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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4072 OF 2001

1. Abdul Kadir Ibrahim Memon]
(Since Deceased Through LRs)]

1a] Imran Abdul Kadir Memon,]
Age: 33 Yrs, Occ: Agriculture,]

1b] Nusrat Iqban Memon,]
Age: 29 Yrs, Occ: Agriculture]
Both r/o. Khardi Station,]
Taluka Shahapur, District Thane.]

...Petitioners

Versus

1) The State Of Maharashtra]
Copy To Be Served On The]
Additional Government Pleader]
(Writ Cell), High Court, Bombay.]

2) The Deputy Conservator Of Forest]
Shahpur, Taluka Shahpur,]
Dist. Thane.]

3) The Deputy Collector,]
Private Forest (Acquisition),]
Thane.]
Collector' Office,]
2nd Floor, Thane]

....Respondents

Mr. Vinayak R. Kumbhar a/w. Mr. Rajendra B. Khaire and Mr. Aniket S. Phapale for the Petitioners.

Ms. Sulbha Chipade, AGP for Respondent Nos.1 to 3/State.

Mr. Abhijit S. Pingle, Asst. Conservator of Forest, Shahapur Forest Division, present.

CORAM : M.M. SATHAYE, J.

DATE : 12th OCTOBER, 2026

JUDGMENT :

1. Invoking Articles 226 and 227 of the Constitution of India, the Petitioners are challenging Judgment and Order dated 31.03.2001 passed by President, Maharashtra Revenue Tribunal, Mumbai ('the Tribunal' for short) in Rev. Forest Appeal No. 4/98. By the said impugned order, appeal filed by Respondent No. 2/State is allowed thereby setting aside the Order dated 19.09.1998 passed by Deputy Collector, Private Forests (Acquisition), Thane in Dispute bearing No.D.C./PF(A.)S.R. 334/98, Ambivali. In effect, the subject matter property is held as a private forest.

2. In this judgment, the Indian Forest Act, 1927 is referred to as 'IFA' and The Maharashtra Private Forests (Acquisition) Act, 1975 is referred to as 'MPFA'.

3. Land bearing Survey No. 201 (Part), Village Ambivali, Taluka Shahapur, District Thane, admeasuring 6 Hectare 72 Are is the subject matter property and the same is referred to as 'the subject matter land' for short.

BRIEF CHRONOLOGICAL BACKGROUND

4. On 15.07.1960 notice was issued under Section 35(3) of IFA to the Petitioner. On 03.08.1960, the said notice was served upon the Petitioner. There is no dispute that notice under Section 35(3) of IFA was served upon the Petitioner. On 27.09.1975, the possession of the

bigger portion of land, admeasuring 25 Acre and 30 Guntha of Survey No. 201/Part was given in possession of the Forest Conservator, Khardi, according to Respondent/State. On 23.08.1988, one Amrita Babu Chaudhari was declared as protected tenant. The Petitioner filed Tenancy Appeal No. 1 of 1989, in which the above order was set aside, under order of Sub-Divisional Officer ('SDO' for short), Bhiwandi dated 04.09.1991. On 21.03.1998, wife of the Petitioner was informed by Office of Deputy Conservator that notice under Section 35(3) of IFA is applicable to the said land and on 31.03.1998, wife of the Petitioner was again informed that permission cannot be granted for felling trees. On 19.09.1998, the dispute under Section 6 of MPFA was considered by the Deputy Collector, Private Forests (Acquisition) and it was declared that the said land is an agricultural land and it was under cultivation and therefore, it does not fall within the definition of forest under provisions of MPFA and therefore, it is deleted from acquisition. On 19.09.1998, Deputy Collector, Private Forests (Acquisition), Thane informed the Petitioner that the said land was released from the acquisition being under cultivation and therefore provisions of the MPFA are not applicable. Respondent No. 2 filed the Revenue Forest Appeal No. 4 of 1998, challenging the order of Deputy Collector. On 31.03.2001, the impugned order is passed.

5. This petition was admitted on 03.09.2001. The Petitioner was restrained from cutting any trees on the subject-matter land and the Respondent/state was directed not to disturb the physical possession of the Petitioner.

SUBMISSIONS

6. Learned counsel for the Petitioner submitted that though notice under Section 35(3) of IFA was served upon the Petitioner, final notification under Section 35(1) of IFA is not issued and therefore, the said land cannot be treated as vested in the government. He has fairly accepted that notice under Section 35(3) of the IFA was served upon the Petitioner. Relying on the judgment of **Godrej and Boyce Manufacturing Company Limited & Anr. Vs. State of Maharashtra (2014) 3 SCC 430** and **Satelite Developers Limited & Anr. Vs. State of Maharashtra 2014 SCC OnLine Bom 2761**, it is submitted that there is no vesting and the Tribunal was not justified in setting aside the order of Deputy Collector. He submitted that there is order passed under tenancy proceedings showing earlier possession of Petitioner or his agriculture tenants and land being put to agriculture. He also relied on unreported order of this Court in **Ramrati Ramdulhari Shahu & Anr Vs. Sub Divisional Officer, Bhiwandi & Ors. - Writ Petition No. 98 of 1992, Order dated 26.07.2002**.

7. On the other hand Learned AGP relying on affidavit-in-reply affirmed on 28.06.2002 by Assistant Conservator of Forest, Shahapur District Thane, supported the impugned order. She contented that notice under Section 35(3) was admittedly served upon the Petitioner and on 20.09.1975 itself, the possession of subject matter land Survey No. 201 (Part) admeasuring 06.72 H-Are was already taken possession of by the government. She relied on a copy of possession receipt as well as a statement of land holding of the Petitioner as on 30.08.1975 drawn during Enquiry under section 22A of MPFA

showing total holding of the Petitioner as 23.45.8 Hectare. She submitted that since during enquiry under 22A of MPFA, the subject matter land is already handed over to the State and as such, if any orders are passed by tenancy authorities regarding agricultural tenant, the same cannot change the nature of the property being private forest already in possession of the government. She submitted that the said land is not an agricultural land and there are over 2000 trees including hundreds of teak trees, khair trees, pine trees etc. She submitted that the Tribunal has considered the evidence on record and has rightly set aside the order of Deputy Collector declaring the said land as agricultural land and deleting it from acquisition. She submitted that after long period of 23 years, the Petitioner can not re-open this issue. She finally submitted that no interference is required in the writ jurisdiction as there is no perversity.

REASONS AND CONCLUSION

8. I have considered the rival submissions and perused the record.
9. It is not in dispute that notice under Section 35(3) of IFA was duly served upon the Petitioner. This is the most distinguishing feature of the present case.
10. In **Godrej & Boyce (Supra)**, the Hon'ble Supreme Court has considered a conceptual argument of 'pipeline notices' about notices under Section 35(3) of IFA that were issued but not acted upon or properly served within a reasonable timeframe, meaning that they had 'a limited shelf life' and were not 'live' and could not be revived decades later. In subsequent ruling, this Court in **Satelite Developers**

(supra) has taken note of this concept. Useful reference can be made to paragraph nos. 63, 72 and 74 of **Godrej & Boyce (Supra)**, which are reproduced below :

“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?

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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."

(emphasis supplied)

11. In the facts of the present case at hand, it is clear from the record that notice under section 35(3) of IFA was duly served on the owner. Pursuant to MPFA brought into force, an enquiry under 22A was undertaken and a chart was prepared so far as Petitioner's holding is concerned. It is produced alongwith affidavit-in-reply filed by the Respondent/State. The said chart clearly indicates list of various properties regarding which notices were issued under 35(3) of IFA and served. In respect of subject matter land S. No. 201(part), there is clear entry that notice No. ET-3043 dated 15.07.1960 is served upon predecessor of Petitioner (Ibrahim) on 03.08.1960. It is also seen that some properties from the list were restored to the Petitioner. However, some properties have not been restored to the Petitioner and retained by the State. The subject matter land being Survey No. 201 (Part) is clearly seen as retained by the State and it was taken in possession by the government on 20.09.1975.

12. This clearly means that notice under section 35(3) of the IFA was not only duly served on the owner, but it was acted upon by the State and part of properties (including present subject matter land) was retained by the State and taken possession of under section 5 of MPFA. Therefore, the notice in the present case is definitely 'pipeline

notice' which was 'live' and which was acted upon before it could be said to have outlived its 'shelf life'.

13. It is important to bear in mind that 23 years thereafter, in 1998, when Petitioner/his wife applied for permission to fell trees, the present dispute under section 6 of MPFA started. The Deputy Collector, on 19.09.1998 has observed about vesting of subject matter land in cryptic manner and by only stating that record is not produced. The finding is obviously contrary to what is explained above.

14. Having given possession of subject matter land in September 1975 itself, the Petitioner cannot be permitted to contend after 23 years in 1998 that he is in possession of the property. Record produced by the Respondent/State before the Tribunal and this Court shows that while conducting the enquiry under section 22A of MPFA and ordering restoration/retention, subject matter land No. 201(part) was not included in restored lands. In the possession receipt signed by the Petitioner and State Authority, the subject matter land has been clearly included as 'taken in possession by the State' in 1975 itself.

15. This aspect is considered by the Tribunal in paragraph No. 7 of the impugned order. The Tribunal has considered that in the enquiry conducted by Deputy Collector, subject matter land appears to be retained. The Tribunal has considered the possession receipt. The Tribunal has held that certain lands standing in the name of Petitioner were taken over by the government and a formal receipt of

taking over possession has been executed. The Tribunal has further held that revenue authorities while making entries in the village record do not seem to have taken cognizance of the fact that Survey No. 201 is already in possession of Forest Department. The Tribunal has also considered the permission sought by Petitioner or his wife to fell trees. After considering such evidence on record, the Tribunal has held that the said land was duly notified and it was not restored to the Petitioner.

16. In the aforesaid peculiar facts and circumstances, the notice in question, under section 35(3) of IFA was very much a 'pipeline / live notice' that was duly served and action has been taken by the State while it had its 'shelf life' and possession is taken.

17. Even if notification under section 35(1) of IFA is not shown to have been issued, after admittedly serving notice under section 35(3) upon the Petitioner/owner and having acted on such notice with enquiry under section 22A completed, culminating in possession being taken under section 5 of MPFA by the State, the Petitioner can not be permitted to reopen the issue.

18. Hence, with due respect, it is noted that the ratio of **Godrej & Boyce (Supra)** and **Satelite Developers (supra)** will not help the Petitioner in the peculiar facts of the present case.

19. Also the facts and issue involved in **Smt. Ramrati Vs. SDO (supra)** were totally different from the present case. As can be seen from paragraph 3 of **Smt. Ramrati Vs. SDO (supra)**, the land in question regarding which notice was received by the Petitioners

therein, was already restored to them under section 22A of the MPFA. Facts in the present case are opposite because the subject matter land is retained by the State. Therefore, said order will not help the Petitioners.

20. In the aforesaid facts and circumstances and for reasons indicated above, there is no perversity in the impugned. The view taken by the Tribunal is most probable view. Hence, there is no reason to interfere. For above reasons, the Petitioners can not be said to be in possession of the subject matter land.

21. **Writ petition is accordingly dismissed.** Interim order dated 03.09.2001 shall continue to operate against the Petitioners but it is vacated for the Respondent/State. Rule is discharged. No order as to costs.

22. At this stage, learned counsel for the Petitioners seeks continuation of the interim relief. Considering the long pendency of the petition, the operation of this order shall remain stayed for a period of only 4 weeks.

23. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)