(2020) 09 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 6419 Of 2016

Gaurakshan Sanstha APPELLANT

Vs

Collector Wardha And Ors RESPONDENT

Date of Decision : 08-09-2020

Acts Referred:

Maharashtra Private Forest (Acquisition) Act, 1975 — Section 2(ci)(f), 2(f), 3, 6, 13, 21, 34(A), 35(1), 35(3), 38
Forest Act, 1980 — Section 2(a)

Citation : (2020) 09 BOM CK 0006

Hon'ble Judges : Anil S.Kilor, J

Bench : Single Bench

Advocate : Sunil Manohar, Vidya Umale, Barabde

Final Decision : Allowed

Judgement

1. The present writ petition is arising out of the order dated 8th March, 2016 passed by the Maharashtra Revenue Tribunal, Nagpur, upholding the order of the Collector dated 6th December, 2014 declaring thereby the notices issued by the Range Forest Officer to the petitioner Sanstha, intimating that the Government has taken possession of the land owned by the petitioner from the date of notice as the land of the petitioner falls under the definition of Section 2 (c-i)(f) of the Maharashtra Private Forest (Acquisition) Act, 1975 (in short "the Act, 1975").

2. The facts leading to the present petition are narrated herein below:-

3. The petitioner is a Gaurakshan Sanstha, which is a public trust established for the purposes of 'Panjarpole', since the year 1962 and registered under the Bombay Public Trust Act.

4. The petitioner-Sanstha owned total land admeasuring 1.26.51.80 H.R. in villages Sarangpur, Jamb, Mandla, Borgaon and Ismailpur in Arvi Tahsil.

5. The State of Maharashtra vide notification published in Government Gazette dated 22nd January, 1985 granted exemption under the provision of the

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, from the provisions of the said Act.

6. The Range Forest Officer on 21st September, 1995 issued a notice to the petitioner, informing that the land owned by the petitioner to the extent of 64.16 H.R. stand vested in Government w.e.f 30th August, 1975 under the provisions of the Act, 1975. The relevant portion read thus:

1- महाराष्ट्र खाजगी वने (संपादन) कायदा 1975 मधील कलम 2 चे पोट कलम (सी-एक) व पोटकलम (एफ) मध्ये नमुद केलेल्या परिभाषेत बसत असलेली सर्व जमिन खाजगी वने असल्याने याच कायघातील कलम 3 अनुसार राखीव वन म्हणुन दिनांक 30 ऑगस्ट 1975 पासुन सर्व प्रकारच्या बोझ्यापासुन मुक्त होवुन राज्य शासनाची मालमत्ता म्हणून निहित झालेली असुन या वनाचे संदर्भात शासना व्यतिरिक्त इतर सर्व इसमांचे असलेले हक्क, हित संपुष्टात आलेले आहेत.

2- करिता खाली नमूद केलेल्या परिशिष्टात उल्लेख केलेल्या खाजगी वनांचा ताबा शासनाच्या वतीने वन खात्याने या पत्राचे दिनांकापासून घेतला असल्याची सुचना याद्वारे आपणास देण्यात येत आहे.

7. The Range Forest Officer on 20th September, 1996 issued similar notice to the petitioner, as regards the land to the extent of 53.21 H.R.

8. The petitioner raised objection under Section 6 of the Act, 1975 to both the notices dated 21st September, 1995 and 20th September, 1996 issued by the Range Forest Officer and thereby prayed for quashing of the said notices.

9. The Collector after considering the objection raised by the petitioner under Section 6 and also after considering the arguments made by both the parties, was pleased to allow the objection of the petitioner and thereby set aside the notices dated 21 st September, 1995 and 20th September, 1996.

10. The Range Forest Officer feeling aggrieved by the aforesaid order, preferred an appeal before the Maharashtra Revenue Tribunal, Nagpur. The Tribunal allowed the appeal and remanded the matter back to the Collector for fresh inquiry vide its order dated 20th April, 1999.

11. The Collector thereafter passed the order dated 23rd January, 2001 setting aside the aforesaid notices issued by the Range Forest Officer. The Collector while holding that on the appointed day the lands owned by the petitioners were under cultivation, he had considered numerous affidavits filed on record in that regard. The relevant findings given by the learned Collector is as follows :

''गैरअपिलार्थी वनपरिक्षेत्र अघिकारी आर्वी यांना महाराष्ट्र शासनाची अधिसुचना दि. 22.01.85 अन्वये प्रसिद्ध केल्यानुसार संस्थेच्या एकुण जमीन 126.5 हे.आर. सिलींग कायद्याचे कलम 47(2) व अन्वये जमिनीला कमाल जमिन धारणा कायद्यातून सुट देण्यात आली आहे. महाराष्ट्र खाजगी वने (संपादन) कायदा 1975 दि. 30.8.75 पासून अस्तित्वात आला. त्यापुर्वी पासुन गौरक्षण संस्था व त्यांचे ताब्यात असलेल्या जमिनीवर वाहीपेरी करीत असल्याचे पुरावे दाखल करण्यात आले आहे. त्यामुळे खाजगी वने (संपादन) कायद्याने नियम 6 अन्वये देण्यात आलेली नोटीस नियमबाहय ठरत असल्याची माझी खात्री झाली आहे. करिता असा निर्णय देण्यात येतो की, अपिलार्थी वनपरिक्षेत्र अधिकारी आर्वी (वन विभाग) यांनी महाराष्ट्र खाजगी वने (संपादन) कायदा 1975 चे कलम 2 व अन्वये गैरअपिलार्थी गौरक्षण संस्था आर्वी यांना देण्यात आलेली नोटीस हा कायदा दि. 30.8.1975 पूर्वीपासून शेती त्यांचेच ताब्यात व वाहीपेरी करीत आहे. करिता देण्यात आलेली नोटीस नियमबाहय व गैरकायदेशीर ठरत असल्यामुळे रद्द करण्यात येत

आहे. तसेच अपिलाथ्ीा वनपरिक्षेत्र अधिकारी यांनी संस्थेच्या जमिनीचा खाजगी वनाचा ताबा कायद्यानुसार पुर्वलक्ष प्रभावाने दर्शविण्यात आलेला अवैध ठरविण्यात येत आहे.''

12. The respondents did not challenge the said order before any forum by way of any appropriate proceeding.

13. In the Writ Petition No. 2980 of 2001 filed by one Bombay Environment Action Group, the issue of destruction of mangroves in the entire State of Maharashtra was raised before the Principal Seat of this Court. In the said petition, this Court on 10th October, 2001 issued interim directions which read thus:

"7. In the meantime, the Collectors of the Districts are directed not to issue certificates under Section 6 of the Maharashtra Private Forest (Acquisition) Act 1975 without obtaining prior approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980. They shall also initiate proceeding for the recall/cancellation of all such certificates that they may have issued in breach of Section 2 of the Forest (Conservation) Act 1980 after the same came into force."

14. The Collector under the pretext of the said interim direction, called upon the petitioner as well as the Range Forest Officer for hearing on the issue of cancellation of order passed by the Collector on 23rd January, 2001.

15. The Collector after hearing both the parties passed the order dated 17th January, 2005 and thereby cancelled the earlier order issued by its predecessor dated 23rd January, 2001.

16. Feeling aggrieved by the said order the petitioner filed an appeal before the Maharashtra Revenue Tribunal, Nagpur. The learned Tribunal dismissed the said appeal. The relevant findings given by the learned Tribunal are as follows:

"The specific words used in concluding part of directions issued does not give any choice and there is also no question of any ifs and buts. Collectors of all districts are directed not to issue certificate under Section 6 of the Maharashtra Private Forest (Acquisition) Act, 1975 without obtaining prior permission of the Central Government under Section 2 of the Forests (Conservation) Act, 1980. They shall also initiated proceedings for the recall/cancellation of all such certificates that may have been issued in breach of Section 2 of the Forest (Conservation) Act, 1980. Thus, the aforesaid directions has sealed the fate of appellant's case and as such appellant cannot be said to have any case to fight it out."

17. The petitioner thereafter approached to this Court by filing Writ Petition No. 4390 of 2010. This Court after hearing both the parties was pleased to allow the petition vide order dated 5th April 2011, with following observations as follows:

"6. Perusal of the order impugned in this petition shows that there is total non application of mind. The authorities below could not have acted on the basis of Division Bench of this Court, without deciding applicability of the said Act. The interim order passed by the Division Bench on 10.10.2001 applies to the certificates issued under Section 6 of the Maharashtra Private Forest (Acquisition) Act, 1975 without obtaining permission of the Central Government under section 2 of the Forest (Conservation) Act, 1980. The question is whether the petitioner was issued certificates under section 6 of the said Act and whether the permission of the Central Government under Section 2(a) of the Forest (Conservation) Act, 1980, required to be obtained, has not been considered by the authorities below. Hence, the order impugned cannot be sustained and the matter will have to be sent back to the Collector, Wardha for the decision afresh in the light of the observations above.

7. The writ petition is allowed.

The order dated 20.1.2010 passed by the Maharashtra Revenue Tribunal, Nagpur and the order dated 17.1.2005 passed by the Collector, Wardha, are quashed and set aside."

18. The Collector thereafter passed the order dated 6th December, 2014, inter alia holding that the notices dated 21st September, 1995 and 20th September, 1996 are legal and proper.

19. The petitioner feeling aggrieved by the said order dated 6th December, 2014, approached to the Maharashtra Revenue Tribunal by filing an appeal under Section 13 of the Act, 1975 which was dismissed by the learned Tribunal vide order dated 8th

20. Heard Shri Sunil Manohar, learned Senior Advocate assisted by Ms. Vidya Umale, learned Advocate for the petitioner and Smt. Barabde, learned Assistant Government Pleader for the respondents.

21. Shri Sunil Manohar, learned Senior Advocate appearing for the petitioner submits that the issue as regards validity of notices dated 21st September, 1995 and 20th September, 1996 issued by the respondent Range Forest Officer, had already been attained finality, as no challenge was raised to the order dated 23rd January, 2001 passed by the Collector, setting aside both the said notices, by the respondents in any proceeding or appeal. He therefore, submits that without express authority or power under the law the Collector cannot review its own order.

22. Shri Manohar, learned Senior Advocate further draws attention of this Court to the order passed by this Court in Writ Petition No. 4390 of 2010 dated 5th April, 2011, remanding the matter back to the Collector with direction to determine that whether the petitioner was issued a certificate under Section 6 of the Act and whether the permission of the Central Government under Section 2(a) of the Forest (Conservation) Act, 1980 was required.

23. He submits that the matter was remanded to the Collector to answer the question framed by this Court, however, the said directions have not been complied with by the Collector in its true letter and spirit.

24. Shri Manohar, learned Senior Advocate on merits submits that by virtue of Section 3 of the Act, 1975 only those lands vest in Government which are 'private forest' and to be declared any land as 'private forest', it must not only be a land that answers the description of 'Forests' within the meaning and definition of Section 2(c-i) of the Act 1975, but it must also be notified to be 'private forest' as required under Section 21 of the Act, 1975.

25. He further submits that all forest are not private forest and only those forest which are notified as stated Section 2(f) or Section 21 of the Act, 1975 are private forest. Thus, he submits that admittedly the land of the petitioner is not notified either Section 34 A or Section 35(1) or Section 35(3) or Section 38 of the Forest Act nor the land notified as 'private forest' under Section 21 of the Maharashtra Private Forest (Acquisition) Act 1975. In the said backdrop he submits that the land of the petitioner is not a 'private forest' and under Section 3 only 'private forest' vests in the Government. It is submitted that the land of the petitioner is not a 'private forest', thus, the notices issued by Range Forest Officer intimating the land of the petitioner has vested in the Government, are illegal.

26. He further submits that even otherwise all agricultural land which are not in excess of ceiling area and which were under cultivation on the appointed day are excluded from the purview of the Act, 1975. He points out that Collector has categorically observed in its order dated 23rd January, 2001, that the land in question was under cultivation on the appointed day. Further more, the provisions of Ceiling Act is not applicable in view of the exemption granted to the land of the petitioner and therefore it cannot be said that the petitioner is having excess of the ceiling area.

27. Per contra, learned Assistant Government Pleader supports the impugned order passed by the Collector as well as Maharashtra Revenue Tribunal and prays for dismissal of the petition.

28. Section 3 of the Act, 1975, speaks about vesting of private forest in State Government with effect on and from the appointed day. It says that 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. It further stipulates that all rights, title and interest of the owner or any person other than Government subsisting in any such forest on the appointed day shall be deemed to have been extinguished.

29. The word 'private forest' means any forest which is not the property of Government and includes any land declared before appointed day to be a forest under Section 34-A of the Forest Act or any forest in respect of which any notification issued under Sub-Section (1) of Section 35 of the Forest Act, before appointed day or any land in respect of which a notice has been issued under Sub-Section (3) of Section 35 of the Forest Act, excluding an area not exceeding

two hectare in extent as the Collector may specify in this behalf or any land in respect of which notification has been issued under Section 38 of the Forest Act.

30. Section 2 (f) of the Act, 1975, further defines the 'private forest' means in case whether the State Government and any other persons are jointly interested in the forest, the interest of such person in such forest or sites of dwelling houses constructed in such forest which are considered to be necessary for the convenient enjoyment or use of the forest land appurtenant thereto.

31. Moreover, Section 21 which is pertaining to declaration of certain land as private forest. The said provision stipulates that wherever it appears to the State Government that any tract of land not being the property of Government, contains trees and shrubs, pasture lands and any other land whatsoever, and that it should be declared in public interest and for furtherance of the objects of the Act, 1975 to be a private forest.

32. Section 21 of the Act, 1975 mandates that the State shall publish a notification in the Official Gazette, declaring that it is proposed to declare such tract of land to be a private forest and specifying as nearly as possible, the situation and limits of such tract.

33. Section 21 of the Act, 1975 further mandates the Collector or any officer authorised in this behalf by State Government, to issue a notice to the owner and to all other persons having an interest in such land, calling on them to show cause why such declaration should not be made. The said provision further stipulates hearing the objections if any, and submission of report along with objections, proceedings and opinion to the State Government, whether the land should or should not be declared to be a private forest, so as to take decision by the Government in this regard.

34. This Court in the case of the Bombay Environmental Action Group & Ors. Vs. State of Maharashtra & Ors. Reported in 2019(1) Bom.C.R. has observed thus:

"63. Sub-section (1) of Section 3 applies to a "private forest" defined under clause (f) of Section 2. Thus, vesting under sub-section (1) will apply only in case of a private forest within the meaning of clause (f) of Section 2 of the Private Forest Act. Therefore, only those lands which are covered by clause (f) of Section 2 will vest in the State Government in accordance with section 3 of the Private Forest Act. Such vesting will be automatic in view of sub-section (1) of Section 3. Hence, such private mangroves lands which are covered by the definition under section 2(f) will vest in the State Government on the appointed day which is 30th August 1975.

66. Under Section 21, a private land not covered by clause (f) of Section 2 can be declared as a private forest. Thus, if a privately owned mangrove land is to be declared as private forest, the procedure under Section 21 will have to be undertaken. It cannot be said that every private land containing trees and shrimps or pasture lands should be declared as a private forest by exercising

power under Section 21. It is ultimately left to the State Government to take recourse to Section 21. Therefore, a writ of mandamus cannot be issued directing the State Government to exercise the power under Section 21 of the Private Forest Act of declaring every privately owned mangrove area as a private forest......"

35. Thus, it is clear from Section 21 that a private land not covered by Clause-(f) of Section 2 can be declared as a 'private forest' and only those lands which are covered by Clause (f) of Section 2 will vest in the State Government in accordance of Section 3 of the Act, 1975.

36. In the present matter on perusal of the notices issued by Range Forest Officer dated 21st September, 1995 and 20th September, 1996, it is apparent that the said notices do not refere to any declaration under Section 21 or disclose how the land in question falls in the purview of definition of 'private forest' under Section 2 (f).

37. Even after going through the orders of the Collector dated 17 th January, 2005 and 06th December, 2014 and the orders of Maharashtra Revenue Tribunal dated 20th January, 2010 and 08th March, 2016, neither the Collector nor the Tribunal has noted about any declaration under Section 21 of the Act 1975 or discussed any material wherefrom it can safely be said that the land owned by the petitioner falls within the purview of Section 2 (f) of the Act, 1975.

38. In view of the above discussion I am of the firm view that without disclosing to the petitioner that how the land owned by the petitioner falls within the ambit of definition of 'private forest' under the Act 1975 or without following the procedure prescribed under the Act 1975 to declare the land in question as a 'private forest', issuance of notices, intimating that the land in question has been vested in Government w.e.f. 30th August 1975, is illegal.

39. At this juncture, it is pertinent to note that vide order dated 5Th April 2011, in Writ Petition No. 4390 of 2010, this Court has unequivocally observed that there was total non application of mind while passing the order by the Collector dated 17th January, 2005 and dated 20th January, 2010 by the Tribunal.

40. This Court, therefore, has also observed that the authorities below could not have acted on the basis of the interim order dated 10 th October 2001, of the Division Bench of this Court without deciding applicability of the Act, 1975 and as such the Collector was directed to decide the question whether the petitioner was issued certificate under Section 6 of the Act, 1975 and whether the permission of the Central Government under Section 2(a) of the Forest (Conservation) Act, 1980, required to be obtained.

41. However, after going through the order passed by the Collector, on 6th December, 2014, it is clear that no compliance has been made of the order dated 5th April 2011 of this Court in its true letter and spirit. The Collector and the Tribunal did not go into the issue of applicability of the Act, 1975 to the land

owned by the petitioner.

42. The Collector and the Tribunal also did not answer the question framed by this Court that whether the petitioner was issued certificate under Section 6 of the said Act, 1975.

43. Thus I am of the considered view that in the light of above discussion the matter needs to be remanded to the Collector for fresh consideration, keeping all the contentions of the parties open. Accordingly, at this stage I am not going into the other contentions of the parties.

44. In the light of above, the petition is allowed. The order dated 8th March 2016, passed by the Maharashtra Revenue Tribunal and the order dated 6th December 2014, passed by the Collector are set aside.

45. By keeping all the contentions of the petitioner and respondents open, the matter is remanded back to the Collector, Wardha with direction to decide the matter afresh after giving notices to both the parties and after hearing both the parties. It is further directed that the Collector shall consider the observations made herein above relating to provisions of Sections 2 (f) and 21 of the Act, 1975, while deciding the matter afresh.

46. No order as to costs.

