant has issued the purchase notice under the said Section on 04.09.2002 to the respondent No.2 - Ministry of Railways stating that if, the Ministry of Railways is in need of the land in question, the same may be acquired by them, and if the same is not required, a clarification to that effect may be issued.

4. After issuance of the said notice, the period of 6 months as prescribed under Section 127 of the MRTP Act, was expired on 3.3.2003, thus, the reservation of the land in question was deemed to be released.

5. Having got no reply from respondent No. 2, the appellant again wrote a letter dated 2.10.2004 to respondent No.1 for de-reservation of the land if the same is not required by them.

6. On 1.11.2004, the respondent No. 2 - Ministry of Railways informed the Urban Development Department of State that there was no proposal for acquisition of reserved land for railway development works in the Railways in the near future.

7. The appellant, on 5.1.2005, wrote to the Urban Development Department of the State Government requesting for suitable steps in view of clarification letter dated 1.11.2004 issued by respondent No. 2 and requested it for expediting the process of deleting the reservation of the land in question.

8. The Urban Development Department of the State Government has issued the notification on 24.5.2006 under Section 37(1) of the MRTP Act, proposing the modification to the Development Plan by deleting "Railway reservation" and adding "Reservation for DP Road". The land which was reserved earlier in the Development Plan for railway line, the period of 10 years and 6 months after issuing notice was lapsed, now proposed to be reserved for Development Plan Road. The same was followed by another notification issued by the State Government under Section 37(1) of the MRTP Act dated 5.8.2008 for modification of the land deleting from the Railway reservation and reserving the same for Development Plan Road.

9. Being aggrieved by the said notification dated 5.8.2008 proposing the modification of reservation of the land in question from the Railway line to Development Plan Road, the appellant approached the High Court by filing Writ Petition No. 2274 of 2011 challenging the correctness of the said notification by placing strong reliance upon Section 127 of the MRTP Act, contending that the proposed modification by the Urban Development Department is impermissible in law as the State Government has no power to do so.

10. The High Court vide its order dated 12.12.2011 dismissed the writ petition by holding that the action of the State Government is only proposed modification and therefore, the writ petition cannot be entertained at this stage. However, the High Court has given

liberty to the appellant to raise objections before the Urban Development Department of the State Government regarding the proposed modification. Further, it is observed by the High Court in the impugned order that the impugned notification was issued in the month of August, 2008, whereas the appellant has filed the petition in the month of August, 2009. In the absence of explanation by the appellant for filing a petition about one year after the issuance of impugned notification, therefore, the writ petition was also rejected on this ground. Hence, the civil appeal is filed by the appellant urging various grounds.

11. Mr. Shyam Divan, the learned senior counsel appearing on behalf of the appellant placed strong reliance upon the provision of Section 127 of the MRTP Act, in support of his legal contention that the land of the appellant involved in this case was reserved for the Development Plan by the State Government for acquisition by the Ministry of Railways for laying additional Railway tracks between "Thane and Kurla", which period of 10 years was expired long back and therefore, the proposed action to de-reserve and modify the same for the abovesaid purpose is not permissible in law.

12. It was further contended by the learned senior counsel that in view of the law laid down in **Prakash R. Gupta v. Lonavala Municipal Council and Ors., (2009) 1 SCC 514 : [2009 ALL SCR 728]**, the land should have been acquired within 10 years from the date of sanctioned development plan. No proceeding for acquisition of the reserved land was commenced by the State Government and Railway department within the said period under Section 127 of the MRTP Act. The land involved in these proceedings having not been acquired by the respondents within stipulated time of 10 years, the reservation of the land for the purpose of railway under the provision of Section 127 of the MRTP Act has lapsed long back and hence the same stands released from reservation in favour of the appellant.

13. The learned senior counsel also contended that the High Court should have seen that once the right of the appellant under Section 127 of the MRTP Act, is accrued in favour of the appellant, any proposed modification of the plan in exercise of power by the State Government under Section 37 of the MRTP Act, should not be allowed to render the right of the appellant under Section 127 of the MRTP Act as otiose.

14. On the contrary, Mr. R.P. Bhatt, the learned senior counsel on behalf of the respondents sought to justify the impugned notification contending that the Stat Government is empowered to modify the Development Plan by deleting the earlier purpose for which the land was reserved, and can be modified for Development Plan Road. The said action is only proposed one and therefore, the appellant cannot have any grievance at this stage and can raise objections to the impugned notification before the State Government, the same will be examined it and take appropriate decision in the matter. Therefore, he submits that the impugned order is not vitiated either on account of erroneous reasoning or error in law and the same need not be interfered with by this Court in exercise of its appellate jurisdiction in this appeal.

15. Having heard the learned senior counsel on behalf of both the parties and with reference to the abovesaid rival factual and legal contentions, we have carefully examined the same keeping in view the undisputed facts involved in this case. It is an undisputed fact that the respondent No. 1 has reserved the land in question for the Development Plan under the provisions of Section 127 of the MRTP Act for the acquisition of the land in favour of Ministry of Railways for laying additional railway track between "Thane and Kurla". It would be apposite to extract Section 127 of the MRTP Act for better appreciation of the claim of the parties, which deals with lapsing of reservation:-

"127. Lapsing of reservations-If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan."

16. It is also an undisputed fact that after 10 years, notice dated 4.9.2002 served by the appellant under Section 127 of the MRTP Act upon the respondent No.1 stating that if, the reserved land was needed for the notified purpose, Railway department may acquire the same by adopting acquisition proceedings, but if the same is not acquired, the clarification to that effect be issued. Thereafter, on 3.3.2003 the period of 6 months as prescribed under the provision of Section 127 of the MRTP Act, after issuance of the above notice by the appellant and served on the respondent No.1, was also lapsed long back. Therefore, the reservation of the land in favour of the Railway was deemed to be released under the above said provision of the MRTP Act. The respondent No. 2-Ministry of Railways informed the Urban Development Department of the State Government on 1.11.2004 stating that there was no proposal for acquisition of the land in the Railways in the near future, is evident from the undisputed fact of the correspondence made between the Ministry of Railways and the Urban Development Department of the State Government, which would clearly go to show that the land reserved even after 10 years and on expiry of service of notice of 6 months there was no intention on the part of the State Government to acquire the reserved land for the purpose reserved in favour of the Railways department to form the Railway tracks between "Thane and Kurla". In that view of the matter, the land reserved for the purpose under Section 127 of the MRTP Act, is lapsed and the appellant is entitled for developing the land as it likes. The State Government instead of clarifying to the notice issued by the appellant, has proceeded further to initiate proceedings under Section 37 of the MRTP Act, proposing the modification in the Development Plan by deleting Railway reservation and adding reservation for Development Plan Road. Section 37(1) of the MRTP Act, which deals with modification of Final Development Plan reads thus:-

"37.Modification of final Development Plan -(1) Where a modification of any part of or any proposal made in, a final Development Plan is of such a nature that it will not change the character of such Development Plan, the Planning Authority may, or when so directed by the State Government shall, within sixty days from the date of such direction, publish a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any), to the State Government for sanction.

1A) If the Planning Authority fails to issue the notice as directed by the State Government, the State Government, shall issue the notice and thereupon, the provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority."

By a careful reading of the provisions of Sections 127 and 37(1) of the MRTP Act, which are extracted as above abundantly make it clear that the State Government is not empowered to delete the reservation of the land involved in this case from Railway use and to modify the same for Development Plan Road in the Development Plan after expiry of 10 years and 6 months notice period was over as the appellant has acquired the valuable statutory right upon the land and the reservation of the same for the proposed formation of Railway track was lapsed long back. Further the respondent No. 2 vide its letter dated 1.11.2004 has stated that there is no proposal for acquisition of land for the purpose of which it was reserved.

Section 127 of the MRTP Act, which fell for consideration before the three Judge Bench of this Court in the case of **Shrirampur Municipal Council, Shrirampur v. Satyabhamabai Bhimaji Dawkher & Ors.,** (2013) 5 SCC 627 : [2013(3) ALL MR 477 (S.C.)], wherein the contention of the appellant that the majority judgment in the case of **Girnar Traders (2) v. State of Maharashtra, (2007) 7 SCC 555 : [2007 ALL SCR 2232]**, need to be considered by larger Bench as the same is contrary to Section 127 and **Municipal Corpn. Of Greater Bombay v. Hakimwadi Tenants' Asson.,** (1988) Supp SCC 55, case, was rejected. The Court opined that the same is not contrary to Section 127 of the MRTP Act and further held that there is no conflict between the judgments of the two-Judge Bench in **Hakimwadi Tenants' Asson.** (supra) and the majority judgment in **Girnar Traders (2), [2007 ALL SCR 2232]** (supra) case. Further, the three Judge Bench judgment in **Shrirampur Municipal Council, Shrirampur, [2013(3) ALL MR 477 (S.C.)]** (supra) at paras 45 and 46 supported the observation of Constitution Bench in **Girnar Traders (3) v. State of Maharashtra, (2011) 3 SCC 1 : [2011 ALL SCR 176]**, case relating to Section 127 of the MRTP Act, which read thus:-

"45. In our view, the observations contained in para 133 of Girnar Traders (3) unequivocally support the majority judgment in Girnar Traders (2).

46. As a sequel to the above discussion, we hold that the majority judgment in Girnar Traders (2) lays down correct law and does not require reconsideration by a larger Bench..."

From the above, it is clear that the majority view in **Girnar Traders (2), [2007 ALL SCR 2232]** (supra) is held to be good law. Therefore, the case of **Girnar Traders (2), [2007 ALL SCR 2232]** (supra) is binding precedent under Article 141 of the Constitution of India upon the respondent No.1. The relevant paragraph 133 from Girnar Traders (3) is extracted hereunder :-

"133. However, in terms of Section 127 of the MRTP Act, if any land reserved, allotted or designated for any purpose specified is not acquired by agreement within 10 years from the date on which final regional plan or final development plan comes into force or if a declaration under sub-section (2) or (4) of Section 126 of the MRTP Act is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice upon such authority to that effect and if within 12 months from the date of service of such notice, the land is not acquired or no steps, as aforesaid, are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed and the land would become available to the owner for the purposes of development. The

defaults, their consequences and even exceptions thereto have been specifically stated in the State Act. For a period of 11 years, the land would remain under reservation or designation, as the case may be, in terms of Section 127 of the MRTP Act (10 years + notice period)."

In view of the above said statement of law declared by this Court in the cases referred to supra, after adverting to the judgment of majority view in Girnar Traders (2) case, [2007 ALL SCR 2232] (supra) is accepted in Shrirampur Municipal Council, Shrirampur, [2013(3) ALL MR 477 (S.C.)] (supra), wherein it is held that the Girnar Traders (2), [2007 ALL SCR 2232] (supra) case is not conflicting with the Hakimwadi Tenants' Asson. case (supra), the statement of law laid down in the above referred cases are aptly applicable to the fact situation. Therefore, we have to hold that the impugned notification is bad in law and liable to quashed. The High Court has not examined the impugned notification from the view point of Section 127 of the MRTP Act and interpretation of the above said provision made in the case of Girnar Traders (2), [2007 ALL SCR 2232] (supra), therefore, giving liberty to the appellant by the High Court to file objections to the proposed notification is futile exercise on the part of the appellant for the reason that the State Government, once the purpose the land was reserved has not been utilized for that purpose and a valid statutory right is acquired by the land owner/interested person after expiry of 10 years from the date of reservation made in the Development Plan and 6 months notice period is also expired, the State Government has not commenced the proceedings to acquire the land by following the procedure as provided under Sections 4 and 6 of the repealed Land Acquisition Act, 1894. Therefore, the land which was reserved for the above purpose is lapsed and it enures to the benefit of the appellant herein. Therefore, it is not open for the State Government to issue the impugned notification proposing to modify the Development Plan from deleting for the purpose of Railways and adding to the Development Plan for the formation of Development Plan Road after lapse of 10 years and expiry of 6 months notice served upon the State Government.

17. In view of above, the order passed by the High Court as well as the impugned notification issued by the State Government are vitiated in law and liable to be set aside and quashed and we order accordingly.

18. The appeal is allowed. The impugned order is set aside and consequently Rule issued. The impugned notification dated 5.8.2008 is also quashed as the period of 10 years from the date of reservation in the Development Plan and 6 months notice served by the appellant on the respondent No. 1 is also over, the reservation of the land is lapsed. No costs.

Appeal allowed.

2015(2) ALL MR 926 (S.C.)

(SUPREME COURT)

M. Y. EQBAL &
KURIAN JOSEPH, JJ.

Sunil Haribhau Kale
Vs.
Avinash Gulabrao Mardikar & Ors.

Civil Appeal No.2080 of 2015.
20th February, 2015.

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