

(2015) 02 BOM CK 0227

In the Bombay High Court

Case No : Writ Petition No. 9969 of 2013

Arjun Sitaram Nitnwar

APPELLANT

Vs

Tahsildar, District Thane and Others

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Forest Act, 1927 — Section 35, 35(1), 35(3), 35(5), 36
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 18, 5
Maharashtra Private Forests (Acquisition) Act, 1975 — Section 2, 2(f), 2(f) (iii), 2(f) (iii), 22A

Citation : (2015) 2 ABR 635 : (2015) 5 ALLMR 624 : (2015) 6 MhLj 634

Hon'ble Judges : Abhay Shreeniwas Oka, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Vivek V. Salunke, for the Appellant; V.P. Malvankar, AGP "B" Panel, Advocates for the Respondent

Judgement

Abhay Shreeniwas Oka, J.—The Petitioner is the Constituted Attorney of one Shri Ashwin Chunilal Dalai. The said Ashwin Dalai is claiming to be a Lessee of the lands bearing Gat Nos. 7/1, 7/2, 7/3 and 7/6 at village Yeoor, Taluka and District Thane of the Investment Provident Company. The lands bearing Gat Nos. 7/1, 7/2, 7/3 and 7/6 are hereinafter referred to as "the said lands". The 7/12 extracts of the said lands (of the date prior to Mutation Entry No. 616) annexed to this Petition show that in the Kabjedar Column, the name of the Government of India appeared through the Investment Provident Company. The name of Shri G.G. Pradhan, as the Manager of the said Company also appeared in the Kabjedar Column. The name of the said Ashwin appeared alongwith four others in the other rights column as well as in cultivation column. The said Ashwin is hereafter referred as the Petitioner as this Petition has been filed by his Constituted Attorney. A Mutation Entry No. 616 was made on 23rd May, 2006 in relation to the said lands along with several other lands at village Yeur, Taluka and District Thane. The said Mutation Entry refers to a notice issued under Section 35 of the Indian Forests Act, 1927 (for short "the said Act of 1927"). It is

stated that an inquiry under the Maharashtra Private Forests (Acquisition) Act, 1975 was pending. By the said Mutation Entry, the name of the State of Maharashtra was entered in the Kabjedar Column in place of the Government of India and an entry as "Reserved Forests" was also made in the Kabjedar Column.

2. The Petitioner is relying upon the letter dated 30th August, 2007 issued by the Assistant Conservator of Forests-cum-Public Information Officer of Sanjay Gandhi National Park, Borivali. It is stated in the said communication that the said lands have not been transferred to the Forest Department.

3. The Petitioner applied for deletion of the name of the State of Maharashtra from the Kabjedar Column of 7/12 extracts. The Petitioner is relying upon the correspondence made in that behalf with the officials of the Forest Department. The Petitioner has filed an additional affidavit dated 6th December, 2013 to which he has annexed the letter dated 24th June, 2005 addressed by the Range Forest Officer, Yeur, Thane. The prayer made in this Petition under Article 226 of the Constitution of India is for enjoining the Respondents to delete the said lands from the purview of the communication dated 22nd February, 2005 and to re-enter the name of the Petitioner in the Revenue Record. The contention in the Petition is that the Mutation Entry No. 616 has been made on the basis of the letter dated 22nd May, 2005 allegedly issued by the Revenue and Forests Department of the State Government, a copy of which is not made available to the Petitioner.

AFFIDAVIT-IN-REPLY ON BEHALF OF THE STATE GOVERNMENT:

4. There is a reply filed by Shri Sudhir Raghunath Padwale, the Assistant Conservator of Forest (LRP and Wildlife), Thane. He has relied upon the Circular dated 22nd February, 2005 issued by the State Government addressed to the Divisional Commissioners and the Collectors in the State. A copy of the said Circular has been annexed to the said reply. In the said Circular, it is stated that in case of lands which are restored in exercise of powers under Section 22A of the said Act of 1975 before 25th October, 1980, which is the date on which the Forest (Conservation) Act, 1980 (for short "the said Act of 1980") came into force, the ownership of the restored lands remains with the land holder and in the Other Rights Column of the 7/12 extracts, an entry of forest is required to be made. It is stated that after 25th October, 1980, in case of the lands restored under Section 22A of the said Act of 1975, where a concurrence has been received from the Government of India to the restoration, in the 7/12 extracts, the name of the land holder will be entered as "Occupant" and in the Other Rights Column, the entry of "the Government of Maharashtra-Forest" should be taken. It is stated that in those cases where after 25th October, 1980, the lands have been restored under Section 22A of the said Act of 1975, and a concurrence of the Government of India is not received, the entry of the name of "the Government of Maharashtra Reserved Forest" should be made in the Occupant's Column. It is stated in the said Circular that the approval of the Government of India is required for restoration of the lands under Section 22A of the said Act of

1975 in view of the provisions of the said Act of 1980.

5. It is stated in the affidavit that the Petitioner has not produced the registered Lease Deed on the basis of which he is claiming to be a Lessee. It is Stated that an inquiry will have to be made to find out the survey numbers of the said lands. It is stated that only after ascertaining the survey numbers from the Lease Deed, it can be stated whether the said lands were included in the Notice dated 13th April, 1957 issued under sub-section (3) of Section 35 of the said Act of 1927. It is contended that the entire land bearing the old Survey No. 4 of village - Yeur, Taluka and District Thane was covered by the Notice dated 13th April, 1957 issued under sub-section (3) of Section 35 of the said Act of 1927. It is stated that in view of sub-section (1) of Section 3 of the said Act of 1975, on 30th August, 1975, which is the appointed date, the lands covered by the said Notice dated 13th April, 1957 stood acquired and vested in the State Government. It is, therefore, contended that the entry of the name of the State of Maharashtra has been made in the Record of Rights by the Mutation Entry No. 616. It is contended that an inquiry will have to be made under the said Act of 1975. Therefore, it is contended that there is no merit in the Petition.

SUBMISSIONS

6. The learned counsel appearing for the Petitioner relied upon the decision of the Apex Court in the case of *Godrej and Boyce Mfg. Company Ltd. and Another Vs. The State of Maharashtra and Others*, AIR 2014 SC 1446 : (2014) AIRSCW 913 : (2014) 2 JT 326 : (2014) 1 SCALE 707 : (2014) 3 SCC 430 : (2014) 4 SCJ 244 and other connected matters (for short "the case of Godrej Boyce"). He invited our attention to the findings recorded by the Apex Court. He urged that the Apex Court held that mere issuance of a notice under sub-section (3) of Section 35 of the said Act of 1927 is not sufficient for any land being declared as a "private forest" within the meaning of sub-clause (iii) of Clause (f) of Section 2 of the said Act of 1975. He submitted that the Apex Court held that the word "issued" in sub-clause (iii) of Clause (f) of Section 2 of the said Act of 1975 should not be given a literal interpretation but the same should be given a broad meaning. He urged that the Apex Court specifically held that the law laid down in its earlier judgment in the case of *Chintamani Gajanan Velkar Vs. State of Maharashtra and Others*, AIR 2000 SC 1073 : (2000) 2 JT 62 : (2000) 1 SCALE 524 : (2000) 3 SCC 143 : (2000) 1 SCR 570 : (2000) 1 UJ 582 : (2000) AIRSCW 557 : (2000) AIRSCW 4361 : (2000) 1 Supreme 550 : (2000) 8 Supreme 217 has been expressly overruled. He pointed out that the Apex Court has considered a decision of the Full Bench of this Court in the case of *Janu Chandra Waghmare and Others Vs. The State of Maharashtra and Others*, AIR 1978 Bom 119 : (1977) 79 BOMLR 499 .

7. Therefore, the learned counsel appearing for the Petitioner urged that in the present case, even going by the affidavit of Shri Sudhir Raghunatii Padwale, it is not the case made out that the notice dated 13th April, 1957 issued under sub-section (3) of Section 35 of the said Act of 1927 was actually served. He urged

that it is not the case that the notice was in relation to the said lands. In view of the decision of the Apex Court in the case of Godrej Boyce, he urged that the said lands are not the private forests under sub-clause (iii) of Clause (f) of Section 2 of the said Act of 1975 and, therefore, the said lands never vested in the State under Section 3 of the said Act of 1975.

8. The learned AGP submitted that there is nothing placed on record to show that the Petitioner was a Lessee in respect of the said lands. He submitted that even a copy of the Lease Deed is not produced on record. He also pointed out that the Petitioner has not pointed out the survey numbers of the said lands. He, therefore, submitted that the Petitioner will have to first establish his title. The learned AGP relied upon the statements made in the reply filed by Shri Sudhir Raghunath Padwale, the Assistant Conservator of Forest (LRP and Wildlife) Thane and submitted that no case for interference is made out.

CONSIDERATION OF LAW ON THE CONTROVERSY:

9. It will be necessary to make a reference to the relevant provisions of the said Act of 1975. Clause (ci) of Section 2 and Clause (f) of Section 2 read thus:

"(ci) "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 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;

(iii) Such pasture land, waterlogged 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 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 34A of the Forest Act;

(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 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;"

Sections 3, 5 and 6 of the said Act of 1975 read thus:

"3. (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, 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. Where any private forest stands acquired and vested in the State Government under the provisions of this Act, the person authorized 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. 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."

Section 22A and Section 24 of the said Act of 1975 read thus:

"22A. (1) Notwithstanding anything contained in the foregoing provisions of this Act, if, on an application-made by any owner of private forest, within a period of six months from the date of commencement of the Maharashtra Private Forests (Acquisition) (Amendment) Act,, 1978, or suo motu at any time, the Collector, after holding such inquiry as he deems fit, is satisfied that the total holding of land of such owner became less than twelve hectares on the appointed day on account of acquisition of his forest land under this Act or that the total holding of land of such owner was already less than twelve hectares on the day immediately preceding the appointed day, the Collector shall determine whether the whole of the forest land acquired from such owner or what portion thereof shall be restored to him, so, however, that his total holding of land, on the appointed day, shall not exceed twelve hectares.

(2) After the Collector has determined the area and situation of the land to be restored to any owner of private forest, the Collector shall make an order, that with effect from the date of his order, the land specified therein, which was acquired and vested in the State Government, shall cease to be a reserved forest within the meaning of the Forest Act, be deemed to have been regranted to the owner and shall be revested in him, subject, however, to all encumbrances, if any, lawfully subsisting on the day immediately preceding the appointed day, which shall stand revived. Possession of the land so restored shall be, given by the Collector to the owner, as far as may be practicable under the circumstances, within a period of one month from the date of the order.

(3) If the amount payable to the owner of private forest under section 7 has been paid to him or the holder of the encumbrances, if any, the Collector shall determine what would have been the amount or the proportionate amount payable to him under section 7 in respect of the land restored to him under sub-section (2), without taking into consideration the deductions to be made for paying the holders of encumbrances, if any, and shall by order direct the owner to repay the amount so determined to the State Government, within a period of six months from the date of receipt of such order by the owner. If the amount is not repaid in time, it shall be recoverable as an arrears of land revenue. When any amount due is repaid by the owner to the State Government, he shall be entitled to make necessary adjustment with the holders of encumbrances, if any, for any payment made to them by the State Government in respect of the land revested in the owner.

(4) Notwithstanding anything contained in the Code or this Act, no appeal shall lie against any decision or order of the Collector under this section, but the Commissioner or the State Government may, within a period not exceeding one year from the date of such decision or order,

(a) call for the record of any inquiry or proceedings of the Collector for the

purpose of satisfying himself or itself as to the legality or propriety of such decision or order, and as to the regularity of such proceedings, as the case may be, and

(b) pass such order thereon as he or it deems fit: Provided that, no such decision or order shall be modified, annulled or reversed, unless opportunity has been given to the interested parties to appear and to be heard.

(5) Any decision taken or order made under this section by the Collector, subject to any revision by the Commissioner or the State Government, and any order made by the Commissioner or the State Government in revision, shall be final and conclusive and shall not be questioned in any suit or proceeding in any Court.

(6) Nothing contained in this section shall apply to any land in a private forest which was used immediately before the appointed day for extracting of minor minerals such as stone quarries. Accordingly, such land shall not be taken into consideration and shall not be liable to be restored under this section."

"24(1) On and from the appointed day, sections 34A, 35, 36, 36A, 36B, 36C 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, sections 34A, 35, 36, 36A, 36B, 36C and 37 of the Forest Act, shall, in respect of the lands restored under section 22A, be deemed to have been reenacted 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."

10. Another provision which is relevant is Section 35 of the said Act of 1927 as amended by Bombay Act No. 24 of 1955 and the Maharashtra Act No. 6 of 1961 which reads thus:

"35. Protection of forests for special purposes.--(1) The State Government may, by notification in the Official Gazette, regulate or prohibit in any forest or wasteland

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

(b) the pasturing of cattle; or

(c) the firing or clearing of the vegetation; when such regulation or prohibition appears necessary for any of the following purposes:

(i) for protection against storms, winds, rolling stones, floods and avalanches;

(ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, 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;

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

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

(v) for the preservation of the public health.

(2) The State Government may, for any such purpose, construct at its own expense, in or upon any forest or wasteland, 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 or land 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.

(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.

(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, for the service of summons and shall also be published in the manner prescribed by rules.

(5A) 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 on 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.

(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.

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

Section 36A of the said Act incorporated by Bombay Act No. 24 of 1955 reads thus:

"36A. Manner of serving notice and order under section 36. The notice referred

to in subsection (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, for the service of summons."

11. In the case of Janu Chandra Waghmare (AIR 1978 SC 119), a Full Bench of this Court held that a land owner who has been issued a notice under sub-section (3) of Section 35 of the said Act of 1927 (but was not heard) has an opportunity to contend that his or her land is not a forest within the meaning of Clause (c-i) of Section 2 of the said Act of 1975 and that such land does not vest automatically in the State by virtue of the said Act of 1975. In the case of Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, AIR 2000 SC 1073 : (2000) 2 JT 62 : (2000) 1 SCALE 524 : (2000) 3 SCC 143 : (2000) 1 SCR 570 : (2000) 1 UJ 582 : (2000) AIRSCW 557 : (2000) AIRSCW 4361 : (2000) 1 Supreme 550 : (2000) 8 Supreme 217 , the Apex Court considered the question whether mere issuance of a notice under sub-section (3) of Section 35 of the said Act of 1927 per se attracted sub-clause (iii) of Clause (f) of Section 2 of the said Act of 1975. In paragraph 19 of the said decision in the case of Chintamani Velkar, the Apex Court held thus:

"19. In our view, the legislature has not made any discrimination in regard to the matters where the notification had been issued under Section 35(1) of the Forest Act. 1927 on the one hand and in cases where notification had not been issued and the matter stood still at the stage of notice under Section 35(3) on the other. In the latter cases, the legislature thought it fit to exclude 2 hectares of the landholder from vesting. If that was done, a notice that was issued under Section 35(3) would itself be sufficient and if such notice was issued before the appointed day i.e. 30-8-1975 the land would vest in the State subject, of course that the Collector has to specify the particular extent of 2 hectares which can be retained by the landholder. There is no need for any service of such notice before 30-8-1975, nor for an inquiry nor for a notification under Section 35(1)."

(Emphasis added)

12. Now, it will be necessary to make a reference to the decision of the Apex Court in the case of Godrej and Boyce Mfg. Company Ltd. and Another Vs. The State of Maharashtra and Others, AIR 2014 SC 1446 : (2014) AIRSCW 913 : (2014) 2 JT 326 : (2014) 1 SCALE 707 : (2014) 3 SCC 430 : (2014) 4 SCJ 244 . Paragraph 1 of the said decision reads thus:

"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."

(Emphasis added)

13. The Apex Court proceeded to consider its earlier decision in the case of *Chintamani Gajanan Velkar Vs. State of Maharashtra and Others*, AIR 2000 SC 1073 : (2000) 2 JT 62 : (2000) 1 SCALE 524 : (2000) 3 SCC 143 : (2000) 1 SCR 570 : (2000) 1 UJ 582 : (2000) AIRSCW 557 : (2000) AIRSCW 4361 : (2000) 1 Supreme 550 : (2000) 8 Supreme 217 . In the facts of the case, the Apex Court considered the question whether the disputed land was a forest under Clause (c-i) of Section 2 of the said Act of 1975. Thereafter, the Apex Court considered the question whether mere issuance of a notice under sub-section (3) of Section 35 of the said Act of 1927 attracts sub-clause (iii) of Clause (f) of Section 2 of the said Act of 1975. In paragraph 55, the Apex Court held thus:

"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."

(Emphasis added)

In paragraph 56, the Apex Court referred to sub-section (4) of Section 35 and thereafter in paragraphs 58 and 59, the Apex Court held thus:

"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."

(Emphasis added)

In paragraph 59, the Apex Court held that

"59. Unfortunately, Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, AIR 2000 SC 1073 : (2000) 2 JT 62 : (2000) 1 SCALE 524 : (2000) 3 SCC 143 : (2000) 1 SCR 570 : (2000) 1 UJ 582 : (2000) AIRSCW 557 : (2000) AIRSCW 4361 : (2000) 1 Supreme 550 : (2000) 8 Supreme 217 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 [The correct factual position is that Section 2(f)(iii) of the Private Forests Act excluded "an area not exceeding two hectares".] were excluded for the benefit of the landholder led this Court to give a restrictive meaning to "issue"."

In paragraphs 60 to 62, the Apex Court held thus:

"60. In Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, AIR 2000 SC 1073 : (2000) 2 JT 62 : (2000) 1 SCALE 524 : (2000) 3 SCC 143 : (2000) 1 SCR 570 : (2000) 1 UJ 582 : (2000) AIRSCW 557 : (2000) AIRSCW 4361 : (2000) 1 Supreme 550 : (2000) 8 Supreme 217 this Court relied on the decision rendered in Commissioner of Income Tax, Gujarat Vs. Bababhai Pitamberdas (HUF), (1993) 112 CTR 130 : (1993) 200 ITR 563 : (1993) 3 SCC 530 Supp : (1993) 68 TAXMAN 342 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 Banarasi Devi Vs. Income Tax Officer, Calcutta, AIR 1964 SC 1742 : (1964) 53 ITR 100 : (1964) 7 SCR 539 and Commissioner of Wealth Tax, U.P. and Another Vs. Kundan Lal Behari Lal, AIR 1976 SC 1150 : (1975) 99 ITR 581 : (1975) 4 SCC 844 to the effect that: Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, AIR 2000 SC 1073 : (2000) 2 JT 62 : (2000) 1 SCALE 524 : (2000) 3 SCC 143 : (2000) 1 SCR 570 : (2000) 1 UJ 582 : (2000) AIRSCW 557 : (2000) AIRSCW 4361 : (2000) 1 Supreme 550 : (2000) 8 Supreme 217

"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 Gajanan Velkar Vs. State of Maharashtra and Others*, AIR 2000 SC 1073 : (2000) 2 JT 62 : (2000) 1 SCALE 524 : (2000) 3 SCC 143 : (2000) 1 SCR 570 : (2000) 1 UJ 582 : (2000) AIRSCW 557 : (2000) AIRSCW 4361 : (2000) 1 Supreme 550 : (2000) 8 Supreme 217 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 Gajanan Velkar Vs. State of Maharashtra and Others*, AIR 2000 SC 1073 : (2000) 2 JT 62 : (2000) 1 SCALE 524 : (2000) 3 SCC 143 : (2000) 1 SCR 570 : (2000) 1 UJ 582 : (2000) AIRSCW 557 : (2000) AIRSCW 4361 : (2000) 1 Supreme 550 : (2000) 8 Supreme 217 was incorrectly decided and it is overruled to this extent. We may add that in *Chintamani Gajanan Velkar Vs. State of Maharashtra and Others*, AIR 2000 SC 1073 : (2000) 2 JT 62 : (2000) 1 SCALE 524 : (2000) 3 SCC 143 : (2000) 1 SCR 570 : (2000) 1 UJ 582 : (2000) AIRSCW 557 : (2000) AIRSCW 4361 : (2000) 1 Supreme 550 : (2000) 8 Supreme 217 "the land in question was factually held to be a private forest and therefore the subsequent discussion was not at all necessary."

(Emphasis added)

14. In paragraph 63, the Apex Court considered another issue which reads thus:

"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 some-what closer proximity to the coming into force of the Private Forests Act, or a "pipeline notice" as Mr. Nariman puts it?"

In paragraph 64, the Apex Court observed that:

"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."

(Emphasis added)

On the facts of the case before it, in paragraph 67, it was held thus:

"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."

(Emphasis added)

THE APPLICATION OF THE SETTLED LAW TO THE FACTS OF THE CASE:

15. Now it will be necessary to advert to the facts of the case in the light of the position of the law. The description of the said lands is Gat Nos. 7/1, 7/2, 7/3 and 7/6 at village Yeur, Taluka and District Thane. The 7/12 extracts of the said lands which were issued before and after the Mutation Entry No. 616 was made have been annexed to the Petition. Before the Mutation Entry No. 616 was made, the first name which appeared in the Occupant/Kabjedar Column was of the Government of India. The second entry in the Occupant/Kabjedar Column was of Investment Provident Company through its Manager Shri G.G. Pradhan. In the Other Rights Column as well as in the Cultivation Column, the names of the five Lessees were mentioned including the present Petitioner (Shri Ashwin Chunilal Dalai).

16. The Mutation Entry No. 616 dated 3rd May, 2006 is made on the basis of a notice issued under sub-section (3) of Section 35 of the said Act of 1927. It also records that the inquiry under the said Act of 1975 was in progress. It is stated that in view of the letter dated 22nd February, 2005, the name of the State Government will have to be entered in the Revenue Record. By the said Mutation Entry, the name of the State Government was mutated in the Revenue Record in the Occupant/Kabjedar Column and the entry of the name of the Maharashtra Government Reserved Forests has been made therein by deleting the entry of the names of the Government of India and the Investment Provident Company. The names of the Lessees were continued in the Other Rights Column.

17. We have perused the Circular/letter dated 22nd May, 2005 which is issued by the State Government to all the Divisional Commissioners and the District Collectors. The directions contained in the said Circular are in relation to the entries to be made in the Revenue Records on the basis of orders of restoration of the lands passed under Section 22A of the said Act of 1975.

18. Now it will be necessary to make a reference to the stand taken in the affidavit-in-reply filed by Shri Sudhir Raghunath Padwale. In the said affidavit-in-reply, a specific reliance has been placed on the notice dated 13th April, 1957 under sub-section (3) of Section 35 of the said Act of 1927 to the original owner. However, it is stated that the Lease Deed of the Petitioner will have to be verified for ascertaining the survey numbers of the said lands. It is further stated that the notice dated 13th April, 1957 was in respect of the land bearing Old Survey No. 4 of village Yeur, Taluka and District Thane. In paragraph 5 of the said affidavit-in-reply, a reliance is also placed on another notice dated 14th August, 1975 under sub-section (3) of Section 35 of the said Act of 1927 in respect of Hissa Nos. 2, 3, 4, 6, 7 and 9 of the New Survey No. 4. Even assuming that both the notices under sub-section (3) of Section 35 of the said Act of 1927 were in respect of the said lands, it is not the case made out in the reply that the notices were served to the owners. It is held by the Apex Court in its decision in the case

of Godrej Boyce that unless the notice under sub-section (3) of Section 35 of the said Act of 1927 is served to the owners, the lands do not become private forests under sub-clause (iii) of Clause (f) of Section 2 of the said Act of 1975. Therefore, unless it is proved that the notice under sub-section (3) of Section 35 of the said Act of 1975 is served, the land subject-matter of notice will not become private forest under sub-clause (iii) of Clause (f) of Section 2 of the said Act of 1975 and, therefore, there will not be any vesting of the said lands in the State Government in accordance with sub-section (1) of Section 3 of the said Act of 1975. From the affidavit of Shri Sudhir Raghunath Padwale and from the Mutation Entry No. 616, it is apparent that the name of the Government of Maharashtra was mutated on the ground that the said lands were private forests vesting in the State within the meaning of sub-clause (iii) of Clause (f) of Section 2 of the said Act of 1975. Assuming that the notices under sub-section (3) of Section 35 of the said Act of 1927 referred to in the reply are in respect of the said lands, even in the affidavit, no case is made out that the notices were served to the owners. As held in the case of Godrej Boyce, the notices of 13th April, 1957 and 14th August, 1975 have become dead letters as a notification under sub-section (1) of Section 35 of the said Act of 1927 has not been issued on the basis of the said notices.

19. Before the Mutation Entry No. 616 was made, as stated earlier, the names of the Government of India and the Investment Provident Company through its Manager Shri G.G. Pradhan were appearing in the Occupant/Kabjedar Column. The names of the Petitioner (Shri Ashwin Chunilal Dalai) and four others were appearing in the Other Rights Column as well as the Tenants Column by describing them as the Lessees. After the Mutation Entry No. 616 was made, the names of the Government of India and the Investment Private Limited were deleted. The entry of the name of the Government of Maharashtra-Reserved Forests was made in the Occupant/Kabjedar Column. However, the names of the said Shri Ashwin Chunilal Dalai and four others continued to appear in the Other Rights Column. In the circumstances, in absence of the Service of Notice under sub-section (3) of Section 35 of the said Act of 1927, only on the basis of the provisions of sub-section (1) of Section 3 the said Act of 1975, the name of the State of Maharashtra cannot be mutated in the Revenue Record on the ground of vesting. The prayer made in the Petition is not for deleting the name of the Government of Maharashtra from the Occupant/Kabjedar Column, but the prayer is for re-entering the name of the Petitioner and other Lessees. From page Nos. 20, 21 and 22 which are the 7/12 extracts in which the effect is given to the Mutation Entry No. 616, it is apparent that the names of the Petitioner and other Lessees have not been deleted and their names continue to appear in the Other Rights Column. Therefore, the name of the State Government will have to be deleted and the earlier entry in the name of the Government of India will have to be restored.

20. We must make it clear that we have made no adjudication on the rights claimed by the Petitioner (Shri Ashwin Chunilal Dalai) as a Tenant or a Lessee in

respect of the said lands as the document of Lease has not been produced. We have entertained this Petition at his instance as his name appears in the Other Right Column of the Revenue Record. Therefore, the issue of the title of the Petitioner (Shri Ashwin Chunilal Dalai) is not decided in this Petition and the same is kept open. Subject to what is observed above, we pass the following order:

ORDER:

"(a) We declare that the lands bearing Gat Nos. 7/1, 7/2, 7/3 and 7/6 of village Yeur, Taluka and District - Thane are not "Private Forests" within the meaning of sub-clause (iii) of Clause (f) of Section 2 of the Maharashtra Private Forests (Acquisition) Act, 1975 and hence, the said lands never vested in the State of Maharashtra by virtue of sub-section (1) of Section 3 of the said Act of 1975. Accordingly, the Mutation Entry No. 616 only in relation to the said lands stands cancelled. Accordingly, all entries in the Record of Rights in existence prior to the said Mutation Entry be restored within three months from today;

(b) We, however, make it clear that we have not made any adjudication on the question whether the provisions of the Indian Forests Act, 1927 and the provisions of the Forest (Conservation) Act, 1980 are otherwise applicable to the said lands. The said issue is expressly kept open;

(c) We also make it clear that we have made no final adjudication on the rights claimed by the Petitioner as the Lessee of the said lands;

(d) Subject to what is observed in the body of the judgment, the Rule is made partly absolute on above terms;

(e) No order as to costs."